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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

PUBLIC COPY



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Date: **MAY 24 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 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 his United States citizen spouse.

The director denied the petition for failure to establish the requisite abuse. On appeal, counsel submits a letter and additional evidence including: a letter dated October 4, 2010, from [REDACTED], RN, CNS; information related to the petitioner’s prescription medication; a referral document dated October 7, 2010, referring the petitioner to “Behavioral Health” listing the reason as “depression, unemployed”; an undated letter from [REDACTED], PhD, Clinical Psychologist¹; letters, both dated October 12, 2010, from [REDACTED] of [REDACTED] and from [REDACTED], Priest-In-Charge, of the [REDACTED]; and an undated letter from the petitioner’s friend, [REDACTED].

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, 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 further 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:

(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

¹ A search of the website at [REDACTED] finds that the address listed on [REDACTED]’s letter, [REDACTED] is the address of [REDACTED]. The record contains no evidence in support of [REDACTED]’s claim that he is a “PhD Clinical Psychologist.”

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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

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.

* * *

(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 citizen of Ethiopia who entered the United States as a K-3 spouse of a U.S. citizen on October 3, 2007. The petitioner filed the instant Form I-360 self-petition on March 23, 2009. The director subsequently issued a request for additional evidence (RFE) that the petitioner resided with his wife, that he married his wife in good faith, and that his wife subjected him to battery or extreme cruelty. The petitioner, through counsel, submitted additional evidence. The director denied the petition for failure to establish the requisite abuse.

On appeal, counsel asserts that the evidence of record demonstrates that the petitioner's wife subjected him to extreme cruelty. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's grounds for denial.

Battery or Extreme Cruelty

In his March 11, 2009 affidavit submitted at the time of filing, the petitioner stated that: he came to the United States on October 3, 2007, and in January 2008, his wife started to mistreat him by refusing to have sexual relations with him and telling him that she did not want him anymore; his wife threatened to have him hurt by "someone," spit on him, and made bad gestures at him with clenched fists; he feared that she would have him deported and report him to the police for no reason; his wife gave him bad looks and controlled everything he did including what time he ate, slept, and went out; she told him that she was pregnant, that the baby was not his, and made him sleep on the floor outside the bedroom; she complained that his food and clothing from Ethiopia smelled and she did not want him to cook at home or to eat with her; she treated him like a servant and abused him verbally; she kicked him out on February 22, 2008, after which he went to the house of his half-brother, who also kicked him out, after which he stayed at the residence of [REDACTED] for one month; he moved back in with his wife in March 2008, after the traditional elders intervened to create peace between them; his wife continued to mistreat him and often kicked him out of the house; he ate only one meal a day, was not allowed to use the telephone in his wife's presence, and was threatened by his wife to be deported; his wife called him an "African beggar," stupid, deaf, and "the 'F' word"; he never had any new clothes since his arrival in the United States and was cold and hungry; after his adjustment of status interview, his wife gave birth and told him that the baby was not his, to get out of their house, and that if he told any authority, she would have him deported; his half-brother warned him that his wife could get him killed; his wife had given him a cell phone prior to kicking him out on August 8, 2008, and she yelled at him, called him names, and demanded payment from him when he went over his allotted 200 minutes; his half-brother punched him in the shoulder while his wife encouraged him; on August 8, 2008, his wife kicked him out of the house and he moved to the residence of [REDACTED], where he stayed for four months; and, according to rumors, his half-brother fathered his wife's baby.

In his April 2, 2010 affidavit submitted in response to the RFE, the petitioner stated that: when he first came to the United States, he and his wife were happy but after she became pregnant, everything changed; his wife told him that her child was not his and he felt lost and isolated; he went to the hospital in January 2009, to deal with the hurt caused by his wife and he continued to see a counselor to deal with the emotional problems caused by his wife; his wife became angry whenever he cooked because it smelled bad; his wife called him horrible names and yelled and screamed at him; she threatened to have him killed or deported; she asked him for money and told him he was useless when he did not have any money to give her; she called him a stupid idiot when he did the laundry and became angry at him for eating too much and talking too long on the cell phone; she belittled him and questioned his manhood; when the petitioner babysat for his wife's son, his wife tried to create problems by asking her son questions about the petitioner related to child molestation; his wife screamed at him and called him names after he fed her son without her permission; she called him dumb, deaf, or stupid when he had difficulty with the English language; he was embarrassed and humiliated by having to ask for money from his friend in order to take the bus to his English class after his wife refused to help him; his wife told him that he would be deported if he gave out the alien registration number information on his work permit; his wife intercepted his mail and never gave it to him; in his wife's eyes, everything he did was wrong; his wife told him in a joking manner that she had slept with his brother; he saw his pregnant wife and his brother together and a restaurant manager told him that the petitioner's brother was touching and rubbing the

petitioner's wife's stomach; the petitioner's wife was trying to drive him away by treating him badly; and the petitioner was broken and had lost all his confidence.

