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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 MAY 05 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:

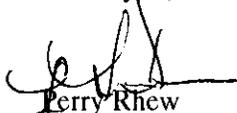


INSTRUCTIONS:

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 a United States citizen or that he had entered into the marriage in good faith. On appeal, counsel submits a brief.

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 Dominican Republic. He claims he entered the United States in or about July 1993 without inspection. He married R-R-¹ the claimed abusive United States citizen on January 14, 1998 in [REDACTED]. On January 15, 1998, the petitioner's spouse filed a Form I-130 on his behalf. On August 16, 2005, the Form I-130 was denied. On January 8, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 11, 2010, 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 R-R- or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

Battery or Extreme Cruelty

The petitioner does not provide a personal affidavit in support of the Form I-360 petition. In response to the director's RFE, the petitioner provided a March 3, 2010 report of a preliminary forensic psychiatric examination prepared by [REDACTED], Ph.D. Dr. [REDACTED] indicated that the petitioner reported: shortly after his marriage to R-R- he noticed that she had significant mood swings; R-R- traveled out of the country in 2001 and was arrested trying to smuggle drugs when she tried to re-enter the United States; and she was incarcerated for approximately six years. Dr. [REDACTED] also indicated that the petitioner reported that upon R-R-'s release from prison she returned to live with the petitioner but that she demonstrated disturbing behaviors including carrying a knife and threatening the petitioner with the knife. Dr. [REDACTED] further indicated that the petitioner reported that there were episodes of violence when R-R- struck him resulting in the petitioner notifying the police, and further that R-R- swore at the petitioner and stole from him. Dr. [REDACTED] opined: "[the petitioner] was abused and victimized physically, emotionally, and psychologically by his wife" and "[the petitioner's] symptoms of mood and affective disturbance, are a consequence of his abuse and victimization by his wife."

Also in response to the director's RFE, the petitioner provided affidavits signed by [REDACTED]s [REDACTED] and [REDACTED]. Ms. [REDACTED] declared that she had known the couple since 1995 and had spent time with them and that she noticed that R-R- was verbally abusive toward the petitioner, would threaten the petitioner all the time, and would throw objects at him. Ms. [REDACTED] declared that she met the couple in August 1999 and would spend time with the couple at parties and neighborhood events and R-R- was abusive towards the petitioner and at times when she was at their house they would argue and R-R- would threaten the petitioner.

Upon review of this information, the director determined that the petitioner had not provided sufficient evidence to establish that he had been subjected to battery or extreme cruelty.

¹ Name withheld to protect the individual's identity.

On appeal, counsel for the petitioner asserts that the evidence submitted is sufficient to establish that the petitioner had been subjected to battery and extreme cruelty perpetrated by R-R-, his United States citizen wife.

Upon review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by R-R-. The only information from the petitioner about the alleged events of battery or extreme cruelty is information he provided to Dr. [REDACTED] as set out in her report. The petitioner does not describe to Dr. [REDACTED] any specific incidents of battery or of threats, but refers generally to episodes of violence. Although the petitioner told Dr. [REDACTED] that he was struck by R-R- and involved the police, he does not provide the details of this alleged incident, including the timeframe of the event. The petitioner's testimony provided only to Dr. [REDACTED] during one interview of unspecified length is insufficiently detailed to conclude that the petitioner was the victim of battery or extreme cruelty. In this matter, the record includes no testimony from the petitioner to United States Citizenship and Immigration Services (USCIS). The petitioner failed to describe in probative detail any specific incidents of battery or of threatening or controlling behavior of his wife.

The affidavits of [REDACTED] and [REDACTED] also fail to provide probative information regarding the actions of the petitioner's spouse. The affiants do not describe specific instances of abusive behavior, including the timing and surrounding circumstances of any claimed instances of abusive behavior. The individuals do not note the petitioner's spouse six-year absence from the claimed marital residence due to her incarceration. Their statements do not provide the requisite evidence to assist in establishing that the petitioner was subjected to battery or extreme cruelty perpetrated by his wife.

Upon review of Dr. [REDACTED]'s March 3, 2010 report of a preliminary forensic psychiatric examination, we observe that her report is based upon a single interview of the petitioner of unspecified duration. Thus her opinion is not based upon an established relationship with the petitioner that would reflect the insight and developmental rapport between the petitioner and a mental health professional. We note that Dr. [REDACTED] styles her report as preliminary in apparent acknowledgement of this fact. We find the absence of an established relationship renders Dr. [REDACTED]'s opinion speculative and diminishes the value of her evaluation. Moreover, the overview of the petitioner's claims of battery and extreme cruelty set out in Dr. [REDACTED]'s report lacks the requisite detail regarding the timing and circumstances of each claim of battery or episode of claimed extreme cruelty sufficient to conclude that the incidents actually occurred. The petitioner's statements to Dr. [REDACTED] as reported by her are insufficiently detailed to ascertain the credibility of the petitioner's statement regarding his wife's actions.

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The petitioner does not provide a credible detailed account of specific incidents or events that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that R-R-'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 him. The petitioner's statement to Dr. [REDACTED] and the statements of others lack the consistent detail necessary to establish that R-R-'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-R-'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 record presented lacks sufficient credible information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse.

Good Faith Entry Into Marriage

The petitioner provided a cursory description of his initial meeting and subsequent interaction with R-R- to Dr. [REDACTED] and failed to provide probative information regarding his specific intent when entering into the marriage. In the affidavits of [REDACTED] and [REDACTED] the affiants speak generally of knowing the couple and that the marriage was a true marriage. The affiants do not provide probative details regarding their observations of the petitioner's allegedly good faith entry into marriage with R-R-. Nor do the affiants acknowledge R-R-'s six-year absence from the claimed marital home. The record also includes a 1998 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, bank statements for a joint account held by the petitioner and R-R- during the time period R-R- was incarcerated, a phone bill addressed to the petitioner in care of R-R- for a date when R-R- was incarcerated, and other IRS documents for the 2001 year. These documents do not provide an adequate picture of the couple's relationship during their marriage. Moreover, the record does not include the necessary probative information from the petitioner to ascertain 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).

On appeal, counsel for the petitioner provides a bank account summary showing that a bank account was opened December 21, 1998 and closed November 12, 2008. Counsel also asserts that the documentation previously submitted establishes that the petitioner entered into the marriage in good faith. Upon review of the totality of the evidence in the record, the petitioner has not described the couple's mutual interests, he has not described their daily routines in detail, and he has not provided any probative information for the record that assists in determining his intent when entering into the marriage. In this matter the petitioner has not set forth his intent in probative detail in a statement to USCIS and the record does not include sufficient evidence that his intent was to establish a life together with R-R-. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with R-R- in good faith, as required by section 204(a)(1)(B)(ii)(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.