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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**

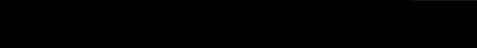
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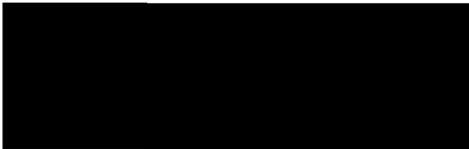
Date: **SEP 29 2011**

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:

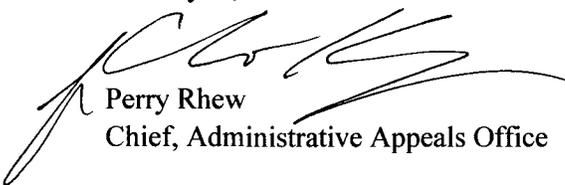


INSTRUCTIONS:

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 Director, Vermont Service Center, (“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 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s former wife subjected the petitioner to battery or extreme cruelty during their marriage.

On appeal, counsel submits a supplemental brief and a psychological evaluation as additional evidence.

Relevant 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). Widows and widowers are also eligible under these provisions provided their U.S. citizen spouse died within two years before their self-petition is filed. *Id.* at § 204(a)(1)(A)(iii)(II)(aa)(CC)(aaa).

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 further explicated 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 further explicated 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who was paroled into the United States on May 20, 2002. The petitioner married a U.S. citizen, [REDACTED] on [REDACTED] 1993 in Bradley County, Tennessee.¹ On June 11, 2008, [REDACTED] died from a drug overdose. The petitioner filed the instant form I-360 on June 8, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's shared residence with his former wife, his former wife's citizenship, his good moral character and his wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition because the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his former spouse. Counsel filed a timely appeal.

On appeal, counsel submits a supplemental brief and a psychological evaluation.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his first affidavit, the petitioner briefly recounted that his former wife had extramarital affairs; threatened to report him to immigration authorities; "pulled, bit, kicked, scratched, spit" on him; on one occasion broke his car windows; and that he "was basically only a money machine" for her. In response to the RFE, the petitioner stated that his former wife would go out with her friends at night and come home intoxicated. He stated that when he questioned his former wife's marital infidelities, she hit and scratched him. He recalled that she slapped him on two occasions, broke his car windshield and once chased him with a knife. The petitioner's descriptions of the alleged instances of abuse are brief, and fail to provide any probative details to support his claims.

The director concluded that the relevant evidence submitted below did not establish by a preponderance of the evidence that the petitioner's wife subjected him to battery or extreme cruelty. On appeal, counsel asserts that the director did not make an adverse credibility finding on the petitioner's statement, and it should therefore alone be sufficient. Counsel contends that the petitioner has now obtained a psychological evaluation to strengthen his claim of alleged abuse. Upon review of the record, including the psychological evaluation submitted on appeal, we find no error in the director's decision. The psychologist, [REDACTED] Ph.D., briefly stated that the petitioner reported that [REDACTED] was "verbally and emotionally abusive, physically aggressive, as well as unfaithful several times." Dr. [REDACTED] diagnosed the petitioner with Posttraumatic Stress Disorder (PTSD), Alcohol Dependence/Abuse and Cyclothymic Disorder. Although Dr. [REDACTED] opined that the petitioner suffers from PTSD as a result of his abusive relationship with [REDACTED] she did not describe any specific instances of marital abuse. Dr. [REDACTED] also noted that the results of the petitioner's Personality Assessment Inventory indicated "a person with a history of drinking problems" and opined that several of his symptoms were related to his chronic use of alcohol. The psychological evaluation, therefore, does not provide probative information of the alleged abuse sufficient to support the petitioner's claims. Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determination that he did not establish he was battered or subjected to extreme cruelty by his former wife. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.