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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  
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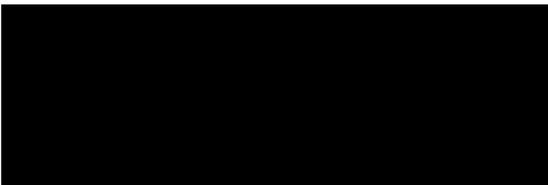


FILE:  Office: VERMONT SERVICE CENTER Date: **MAR 21 2011**

IN RE: 

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 the \$630 fee. 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 Vermont Service Center director (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 denied the petition on the basis of his determination that the petitioner had failed to establish that he resided with his wife, entered their marriage in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and additional evidence.

#### *Applicable Law and Regulations*

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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, 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, 8 U.S.C. § 1154(a)(1)(J) 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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 citizen of the Philippines who entered the United States on November 20, 2007 as the nonimmigrant fiancé of a U.S. citizen whom he married on December 15, 2007 in California. On July 29, 2008, the petitioner's application for adjustment of status was denied and he was subsequently placed in removal proceedings.<sup>1</sup> The petitioner filed the instant Form I-360 on January 21, 2009. The director subsequently issued two requests for additional evidence (RFE) of, *inter alia*, the petitioner's residence and good-faith entry into marriage with his wife as well as her battery or extreme cruelty. The director found the petitioner's responses to the RFEs insufficient to establish his eligibility and denied the petition on those three grounds.

On appeal, counsel asserts that the evidence submitted below and on appeal demonstrates the bonafides of the petitioner's marriage and that the petitioner's wife subjected him to battery and extreme cruelty during their marriage.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the evidence submitted on appeal fail to overcome the director's grounds for denial for the following reasons.

*Good-Faith Entry into the Marriage*

In his first declaration submitted below, the petitioner stated that he was introduced to his wife through his sister-in-law's aunt. At the time, the petitioner was working in Taiwan and his future wife was living in the United States. The petitioner recounted that they began communicating through telephone calls in January 2006 and sent each other letters and cards. The petitioner stated that they told each other about their prior relationships and they became good friends. Their friendship turned romantic after a few weeks and they decided to meet in the Philippines after the petitioner's employment contract ended in Taiwan. In October 2006, the petitioner stated that his future wife came to the Philippines and he "surprised her with a marriage proposal" because he "fe[lt] comfortable to her." The petitioner explained that they planned to get married in the Philippines, but his wife's divorce documents from her prior marriage were not accepted by the Filipino authorities and they cancelled the wedding.

In August 2007, the petitioner learned that his future wife's fiancé petition for him had been approved. The petitioner recounted that after he arrived in the United States on November 20, 2007, he waited a couple of hours at the airport for his future wife, who told him that she was late because she was at a medical appointment related to her breast cancer. The petitioner explained that he tried to be understanding and help build her confidence to fight the cancer. After leaving the airport, the petitioner stated that he and his future wife went to a restaurant and then visited some of her friends and relatives.

The petitioner stated that he and his future wife began fighting the day after his arrival due to her jealousy and although "things were bad" between them, they went ahead with their wedding on

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<sup>1</sup> The petitioner remains in proceedings before the San Diego Immigration Court and his next hearing is scheduled for March 29, 2011.

December 15, 2007. The petitioner stated that most of the guests at the wedding were his wife's friends. The petitioner recounted that some time later he began working at a restaurant in another city and would return to his wife's home on the weekends. However, the petitioner explained that his wife's jealousy and harassment eventually made him realize that their "relationship would never work out no matter what [he] did" and he decided to leave the marriage.

In his second declaration submitted in response to the director's second RFE, the petitioner asserted, "I married [my wife] because we fell in love; we intended to live together. However, things did not work out as planned." The petitioner further explained, "[d]uring our marriage, we've tried to establish evidence of joint ownership and assets but things were not going well and we were already having problems on our marriage."

The director determined that the petitioner's statements were insufficient to demonstrate his good-faith entry into his marriage. We find no error in the director's assessment. The petitioner indicates that he was ready to marry his wife before they met in person, although he does not describe the content of their prior correspondence in any probative detail, nor does he explain his reasons for wanting to marry other than that he felt "comfortable" with her. On appeal, the petitioner submits a copy of a letter his wife wrote in support of her fiancé visa petition in which she stated that they first met in person on September 23, 2006 when she visited him the Philippines and that they stayed together until she left on October 7, 2006. The petitioner stated that during his wife's visit, she met his relatives and close friends and they went "out in some good places near [his] home," but he provided no detailed description of their activities, interactions or their decision to marry less than two weeks after meeting each other in person.

