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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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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 31 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 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 pursuant to 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 his United States citizen spouse.

The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by a United States citizen. Counsel for the petitioner submits a brief and documentation in support of the appeal.

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.

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.

Facts and Procedural History

The petitioner is a native and citizen of the Republic of Korea. He entered the United States on November 14, 1997 on an F-1 visa, valid for the duration of his student status. The petitioner terminated his studies after one year and consequently fell out of valid student status. On November 12, 2008, the petitioner married J-S-L-¹, the claimed abusive United States citizen. On or about January 15, 2009, J-S-L- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The Form I-130 was denied on September 24, 2009. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on December 8, 2009. The petitioner indicated on the Form I-360 that he had resided with J-S-L- from November 12, 2008 to September 30, 2009.² On March 3, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the

¹ Name withheld to protect the individual's identity.

² The petitioner also noted on the Form I-360, that his spouse and her boyfriend attempted to have him removed from the marital home prior to September 30, 2009 and that is why the Stipulated Judgment of Divorce indicates that the couple separated effective August 1, 2009. The record does not include a Final Judgment of Divorce.

director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by J-S-L-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, and documentation in support of the appeal.

Battery or Extreme Cruelty

In the petitioner's initial statement, he indicated that his former wife complained of his church attendance and his fellowship with other church members and they frequently argued about it. The petitioner noted that after five or six months they talked less and less and when he found out she was seeing someone else, he was devastated. The petitioner stated that one day his former wife's boyfriend came and "threatened [him] to leave the house" and his former wife also told him to leave and that if he did not leave they would call the police. The petitioner noted that the police came but as he was the husband, the police said that he could stay at the house and when his former wife's boyfriend called the police a second time, the police told them that if anyone called the police again, everyone would be arrested.

The petitioner also provided an October 28, 2009 evaluation prepared by [REDACTED] Clinical Psychologist. [REDACTED] noted that she spent three and one-half hours interviewing and testing the petitioner with his interpreter and another 15 minutes alone with the petitioner. [REDACTED] noted that she reviewed background information from the petitioner's counsel, affidavits from the petitioner's pastor and his neighbor, and the petitioner's personal statement. [REDACTED] noted in her evaluation that the petitioner also reported that his former wife pressured him to work more hours and bring in more money and when he could not, she attacked him for not being a better man and better provider. [REDACTED] also noted the petitioner's report that his former wife demeaned his sexual performance. The petitioner reported to [REDACTED] that in May his former wife began to spend more time at her church where she met another man and eventually she was gone for three weeks. When she returned she brought her boyfriend, who verbally argued with the petitioner and tried to convince him to leave the house. [REDACTED] diagnosed the petitioner with adjustment problems with anxiety and depression and found that his stressors were legal, family, and financial. [REDACTED] opined: "it is apparent that [the petitioner] did experience emotional abuse in his marriage."

The petitioner also submitted an October 18, 2009 letter from his pastor who noted that he had counseled the petitioner regarding his former spouse's infidelity but that the petitioner continued to struggle internally. In a December 2, 2009 affidavit signed by [REDACTED] declared that: she and her husband are members of the petitioner's church; the petitioner's former wife seemed jealous of her and her husband and their friendship with the petitioner; and that the petitioner told her that his former wife wanted him to bring home more money but also wanted him to spend more time with her. [REDACTED] noted the petitioner's deep hurt at his former spouse's decision to reject him and end their marriage. The initial record also included a statement from the petitioner's neighbor indicating she had witnessed the police coming to her next door neighbor's house on two occasions on the same day.

