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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:

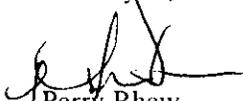


INSTRUCTIONS:

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 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, 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 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 the Philippines who entered the United States as a visitor for business on August 10, 2007. On February 11, 2008, the petitioner married a U.S. citizen in Florida. The petitioner's wife filed an alien relative immigrant petition on the petitioner's behalf, which was denied on October 7, 2008, due to abandonment. The petitioner was placed into removal proceedings before the Cleveland, Ohio Immigration Court, which are currently pending.

The petitioner filed the instant Form I-360 self-petition on December 23, 2008. The director subsequently issued requests for additional evidence (RFE) that the petitioner was a person of good moral character and that his wife subjected him to battery or extreme cruelty. The petitioner, through former counsel, submitted additional evidence. The director denied the petition for failure to establish the requisite abuse.

On appeal, counsel asserts that the evidence supporting the petition, including three affidavits from the petitioner, two psychological evaluations, and an affidavit from [REDACTED], 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 December 15, 2008 affidavit submitted at the time of filing, the petitioner stated that: he moved in with his wife and her mother before they were married, and after he and his wife were

married in February 2008, he learned that his wife had serious financial problems and had declared bankruptcy; after his savings started to run out in April 2008, his wife's attitude towards him changed and she was sarcastic and rude to him; his wife refused to tell her children about their marriage and also refused to wear her wedding ring; his wife told him that her former husband might do the "unthinkable" if he found out about her marriage to the petitioner; his wife did not show up at his birthday celebration in May 2008, and since then they had not slept together; his wife began staying out all night and not coming home; he suspected his wife and mother-in-law of stealing his mail; his mother-in-law, who purportedly had served jail time in the Philippines for murder, informed him that his wife went back with her former boyfriend and that the petitioner should leave; he was afraid of his mother-in-law and when he talked to his wife about it, his wife told him to get out of the house; his heart was broken because he knew that his wife and mother-in-law had used him for his money; he moved out in August 2008 because he was devastated that his wife had been unfaithful and he was afraid of his mother-in-law; he was depressed and the mental torture from his wife and mother-in-law drove him to suicidal thoughts; and he lived in constant fear of his mother-in-law.

In his March 25, 2010 affidavit submitted in response to the RFE, the petitioner stated, in part, that: his marriage was very good until his savings began to run out and he could not find a better job; his wife and mother-in-law verbally abused him and threatened him; his wife belittled him; his wife and his mother-in-law gave him dirty looks; his mother-in-law threatened to kill him; his wife threatened to have her former husband hurt him; he was afraid of his wife and mother-in-law; his wife socially isolated him by not allowing him to go out and visit with friends, not allowing him in all areas of the house, not allowing him to eat with her and her mother; and now allowing him to do the laundry without permission; he suspected that his wife and mother-in-law were taking his mail as he never received his work permit and approval notice from "immigration"; his wife threatened that she would not attend their "immigration" interview; his quality of life was diminished due to his wife's abuse; he lost all motivation, lost weight, and was always tired and worn down; and he would be an outcast in the Philippines because of his divorce.

In his March 26, 2010 affidavit, the petitioner provided more details regarding his previously submitted statements. For example, the petitioner stated that when he attended the birthday party of a person whom his mother-in-law disliked, his wife was sarcastic to him about getting his "green card." The petitioner also stated that after he returned home from his birthday celebration, he found that all of his things had been moved to another room, and his wife and mother-in-law threatened him about his "green card." The petitioner stated that his wife belittled him about his job at a call center and she and her mother started cooking less and hiding food in the refrigerator, and they disabled the remote garage opener and played loud music when he was trying to sleep. The petitioner recounted how his mother-in-law told him that he should give his wife \$50,000 for his green card because she was offered that much from her "town mate" to marry him. The petitioner also stated that his wife told him that her former husband was a Karate instructor and a violent person, and that her three sons would hurt the petitioner if instructed to do so by their father. The petitioner recounted that his former attorney deemed that his and his wife's immigration interview should be rescheduled because his wife was caught lying during the mock interview. The petitioner stated that his wife threatened to call the police if he did not move out, that she married him only as a possible solution to her serious financial problems, and that she was unfaithful to him, which was the most painful experience a man could have.

In his December 8, 2008 affidavit submitted at the time of filing, the petitioner's nephew, [REDACTED], stated, in part, that: the petitioner told him soon after his marriage that he and his wife were having problems; the petitioner called him to complain about his wife but he could not remember the specifics because he did not want to get involved in their problems; the petitioner became more miserable and devastated as time went on because his marriage was not working out; and the petitioner finally moved out and was lonelier than ever.

