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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**

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: **MAR 15 2011**

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)

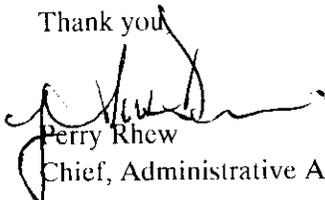
ON BEHALF OF PETITIONER:

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. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, and the AAO's previous decision will be affirmed. The petition remains denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

On October 2, 2009, the director denied the petition, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, and a statement in support of the appeal. The AAO concurred with the director's decision and dismissed the appeal. Counsel timely submits a Form I-290B, Notice of Appeal or Motion, and requests that the matter be reopened and the decision reconsidered. Counsel submits a brief in support of the motion.

Applicable Law and Regulations

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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].

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 further 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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Yemen. He entered the United States on November 30, 2001 as a B-2 visitor with authorized stay in the United States to May 29, 2002. On January 25, 2002, the petitioner filed a Form I-589, Application for Asylum and Withholding of Removal. On March 22, 2005, the petitioner married R-Z-¹, the claimed abusive United States citizen spouse.² On April 5, 2005, the petitioner's asylum claim was referred to immigration court and the petitioner was placed in removal proceedings. On April 19, 2005, R-Z- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on the same date. The Form I-130 was approved on August 2, 2005. The immigration court terminated its proceedings on May 24, 2006 to allow for the adjudication of the petitioner's Form I-485. On February 11, 2008, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that he resided with R-Z- from June 2004 to October 2007. On August 15, 2008, a judgment dissolving the marriage was issued by the State of New York Supreme Court, County of Monroe.

Motion to Reopen and Motion to Reconsider

The record on motion does not include any new facts that are supported by affidavits or other documentary evidence. However, counsel provides a brief and requests that the AAO reconsider the petitioner's former spouse's acts and find that her acts were part of an overall pattern of purposeful behavior, directed at achieving control over the petitioner to exploit his immigration status. The motion is granted for such consideration.

Abuse

Upon review of the evidence in the record, the record does not include probative evidence of the petitioner's former spouse's acts that constitute battery or extreme cruelty. In the petitioner's initial

¹ Name withheld to protect the individual's identity.

² The petitioner claims that on June 16, 2004 he married R-Z- in a religious ceremony. The record includes a sworn statement dated April 2, 2005 signed by the administrator of the [REDACTED] stating that a marriage ceremony was performed by the [REDACTED] for the petitioner and [REDACTED]

statement, he complained of his former spouse's demands for money, his former spouse's betrayal, and her extra marital affair with her former boyfriend. The petitioner provided no information regarding specific acts or incidents that constitute battery or extreme cruelty under the statute and regulation. The petitioner did not demonstrate that his former spouse's actions were part of an overall pattern of violence or coercion. In the petitioner's second statement he added that his former spouse did not marry him in good faith, that she called him derogatory names, and that she repeatedly threatened to call immigration and have him deported. Although the petitioner stated that his former spouse repeatedly threatened him with calling immigration and having him deported, the petitioner does not provide information regarding the circumstances of specific threats and does not detail or identify particular behavior that demonstrates that he was subjected to an overall pattern of violence or coercion. As noted in our previous decision, the petitioner in this matter added that his former spouse threatened him with deportation after being informed that his first affidavit was insufficient to establish that he had been subjected to battery or extreme cruelty. This escalation of the type and nature of the claimed abuse amounts to unreliable testimony on the part of the petitioner which undermines his credibility. Moreover, the affidavits submitted on his behalf also fail to provide the probative information necessary to establish the specifics of the alleged threats made against the petitioner. The affiants provide general information regarding the petitioner's former spouse's demands for money and threats regarding his immigration status. The affiants' descriptions track the petitioner's statement and thus do not provide independent probative information regarding the actuality of the events described.

Upon review of the record on motion, the record does not establish that R-Z's actions 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 R-Z's 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's testimony in this matter, as well as the testimony of the individuals who submitted affidavits on his behalf, do not include probative, credible evidence establishing that he was subjected to battery or extreme cruelty as defined in the statute and regulation. The record lacks the credible evidence necessary to establish that the petitioner's former spouse subjected him to extreme cruelty by exploiting his immigration status. The record is insufficient in this regard.

Conclusion

The AAO, upon review of the evidence, affirms its previous decision that the petitioner had failed to establish that he was subjected to battery or extreme cruelty perpetrated by his former spouse. As discussed above, the record on motion does not include any further information or evidence that overcomes the AAO's July 15, 2010 decision to dismiss the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The AAO's decision, dated July 15, 2010 is affirmed. The petition remains denied.