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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 23 2011** Office: VERMONT SERVICE CENTER

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 claims to be a native and citizen of Republic of Togo, who entered the United States on December 29, 2002 on an F-1 student visa. He married A-M-¹, the claimed abusive United States citizen on April 23, 2007 in Minnesota. On June 26, 2009, 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 A-M- from April 2007 to October 2008. On July 1, 2009 and on January 21, 2010, the director issued requests for evidence (RFE). The petitioner, through counsel, responded to the RFEs on November 19, 2009 and on April 15, 2010. In addition, the petitioner supplemented the record on April 17, 2010, April 28, 2010, and May 3, 2010. Upon review of the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by A-M- 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 supplements the Form I-290B with a brief in support of the appeal.

Battery or Extreme Cruelty

In the petitioner's initial June 12, 2009 affidavit, he declared that he and A-M- disagreed about her taking the bus when she wanted to drive without a license, that she did not want to work, that she began to party and drink often, and in November 2007, a man told him he was having an affair with A-M-. The petitioner indicated that the couple fought quite often. The petitioner also claims he was assaulted by A-M- on three different occasions. On an undeclared date, he noted that "[he] kept pressing [A-M-] for an answer, asking her where she had been," and A-M- who he observed was intoxicated got angrier and tried to hit him in the face with her handbag. The petitioner indicated that he blocked the blow and she continued to beat him with her bag. On a second occasion in June 2008, he declared that A-M- wanted to use his car to drive to another city and he told her she could not and "she jumped on [him] and started to hit and scratch [him]." The petitioner reported that he called the police who arrived in about 30 minutes and he showed the officer the scratches on his arm from A-M-'s nails. When the police asked if he wanted to press charges he declined to do so. The petitioner stated that when A-M- returned from her trip, her partying got worse and she frequently stayed out quite late. The petitioner indicated that he suspected that A-M- was having an affair and on October 14, 2008 his suspicions were confirmed when he discovered suggestive text messages on her phone from a male. The petitioner indicated that it was on this date that the third assault occurred. The petitioner acknowledged that he broke A-M-'s phone which woke A-M- and they began screaming at each other. The petitioner declared that "she jumped on top of [him]," "was hitting and punching [him] everywhere," and "[he] kept putting [his] hands to protect her and block [his] face." The petitioner noted that he injured his thumb and it was bleeding. The petitioner reported that A-M- threw shoes, clothes, and other things at him, she managed to hit him in the groin, and she kept hitting and kicking at him until he finally escaped to the bathroom. The petitioner noted that A-M- ran around to the other door to the bathroom holding a large stick and he wrestled it from her and pushed her outside the bathroom. The petitioner noted that he was bruised and bleeding from the scratches inflicted by A-M-. The petitioner noted that the police came to the house about 15 to 20 minutes later and that was when he came out of the bathroom. The petitioner

¹ Name withheld to protect the individual's identity.

stated that he asked one of the officers to take pictures of his injuries but the officer refused. The petitioner reported that he was taken to jail although he asked to be taken to the hospital. While in a holding cell an officer saw that his thumb was swollen and the police took him to the hospital where his thumb, although not broken, was put in a cast. The petitioner declared that as a result of this altercation, he was in jail until February 25, 2009.

The petitioner acknowledged that he was charged with two felonies of domestic strangulation and he eventually pled guilty to putting A-M- in fear because he broke her phone, a fifth degree simple assault and was sentenced to 90 days in jail. He reported that he was in United States Immigration and Customs Enforcement (USICE) custody another 30 days after serving his time for the simple assault charge. He learned while in jail that A-M- had obtained a protective order against him and that she also had stolen his checkbook and cashed checks by forging his signature, that she sold one of his cars, and that she did not pay the rent and he was evicted from the apartment. The petitioner noted that he tried to press charges against A-M- but that he was told that he could not while he was still legally married to her.

