

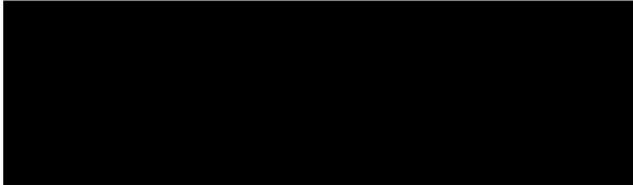
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



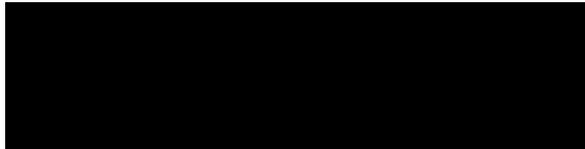
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DATE: **JUN 22 2011** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

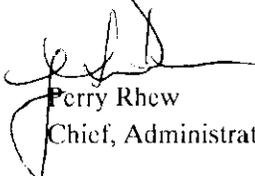


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse or that he had entered into the marriage in good faith. On appeal, counsel submits a Form I-290B, Notice of Appeal or Motion, and a printout of an article on economic abuse.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated

against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner is a native and citizen of the Republic of Guyana. He entered the United States on or about December 21, 1995 on a B-2 visitor's visa with temporary authorization to remain in the United States until June 20, 1996. He married K-B-¹ the claimed abusive United States citizen on [REDACTED]. On July 21, 2006, K-B- filed a Form I-130, Petition for Alien Relative on the petitioner's behalf. The Form I-130 was denied on February 7, 2008. On April 9, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he resided with K-B- beginning in September 2004, however, he does not include a date indicating when the claimed joint residence terminated. On April 28, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by K-B- or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, and an article on economic abuse. Counsel checks the box on the Form I-290B indicating that a brief would be submitted to the AAO in 30 days. To date, the record does not include a supplemental brief. The record is considered complete.

Battery and Extreme Cruelty

The petitioner initially provided a personal statement in which he declared that his marital bliss with his wife was short-lived. He indicated that K-B- demanded that he pick her up from work and when he did not, she failed to come home. He stated that in January 2007 he realized that his wife drank when he went to pick her up and found her drinking with a strange man. He noted that his wife refused to come home and that she stayed away for a month. On February 27, 2007, at his birthday party, he reported that his wife got drunk and started cursing him and she called 9-1-1- to report him as an abuser. The petitioner indicated that he left the house to avoid being arrested. The petitioner declared that he reported to the police station the next day and the police told him that his wife did not want him in the house so he stayed away for a few days and they later reconciled. He reported that in March 2007 she again demanded that he leave the home and he slept in his taxi for several days. He noted that because of his wife's verbal abuse, he stopped his friends from coming over for dinner, cards, or to watch the game. The petitioner also stated that K-B- used the household money to buy alcohol and she embarrassed him in public with her drunkenness and verbal abuse. He declared that he later found out that she wanted him out of the house so that she could have an affair with his friend. The petitioner indicated that she also insulted his religion.

The record included a copy of a police report filed on [REDACTED]. The police narrative provided the petitioner's report that during the previous two months, his wife had threatened to hit him, break his stuff, take his belongings, and that she came home drunk on numerous occasions causing an annoyance by yelling and threatening him.

¹ Name withheld to protect the individual's identity.

In response to the director's RFE, the petitioner submitted his initial statement with the date changed. He also provided a July 29, 2001 affidavit signed by [REDACTED] who declared that he "hung out at [the petitioner's] house many Saturday nights," that the petitioner's wife "was quite comfortable with the company," and that "[s]he was a heavy drinker, and very abusive when she is drunk." In the July 20, 2009 statement signed by [REDACTED] indicated that after six months of marriage, [REDACTED] became very abusive and had extra marital affairs in public and in the petitioner's presence, she would hit him with anything found in her range, and that she put him out on the streets on several occasions. [REDACTED] reported that these actions went on for about four months until the petitioner could not take it anymore and was forced to find shelter elsewhere. In the statement of [REDACTED] declared that the petitioner's wife was very abusive to him verbally as well as physically and that he had witnessed these events. [REDACTED] reported that [REDACTED] was an alcoholic and constantly threw the petitioner out of his home so that she could continue to have an affair. In a declaration signed by [REDACTED] stated that [REDACTED] was an alcoholic, the petitioner always complained to her, she also witnessed a lot of the abuse, and that the petitioner spent the night at her house many times when [REDACTED] put him out of the apartment. A July 23, 2009 handwritten statement prepared by the petitioner's counsel's law office indicated that the petitioner was taken to a domestic violence shelter on March 6, 2007 where he stayed for about seven hours.

Based on the information in the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty as defined in the statute and regulation.