In her February 18, 2009 affidavit submitted at the time of filing, [REDACTED] stated, in part, that: the petitioner's wife kicked him out of their house on February 22, 2008, after which the petitioner went to the house of his half-brother, who also kicked him out; she and her husband then took the petitioner to the residence of [REDACTED], where he stayed until March 2008; in March 2008, she, her husband, and other elders intervened to create peace between the petitioner and his wife; she knew that the petitioner's wife called the petitioner inappropriate words such as "African beggar" and "the 'F' word"; she knew that the petitioner had financial difficulty in obtaining warm clothing, food, and transportation; and she knew that the petitioner and his wife were separated since August 8, 2008, and from August 8 – December 10, 2008, the petitioner stayed with her and husband.

In his February 18, 2009 affidavit submitted at the time of filing, Mr. [REDACTED] stated, in part, that: the petitioner's wife kicked him out of their house on February 22, 2008, after which the petitioner went to the house of his half-brother, who also kicked him out; he and his wife then took the petitioner to the residence of Mrs. [REDACTED], where he stayed until March 2008; in March 2008, he, his wife, and other elders intervened to create peace between the petitioner and his wife; he knew that the petitioner had financial difficulty in obtaining warm clothing, food, and transportation; and he knew that the petitioner and his wife were separated since August 8, 2008, and from August 8 – December 10, 2008, the petitioner stayed with him and his wife.

In his February 18, 2009 affidavit submitted at the time of filing, [REDACTED] stated, in part, that: the petitioner's wife kicked him out of their house on February 22, 2008, after which the petitioner went to the house of his half-brother, who also kicked him out; [REDACTED] then took the petitioner to the residence of [REDACTED], where he stayed until March 2008; he knew that the petitioner had financial difficulty in obtaining warm clothing, food, and transportation; and he knew that the petitioner and his wife were separated since August 8, 2008, and from August 8 – December 10, 2008, the petitioner stayed with [REDACTED] and the petitioner's wife told him that the petitioner was not the father of her baby.

In her February 24, 2009 affidavit submitted at the time of filing, Mrs. [REDACTED] stated, in part, that: the petitioner's wife kicked him out of their house on February 22, 2008, after which the petitioner went to the house of his half-brother, who also kicked him out; [REDACTED] then contacted her and the petitioner stayed at her residence until March 2008; in March 2008, she was among the elders who intervened to create peace between the petitioner and his wife; and she knew that the petitioner had financial difficulty in obtaining warm clothing, food, and transportation.

In his February 10, 2009 affidavit submitted at the time of filing, Mr. [REDACTED] stated, in part, that: the petitioner called him a year ago to tell him that his relationship with his wife had gone bad, the petitioner's wife kicked the petitioner out of the house and forced him to find shelter with friends; and that he sent \$200 to help the petitioner.

In her February 26, 2009 letter submitted at the time of filing, [REDACTED], RN, CNS, stated, in part, that: the petitioner was diagnosed with "adjustment disorder with depressed mood" on January

8, 2009, at the [REDACTED] at [REDACTED] the petitioner reported through an interpreter that he felt sad and upset because his wife told him she no longer loved him and wanted to end their marriage; and she was not qualified to determine what caused the petitioner's depression or whether he suffered from emotional abuse by his estranged wife because she met with the petitioner for only 40 minutes.

In her February 10, 2010 letter submitted in response to the RFE, [REDACTED] stated, in part, that the petitioner was experiencing some depression and anxiety related to his wife's telling him that he was not the father of her baby and to leave their apartment and marriage. [REDACTED] also stated that the petitioner was prescribed an antidepressant medication and that he was seen at their office for medication management and supportive therapy for four additional visits, each lasting from 30-35 minutes in duration. [REDACTED] stated that during the petitioner's last visit on February 10, 2010, he reported feeling depressed, anxious, and frustrated due to a work injury that was not improving and his past injustices. [REDACTED] stated that she again prescribed an antidepressant medication for the petitioner and that he would return for follow-up visits.