The remaining, relevant evidence also fails to support the petitioner's claims. On appeal, the petitioner submits additional statements from four individuals. [REDACTED], the mother of his sister-in-law, who states that the petitioner and his wife stayed in her home during his wife's visit to the Philippines in September 2006, confirms that the couple planned a wedding, but could not marry in the Philippines because the petitioner's wife's divorce documents were not recognized by the authorities. [REDACTED] explains that because the petitioner had already paid for the arrangements, they went ahead and held the wedding reception, which many guests and the petitioner's family attended. The petitioner himself did not mention this reception in either of his declarations. [REDACTED] also states that she attended the petitioner's wedding and reception in California, but she does not describe either event in detail or provide any substantive information regarding her observations of the couple and the petitioner's interactions with his wife.

[REDACTED], the petitioner's uncle, states that he resides in the Philippines, but came to the United States to attend the petitioner's wedding. [REDACTED] attests that he stayed at the petitioner's wife's apartment during his visit and met five members of her family as well as her godparents. [REDACTED] noted that the wedding ceremony was "done in good faith and very solemn," but he provides no information regarding the petitioner's relationship with his wife or his observations of the petitioner's interactions with her during his visit. In addition, the petitioner himself stated that most of the guests at the wedding were his wife's friends and relatives and he does not mention his uncle's presence. [REDACTED], the petitioner's family friend, states that he also attended the petitioner's wedding and that the petitioner told him he wanted to have a good relationship with his wife's family and find a job to support them. [REDACTED] does not describe

the petitioner's wedding or marital relationship in any probative detail, except to discuss incidents of alleged abuse.

The petitioner also submitted a letter from the priest who solemnized his marriage. The priest confirms that the marriage took place at his church on December 15, 2007 and that it was recorded in the church's book of marriages. While the priest's letter affirms that a marriage ceremony occurred, it provides no probative information regarding the petitioner's intentions in entering the marriage.

On appeal, counsel asserts that the director did not acknowledge the numerous cards and electronic mail messages the petitioner's wife sent him and the photographs of the couple and their wedding. The cards and messages from the petitioner's wife reflect her feelings for the petitioner, but do not establish the petitioner's own good faith in entering their marriage. The photographs picture the petitioner and his wife at their wedding and on one other occasion. Although the photographs show that they were together on these two occasions, the pictures alone are insufficient to establish the petitioner's intentions in entering the marriage.

When viewed in the aggregate, the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

On the Form I-360, the petitioner stated that he lived with his wife from November 2007 to May 2008 at an address [REDACTED]. In his first declaration, the petitioner stated that on an unspecified date after his arrival in the United States, he began working in another city and would return to his wife's home on the weekends, but eventually he "decided to give everything up" and "decided [he] wouldn't go back home and [he] should start learning to live by [him]self." The petitioner did not state the address of his purported residence with his wife or describe, for example, their home, living arrangements or residential routines in any probative detail. In his second declaration, the petitioner stated that he and his wife "intended to live together," but their marriage ended before they had "enough time to establish supporting documents."

[REDACTED], the petitioner's uncle who attended his wedding, states that he stayed at the petitioner's wife's apartment [REDACTED], but he does not indicate that the petitioner was residing there at the time. [REDACTED] states that the petitioner and his wife "lived together" at her home in [REDACTED] after the petitioner's arrival, but he did not describe ever visiting the couple at their home or provide any other information regarding their allegedly shared residence.

On appeal, counsel does not address this ground for denial of the petition. In sum, the relevant evidence of record does not demonstrate that the petitioner resided with his wife during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Battery or Extreme Cruelty*

In his first declaration, the petitioner recounted that the day after he came to the United States, he and his wife began fighting because of her jealousy. The petitioner stated that his wife would check the telephone to see who he had called and ask where he had been although she knew that he was at home. The petitioner reported that his wife suspected he was speaking to another woman when he called his family in the Philippines and that she complained about having no money, but did not help him find employment. The petitioner's wife also argued with him when he had conversations in a dialect that she did not understand.

After the petitioner began working in another city, he recounted that his wife would frequently call his workplace and his boss to check on him and accused him of having an extramarital affair with one of his coworkers. On one occasion, the petitioner's wife threatened that if he did not stop working and return home, she would "call immigration" and the police. To avoid further trouble, the petitioner stated that he returned to his wife's home, but two days later his wife went to the house where he was staying during the workweek at night to check on him. The petitioner recounted that his wife woke up and disturbed him and his coworkers, again accused him of having an affair and took his car keys, documents and wallet. The petitioner stated that she returned his belongings after he went to her home and they reconciled, but the next evening she returned to the house where he stayed during the workweek and "again created a scene." The petitioner stated that she punched, pushed and cursed him, but he thought "it was okay, [he] could endure her punches." After a few days, the petitioner explained that he and his wife reconciled after she admitted that she was at fault. The petitioner stated that he "gave her another chance, but the cycle just repeated" and he realized "it was finally time to end everything."