The record includes a police report regarding the June 26, 2008 incident which the police officer characterizes as verbal in nature. The officer indicated that the petitioner called and reported that the couple was arguing and A-M- was trying to leave and the petitioner did not want her driving without a driver's license. The officer also reported that A-M- said the confrontation was verbal only. The officer further reported that the petitioner said that A-M- had hit him once in the shoulder when he was trying to get the car key from her. The officer noted that there was no mark and the petitioner would not give him a statement.

The record also includes the police report regarding the petitioner's October 14, 2008 arrest. [REDACTED] of the Waite Park Police Department reports that he and [REDACTED] responded to a call involving a "domestic in progress" and were met by the petitioner and A-M-. [REDACTED] stated he spoke with the petitioner who told him the couple was having a dispute but that the petitioner did not want to say much. At the direction of [REDACTED] who had been speaking with A-M- separately, he arrested the petitioner and escorted him out of the residence. [REDACTED] reported that he photographed A-M- who had at least five locations on her body where she had been struck with sticks and also had small bruises and abrasions on several areas of her body. The officer noted that her neck did not show much injury of being choked. [REDACTED] collected the sticks used in the assault. [REDACTED] interviewed A-M- who described an assault perpetrated by the petitioner and [REDACTED] noted that A-M- had bruises on her arms and hands and bruises on the back of her body where she had been assaulted with a stick. [REDACTED] indicated that he transported the petitioner to jail and after being advised of his rights, the petitioner declined to speak with him. After it was determined that the jail facility did not have nursing staff on hand, he took the petitioner to the hospital. [REDACTED] indicated that after the petitioner was booked, the petitioner indicated that he wanted to speak with an officer and that at that time he took the petitioner's statement. [REDACTED] noted that the petitioner stated that he had been the victim in the assault and [REDACTED] noted a bruise on the petitioner's elbow joint, a cut smaller than a pea

² The last name of [REDACTED] sometimes appears as [REDACTED]

and a bruise on his chest. When the petitioner was asked about A-M-'s bruises, the petitioner admitted he had struck A-M- with the stick once and that he had put his hand on her neck to defend himself while she was hitting him with the stick. He was unable to explain why A-M- had several stick marks on her backside.

The record includes a hospital report dated October 14, 2008 indicating the petitioner's complaint concerned a thumb injury and chest wall pain. The report indicated the petitioner's thumb was a bit swollen and he had indicated that his spouse had thrown a shoe at him which hit him in the thumb. The report further indicated that the petitioner complained of "a little bit of pain in the left side of his chest" and he had indicated that his spouse had also kicked him in the side. The report also noted that x-rays were unremarkable but the patient's thumb was placed in a cast. The petitioner answered no when asked whether he was suicidal and the nurse noted that he seemed hesitant in his response so changed his answer to yes. The petitioner also noted that he was depressed.

Included in the initial record is a June 15, 2009 statement signed by [REDACTED] licensed psychologist, who conducted eight sessions with the petitioner while he was incarcerated. [REDACTED] noted that the petitioner reported that his wife made allegations of physical abuse and utilized his incarceration to take advantage of him by selling his belongings, writing checks on his personal account, and by declining to sign divorce papers. The record includes photographs of a television on a bed, a few boxes in a room, and items strewn about within a dwelling. Counsel asserts that the photographs were taken before A-M- sold the petitioner's possessions and later asserts that these photos show the petitioner's destroyed property.

Counsel for the petitioner also included for the record a transcript of A-M-'s deposition taken on April 26, 2010, wherein A-M- admits that she sold the petitioner's car while he was incarcerated but states that she did so at the direction of the petitioner's friend who told her to sell it for money to get the petitioner out of jail. A-M- also admits that she forged the petitioner's name on checks written to herself but states that she did so to pay rent on their apartment and for food. A-M- also admitted that she took anti-anxiety medication that had been prescribed for her aunt, for about a week and that she did so because of the petitioner and her discovery that he had cheated on her. A-M- also stated that she removed her clothes from the home when the couple was separated after the October 14, 2008 incident and denies removing anything else. A-M- acknowledges that she threw a shoe at the petitioner and notes that she did that when he was coming after her.