In response to the director's RFE, the petitioner provided a second personal statement. The petitioner declared that J-S-L- had not physically battered him and that his claim is based on

extreme cruelty perpetrated by J-S-L- against him. The petitioner added that after he had been married for about five months, his former spouse began complaining that he did not make enough money and started belittling him for that and for his lack of education. The petitioner noted that his former spouse made fun of him and disrespected him in such a way that he wanted to kill himself. The petitioner noted further that in May 2009, she started staying away from the house for long periods and he suspected she might have met someone else. The petitioner added that she started telling him that if he was deported he deserved it because he had not become more successful. The petitioner added further that when she decided not to be married to him anymore, she started threatening him with deportation saying she would call immigration and they would take him away from their house.

Based on the above information, the director denied the petition determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by a U.S. citizen.

On appeal, counsel for the petitioner asserts that the petitioner has presented: evidence of verbal abuse; testimony of threats regarding his immigration status in order to control him; evidence of his social isolation as his former spouse objected to his church attendance; and [REDACTED] opinion that he was subjected to emotional abuse. Counsel contends that the petitioner suffered extreme cruelty as contemplated by the statute and regulations and that his situation was different from marital tensions and incompatibilities, the phrase the director used as authority to deny the petition. Counsel submits background information on the passage of the Violence Against Women Act (VAWA) and notes disseminated in 2003 regarding the VAWA adjudicatory process.

Upon review of the record, we find no error in the director's assessment of the relevant evidence. The petitioner provides testimony regarding the breakdown of his marriage and the distress he experienced as he realized his former spouse was involved with someone else. The petitioner's testimony does not reveal any specific evidence demonstrating that his former spouse's unhappiness with him escalated into behavior that constitutes extreme cruelty as defined by the statute and regulation. The petitioner does not provide detailed probative testimony regarding his former's spouse's alleged disrespect and name calling sufficient to demonstrate that he was subjected to extreme cruelty. Likewise, the petitioner's former spouse's desire to end the marriage, although causing the petitioner anguish, does not constitute extreme cruelty under the statute and regulation. There is insufficient evidence to establish that the petitioner's former spouse's indication that she was going to involve the police and immigration when he refused to leave the home, were actions of manipulation or control over the petitioner or other abusive behavior that was part of a cycle of psychological or sexual violence. The record does not include probative testimony evidencing that the petitioner's former spouse's alleged threats were accompanied by physical violence or of threats of physical violence. Furthermore, the record does not reveal that the petitioner was socially isolated from his church or church members, but rather that he continued to attend his church. The petitioner's spouse's infidelity and abandonment of the marriage are not behaviors that constitute extreme cruelty under the statute and regulation and the petitioner's testimony does not reveal other behaviors or actions that constitute extreme cruelty as set out in the statute or regulation.

Upon review of [REDACTED] evaluation of the petitioner, the evaluation is based on one interview of approximately four hours and thus does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional. Moreover, [REDACTED] does not causally connect any specific behaviors by J-S-L- that constitute extreme cruelty as contemplated in the statute and regulation to her diagnosis of the petitioner's adjustment problems with anxiety and depression. We acknowledge [REDACTED] opinion that the petitioner suffered emotional abuse in his marriage; however, emotional abuse as generally described in the evaluation is not the equivalent of extreme cruelty as set out in the statute and regulation.

Upon review of the affidavits submitted by the petitioner's pastor and his friend, the affiants do not describe witnessing any specific incident of abuse. The petitioner's neighbor, although confirming the petitioner's statement that the police visited the marital home two times on one day, does not describe witnessing any abusive behavior on the part of J-S-L-. The affiants do not reveal any particular behavior on the part of J-S-L- that constitutes extreme cruelty as set out in the statute and regulation.

Upon review of the petitioner's statements and the statements and evaluation submitted on his behalf, the evidence of record lacks the descriptive detail necessary to establish that J-S-L- subjected the petitioner to battery or that her actions constituted extreme cruelty as defined in the statute and regulations. The petitioner has failed to establish that J-S-L-'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 J-S-L-'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)). In this matter, the petitioner has not provided sufficient probative evidence to establish that he was subjected to battery or extreme cruelty perpetrated by J-S-L-.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reason. 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.