In his second declaration, the petitioner provided no further details regarding the alleged abuse, but simply stated, "things did not work out as planned. Unexpected things happened and went out of places [sic]. It was difficult for me to handle it, but life has to move on."

In her undated statement submitted below, [REDACTED] the petitioner's former employer affirmed that the petitioner's wife called her a number of times inquiring about the petitioner's activities and whereabouts. [REDACTED] stated that the petitioner's wife also went to the "staff house" to check on the petitioner at night and accused the petitioner of having an affair with another staff member. [REDACTED] also confirmed that the petitioner's wife would threaten the petitioner that if he did not return home with her, she would report that he was working without authorization. [REDACTED] recounted that she once saw the petitioner's wife "pointing her finger at [the petitioner] in one of their confrontations" and challenged the petitioner to hit her, but he did not respond. [REDACTED] concluded that the petitioner's wife placed him "into great embarrassment with her histrionic acts. He had no peace of mind with her."

In his declaration submitted on appeal, [REDACTED] the petitioner's family friend, states that the petitioner told him about the incidents where his wife went to his workplace and "humiliated [him] in front of his employer [and] workmates." [REDACTED] also recounts one incident where the petitioner's wife told him she went to the petitioner's workplace to spy on him and another occasion when she went to [REDACTED]'s house and accused him of hiding the petitioner from her.

The petitioner also submitted his psychological evaluation by [REDACTED], a licensed psychologist who interviewed the petitioner on March 5, 2009. [REDACTED] reported that the petitioner's score on

the Millon Clinical Multiaxial Inventory (MCMI-III) indicated that he was “fearful, sad, socially anxious, self-effacing and noncompetitive.” [REDACTED] explained that the petitioner’s score on the Beck Depression Inventory-II indicated “a mild to moderate level of depression” and she diagnosed the petitioner with adjustment disorder with mixed anxiety and depressed mood. [REDACTED] concluded that the petitioner’s wife exploited his self-sacrificing and passive nature to manipulate him and noted that although the petitioner’s emotional functioning had improved since he separated from his wife, he “remains socially withdrawn, agitated and untrusting.”

The director found the relevant evidence submitted below insufficient to support the petitioner’s claims of abuse. On appeal, counsel asserts that the director erred in giving little weight to the statement of the petitioner’s employer and his psychological evaluation and that the evidence submitted below and on appeal demonstrates that the petitioner’s wife subjected him to both battery and extreme cruelty.

The director based his determination, in part, on the petitioner’s failure to submit “additional third party testimony to corroborate [his] claims of abuse.” To the extent that the director’s decision indicated that corroborative evidence of battery or extreme cruelty was required, such portion of his decision is hereby withdrawn. The regulations do not require a self-petitioner to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i) (“The self-petitioner may, but is not required to demonstrate that preferred primary or secondary evidence is unavailable.”).

Nonetheless, we find no error in the director’s ultimate determination that the relevant evidence submitted below did not establish the requisite battery or extreme cruelty. Although the petitioner recounted that his wife once punched and pushed him, he stated that this incident occurred at the house where he was staying with other coworkers and that his wife called his boss after the incident to insist that he return to her home. However, the petitioner’s former employer, [REDACTED] does not mention this incident in particular and indicates that the only physical confrontation she witnessed between the petitioner and his wife was when his wife pointed a finger at him. Although both [REDACTED] and [REDACTED] state that the petitioner told them about the incident, their descriptions of the confrontation differ significantly from the petitioner’s account. Given these inconsistencies, the petitioner’s brief, one-sentence description of the incident is insufficient to establish that his wife physically assaulted him.

The relevant evidence submitted below and on appeal also fails to demonstrate that the petitioner’s wife subjected him to extreme cruelty during their marriage. The record indicates that the petitioner’s wife was jealous and disturbed the petitioner several times at his workplace; and that he experienced moderate depression and anxiety due, in part, to his troubled relationship with his wife. The relevant evidence does not establish, however, that the petitioner’s wife’s actions amounted to psychological abuse, were part of a cycle of violence or otherwise constituted extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the cruelty be extreme. The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has explained that: “[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 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner’s wife subjected him to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.