The petitioner also submitted copies of notes from his wife telling him to move out of the house and copies of correspondence between himself and his attorney.

In her September 9, 2008 psychological evaluation, [REDACTED] M.S. Ed., P.C.C., stated, in part, that the petitioner was referred to her by his attorney. Ms. [REDACTED] reiterated the information from the petitioner's December 15, 2008 affidavit and diagnosed the petitioner with Adjustment Disorder with Mixed Anxiety and Depressed Mood due to the emotional abuse he suffered from his wife and mother-in-law. Ms. [REDACTED] mended that the petitioner participate in counseling and that he remain in the United States to avoid public shame associated with returning to his country.

In her second psychological evaluation, dated March 15, 2010, Ms. [REDACTED] stated, in part, that the petitioner returned for counseling and a second evaluation, and he reported continued anxiety and depression symptoms. Ms. [REDACTED] reiterated the petitioner's previous claims, including that his wife and mother-in-law berated him, his wife socially isolated him, and his mother-in-law threatened to stab him with a knife. Ms. [REDACTED] also stated that the petitioner reported that the petitioner's wife blamed him for her economic situation and told him that she wanted him to be deported. Ms. [REDACTED] diagnosed the petitioner with Major Depression and opined further that the petitioner had suffered from extreme cruelty from his wife and mother-in-law. Ms. [REDACTED] also recommended that the petitioner be allowed to remain in the United States.

The director determined that the record does not contain satisfactory evidence to establish the requisite battery or extreme cruelty. The director also found that the petitioner's testimony contained inconsistent information, namely that the petitioner's claim in his March 26, 2010 affidavit that his wife told him that her three sons would harm the petitioner if instructed to do so by their father, conflicted with petitioner's previous claims that his wife threatened that he would be harmed by her former husband. The director also found that it was unclear as to why the petitioner and his wife met with their former attorney to prepare for their immigration interview when the petitioner and his wife were no longer sleeping together, his wife was back together with her former boyfriend, his wife had asked him to leave her house on numerous occasions, and he planned on leaving his wife's house. On appeal, counsel asserts that the evidence supporting the petition, including three affidavits from the petitioner, two psychological evaluations, and an affidavit from [REDACTED], demonstrates that the petitioner's wife subjected him to extreme cruelty.

The AAO acknowledges Ms. [REDACTED]'s September 9, 2008 psychological evaluation based on one interview with the petitioner on the same date. Ms. [REDACTED] did not specify the length of her assessment session with the petitioner. Ms. [REDACTED] diagnosed the petitioner with Adjustment Disorder with Mixed Anxiety and Depressed Mood due to the emotional abuse he suffered from his wife and mother-in-law, and recommended that the petitioner participate in counseling and that he

remain in the United States to avoid public shame associated with returning to his country. It is noted that the record contains no evidence that the petitioner participated in any further counseling until his second session with Ms. [REDACTED] more than a year later.

The AAO also acknowledges Ms. [REDACTED]'s second psychological evaluation, dated March 15, 2010, stating that the petitioner returned for counseling and a second evaluation. Again, Ms. [REDACTED] did not provide details of the counseling session/s such as the number of sessions, dates, and the length of such sessions with the petitioner. Ms. [REDACTED] diagnosed the petitioner with Major Depression and opined further that the petitioner had suffered from extreme cruelty from his wife and mother-in-law. Ms. [REDACTED] also recommended ongoing counseling for the petitioner and that he be allowed to remain in the United States.

While we do not question the expertise of Ms. [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.

We find no error in the director's assessment of the relevant evidence. At the outset, neither counsel nor the petitioner discusses on appeal the inconsistent testimony discussed by the director in his decision or provides an explanation as to why the petitioner and his wife met with their former attorney to prepare for their immigration interview when the petitioner and his wife were no longer sleeping together, his wife was back together with her former boyfriend, his wife had asked him to leave her house on numerous occasions, and he planned on leaving his wife's house. In addition, the petitioner's nephew, Mr. [REDACTED], specifically stated in his affidavit that although the petitioner complained to him about his wife, he did not remember the specifics because he did not want to get involved in their problems. Moreover, although the petitioner indicated that his wife threatened that her former spouse was a Karate expert who could hurt him and that his mother-in-law threatened to kill 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. In addition, the petitioner has failed to establish that his spouse'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.