The petitioner also provided his response to A-M-'s deposition. He denied instructing his friend to tell A-M- to sell his car to get him out of jail. The petitioner declared that contrary to A-M-'s claims in the deposition, A-M- threatened that she would call USICE on him and make sure that he was deported. The petitioner insists, contrary to A-M-'s declaration, that he did not put his hands on A-M- prior to the October 2008 incident. He also claims that A-M- took much more than her clothes from the apartment including items belonging to him.

The director acknowledged that the petitioner appeared to be in a tumultuous relationship with A-M- but determined that the evidence of record did not establish that the petitioner had been subjected to battery or extreme cruelty perpetrated by A-M-.

On appeal, counsel for the petitioner asserts that A-M- subjected the petitioner to constant verbal insults, emotional abuse, and physical violence, as well as exploiting the petitioner financially. Counsel contends that A-M- was unfaithful and left him destitute following his wrongful arrest and subsequent incarceration. Counsel asserts that A-M- freely admitted her abusive behavior and references A-M-'s admission that she sold the petitioner's car and that she forged his signature on checks from his personal account. Counsel also avers that A-M-'s use of mood altering drugs explains her "seemingly psychotic outbursts towards [the petitioner] for no apparent reason" and references the petitioner's description of A-M- hitting him with her handbag. Counsel references the copies of forged checks, photos of the petitioner's "destroyed" property, notices regarding unpaid rent, motor vehicle information, joint bank statements showing withdrawals, and medical records and contends that the evidence "undeniably demonstrates that [A-M-] was the principal aggressor in the October 14, 2008 incident and throughout the marriage." Counsel asserts that A-M- exhibited an overall pattern of violence and manipulated the petitioner into maintaining her lifestyle while he worked and went to school.

Upon review of the petitioner's statements, the three incidents of claimed battery do not include sufficient descriptive information to conclude that A-M- was the perpetrator of battery upon the petitioner. The first incident the petitioner described involved A-M- trying to hit him in the face with her handbag and her continuing to beat him with her handbag. The petitioner noted that "[he] kept pressing [A-M-] for an answer, asking her where she had been," and A-M- who he noted was intoxicated got angrier and then hit him with her handbag. The petitioner indicated that this incident occurred out of the blue and counsel speculates on appeal that A-M-'s actions may have occurred because she was taking medication without a doctor's prescription. The circumstances of this incident, however, are not sufficiently described and when viewed with the totality of the record, the incident is insufficient to conclude that the petitioner was subjected to battery perpetrated by A-M-. Moreover, counsel's speculation that the event was caused by A-M-'s use of improperly obtained prescription medication is without foundation. We observe that A-M- admitted taking such medication for about a week but she does not provide a timeframe. Further, the petitioner noted that A-M- was intoxicated and responded angrily when he continued to press her regarding her whereabouts.

The petitioner provided a date for the second incident of claimed battery as well as a police report of the incident. The petitioner indicated that the dispute arose because he would not let A-M- drive his car without a license. The police officer report showed that the confrontation was verbal and noted that the petitioner indicated that he had been hit in the shoulder when he was trying to take the car keys from her but that he did not have a mark as a result of the hit. The police officer noted that the petitioner declined to make a statement and when asked if he wanted to press charges he also declined to do so. The police officer's report thus does not support the petitioner's claim that he was scratched and at most indicates that the petitioner and A-M- wrestled over car keys. The record is insufficient to establish that the petitioner was the victim of battery perpetrated by A-M-.

The record regarding the October 14, 2008 incident which resulted in the petitioner's arrest and subsequent guilty plea to simple assault also fails to demonstrate that A-M- subjected the petitioner to battery. Upon review of the evidence concerning this matter, which includes: the petitioner's statements to United States Citizenship and Immigration Services (USCIS) and the police; the police and hospital reports; the disposition of the incident; and A-M-'s deposition, it is not possible to conclude that A-M- was the aggressor in the incident. We note the petitioner's statements to [REDACTED] that A-M- was the aggressor and his statements that he believed the police were biased against him; however, the record regarding this incident when reviewed as a whole is insufficient to support his claims.