On appeal, counsel asserts that the director gave little weight to the police report and failed to consider that the abuse was constant and that the witnesses spoke only to the pervasive and general nature of the abuse rather than any specific incident as the petitioner was abused all the time. Counsel noted that [REDACTED] did not sign the lease because she wanted to put all the liability on the petitioner and asserts that this is a form of economic abuse as defined in the article on economic abuse attached to the Form I-290B.

Upon review of the record, the petitioner has not established that he was subjected to battery or extreme cruelty as defined in the statute and regulation. In the petitioner's personal statement, he does not mention any incident of battery. Although the petitioner told the police that [REDACTED] had threatened to hit him, break his stuff, and take his belongings, he does not provide examples of specific instances of battery. Similarly, although the petitioner reported to the police that his wife was drunk on numerous occasions and that she yelled and threatened him, he does not provide examples of specific events or incidents. Likewise, in the statements submitted on his behalf, the declarants do not provide details regarding particular instances of battery or extreme cruelty and do not specify the circumstances of what they allegedly witnessed. Contrary to counsel's assertion, the declarants must provide some information regarding the circumstances of the alleged battery or extreme cruelty as well as the specific behavior and conduct observed. The petitioner also fails to provide probative testimony that he was subjected to economic abuse. The record contains little detail regarding specific incidents or events of battery or extreme cruelty. Moreover, the general information in the record does not include sufficient information and detail to suggest that [REDACTED]'s non-physical behavior was accompanied by any coercive actions or

threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The declarations again lack the requisite detail of specific events and the surrounding circumstances to conclude that [REDACTED] conduct constituted battery and/or extreme cruelty.

The petitioner's embarrassment as a result of [REDACTED] behavior and conduct is insufficient to establish that [REDACTED] conduct constituted extreme cruelty as set out in the statute and regulation. In this matter, the petitioner's testimony and the testimony of his friends fail to establish that the actions of [REDACTED] were comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that [REDACTED] behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

The petitioner has failed to provide any detailed probative testimony regarding controlling or manipulative behavior perpetrated by [REDACTED]. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty under the statute or regulation. The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by [REDACTED].

Good Faith Entry Into Marriage

In the petitioner's initial statement, he indicated that he met [REDACTED] when she visited his neighbors and that eventually the two became intimate and lived together for four months prior to marriage. The petitioner included a copy of a lease dated August 5, 2004 that lists [REDACTED] but does not include her signature. The record also includes a copy of the petitioner's 2004 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, indicating that he was filing as head of household and listing his daughter on the return. An amended tax return was filed in July and in September 2006 although it is not clear which return(s) are being amended. The explanation on the amended return is that the "I filed single mistakenly." In the July 23, 2009 handwritten statement prepared by the petitioner's counsel's law office, counsel noted that since the petitioner and [REDACTED] do not live together, they do not have any joint accounts or bank statements. As the director noted, the record also included copies of bills, credit cards, a letter from [REDACTED] and a blank check from the [REDACTED] account, submitted in support of the Form I-130 and all dated in September 2006. The record also includes statements from: [REDACTED] who indicated that he was present at the petitioner's wedding and that he visited the couple often; [REDACTED] who only discussed the claim of abuse; [REDACTED] who only commented on the claim of abuse; and [REDACTED] who only discussed the claim of abuse.

Based on the information in the record, the director determined that the petitioner had not established his good faith intent when entering into the marriage. The director specifically observed that the petitioner had not listed his daughter who he claimed resided with him in the

year 2004 on the lease provided, that the marriage certificate showed that [REDACTED] resided at a separate address contradicting the petitioner's claim that the couple resided together for four months prior to marriage, and that the declarants who submitted statements on the petitioner's behalf did not include information demonstrating the petitioner's good faith in entering into the marriage.

On appeal, counsel asserts that the director erred when evaluating the evidence submitted. Counsel contends that the petitioner's daughter was being raised by her grandmother and that [REDACTED] was residing at the address on the marriage certificate but was living temporarily with the petitioner before marriage.

Upon review, the petitioner does not provide probative testimony regarding his courtship with [REDACTED] or his interactions with [REDACTED] in detail. He does not describe the couple's mutual interests in detail, he does not detail the couple's daily routines, and he fails to provide any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). Similarly, the statements from his friends fail to provide any probative details regarding their observations of the petitioner's interactions with [REDACTED], other than interactions relating to the claimed abuse.

The documentary evidence submitted is insufficient to establish the petitioner's intent when entering into the marriage. The petitioner's tax returns are inconsistent regarding the petitioner's marital status and moreover do not reveal the petitioner's intent when entering into the marriage. The minimal information submitted in support of the Form I-130 does not provide indicia of the commingling of assets or establishing a life together. The lease is not signed by [REDACTED] and does not reflect the petitioner's intent when entering into the marriage. Upon review of the totality of the evidence in the record, the documentation is insufficient to establish the petitioner's intent when entering into the marriage. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimony and the testimony of others on his behalf also fail to demonstrate or otherwise assist in establishing his intent when entering into the marriage. The record in this matter does not include sufficient probative evidence to establish that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.