In her February 21, 2010 statement submitted in response to the RFE, the petitioner's mother, [REDACTED], stated, in part, that: a little while after the petitioner went to the United States, she heard that the petitioner and his wife had fought and that the petitioner was facing many hardships and problems; the petitioner told her that his feelings were hurt and his situation was sad; and she was worried about the petitioner's situation and she could not afford to pay the bills for the petitioner's wedding.

The petitioner also submitted copies of two photographs depicting himself with a bag, and annotated that his wife left his belongings at a restaurant.

The director determined that the record does not contain satisfactory evidence to establish the requisite battery or extreme cruelty. On appeal, counsel asserts that the petitioner has suffered both emotional and physical abuse by his wife, as she had called him names, treated him like a servant, forced him to live in the streets in winter, and encouraged and stood by while the petitioner's brother physically abused him. Counsel also asserts that the petitioner continues to suffer from the extreme cruelty inflicted on him by his wife and that the petitioner is currently under the care of two mental health specialists.

In her October 4, 2010 letter submitted on appeal, [REDACTED] states, in part, that the petitioner has been a client of their clinic since March 30, 2009, he has been diagnosed with Depression and Anxiety, and he has consistently stated that his symptoms are a result of his wife's bad treatment and emotional abuse of him.

In his undated letter, [REDACTED] states, in part, that he has worked closely and interacted with the petitioner due to his "major depressive condition" due to the estrangement of his wife. [REDACTED] also states that he is willing to counsel the petitioner free of charge and "take good care of the severe psychological problems."

In his letter dated October 12, 2010, [REDACTED] of [REDACTED], states, in part, that he spoke with the petitioner on October 11,

2010, for several hours about the petitioner's marriage. [REDACTED] finds that the petitioner was mentally and psychologically abused by his wife's behavior.

In his letter dated October 12, 2010, [REDACTED] of the [REDACTED], states, in part, that adultery is disgraceful, shameful, and not allowed in their religion and culture.

In his undated letter, [REDACTED] states, in part, that the petitioner told him that his wife told the immigration officer that the petitioner was the father of her baby but subsequently told the petitioner that he was not the baby's father. [REDACTED] also states that the petitioner is hurting a lot and is extremely depressed.

The AAO acknowledges the letters from the health professionals. At the outset, [REDACTED] RN, CNS, specifically stated that she was not qualified to determine what caused the petitioner's depression or whether he suffered from emotional abuse by his estranged wife because she had met with the petitioner for only 40 minutes.

In her February 10, 2010 letter, [REDACTED] MS, RN, CNS, stated that the petitioner was experiencing some depression and anxiety related to his wife's behavior, that he was prescribed an antidepressant medication, and that he was seen at their office for medication management and supportive therapy for four additional visits, each lasting from 30-35 minutes in duration. [REDACTED] also stated that during the petitioner's last visit on February 10, 2010, he reported feeling depressed, anxious, and frustrated due to a work injury that was not improving and his past injustices. In her October 4, 2010 letter submitted on appeal, [REDACTED] states, in part, that the petitioner has been a client of their clinic since March 30, 2009, he has been diagnosed with Depression and Anxiety, and he has consistently stated that his symptoms are a result of his wife's bad treatment and emotional abuse of him.

While we do not question the expertise of [REDACTED] her testimony fails to establish that the behavior of the petitioner's spouse was comparable to the behavior described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that his spouse's behavior was part of an overall pattern of violence or coercion.

It is also noted that, although counsel asserts on appeal that the petitioner is presently under the care of two mental health professionals, the record contains insufficient information regarding the specific services provided to the petitioner by [REDACTED] and his qualifications as a mental health professional. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We find no error in the director's assessment of the relevant evidence. Although the petitioner indicated that his half-brother punched him in the shoulder a few times while his wife encouraged him, he has not provided the probative details of these events to reach a conclusion that he was the

victim of battery or extreme cruelty perpetrated or incited by his spouse. The petitioner's statements and those submitted on his behalf do not recount any specific incidents of battery in probative and consistent detail. Their statements also do not demonstrate that the petitioner's wife'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 his spouse'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 relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner's spouse 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.