Upon review of the totality of the record regarding the petitioner's claims that he was subjected to three incidents of battery, the petitioner has not supported his claims with probative, credible testimony, and his statements regarding the last two incidents do not correspond with the police reports. The petitioner has not established that he was the victim of battery perpetrated by his United States citizen wife.

The record also fails to establish that the petitioner was subjected to extreme cruelty perpetrated by A-M-. Counsel asserts that the petitioner was subjected to verbal insults, emotional abuse, and financial exploitation. Counsel asserts that A-M-'s own testimony includes admissions of abusive behavior. The record, however, does not support counsel's contention that A-M-'s acts were a form of extreme cruelty as defined in the statute and regulation. Both the petitioner and counsel focus on A-M-'s actions while he was incarcerated alleging that A-M- took advantage of his incarceration by forging his signature on checks and selling his car leaving him destitute when he was released from jail. Upon review of the evidence submitted, although A-M- admitted forging the petitioner's name on checks and selling his car, she declared that she did so on the petitioner's behalf. The photographs of the petitioner's apartment, submitted to demonstrate that the petitioner destroyed or stole the petitioner's property, are not identifiable in a particular context, and only show a TV, bed, and other items. The record does not indicate when the photographs were taken or who took the photographs. Upon review of A-M-'s actions while he was incarcerated, the AAO recognizes that A-M- may have taken advantage of the situation; however, there is insufficient evidence to conclude that her behavior constituted extreme cruelty under the statute and regulation.

The petitioner does not provide a detailed account of verbal abuse; rather his initial 25-page statement outlines A-M-'s failure to work, her staying out late with friends and drinking, her alleged affairs, her withdrawing money from their joint account, and the couple's arguments about these issues. Similarly, the petitioner does not provide specific details regarding A-M-'s alleged controlling behavior. The record does not include probative evidence that she manipulated the petitioner or caused him to act or react in a particular way. The record does not demonstrate that the petitioner was the victim of any act or threatened act of violence or that he was threatened with physical or mental injury. The petitioner describes his dislike and emotional unhappiness caused by A-M-'s failure to contribute to the couple's finances, her staying out late and coming home drunk, her alleged affairs, and her use of the couple's funds for partying; however, her actions, as described, do not constitute extreme cruelty under the statute or

regulation. There is no probative evidence that her 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. The petitioner has not established that A-M-'s behavior was part of an overall pattern of violence or coercion exercised in order to manipulate and control him. The record is simply deficient in this regard. 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)). For example, counsel concludes that the forged checks, the photos of the petitioner's destroyed property, notices regarding unpaid rent, motor vehicle information, joint bank statements showing withdrawals, and medical records are evidence that A-M- was the principal aggressor in the October 14, 2008 incident and throughout the marriage. However, there is no probative testimony or other evidence demonstrating that A-M- controlled the petitioner or exhibited an overall pattern of violence.

The declarations of others submitted on the petitioner's behalf do not indicate that they witnessed particular incidents of battery or extreme cruelty. The report prepared by [REDACTED], while noting the petitioner's belief that A-M- manipulated him and used his incarceration to her advantage, does not provide the requisite evidence or testimony to support the petitioner's belief. Again, the record is deficient of the probative evidence necessary to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse.

Good Faith Entry Into Marriage

Upon review of the evidence in the record regarding the petitioner's intent when entering into the marriage, we find the petitioner's statements and the relevant evidence in the record sufficient to demonstrate that he intended to establish a life together with A-M- when they married, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director's decision on this issue is hereby withdrawn.

Conclusion

The petition will be denied and the appeal dismissed because the petitioner did not establish that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen. 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.