

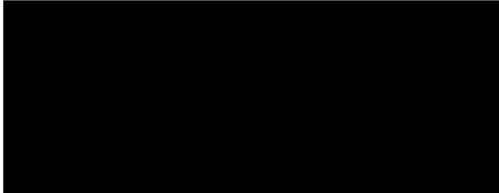
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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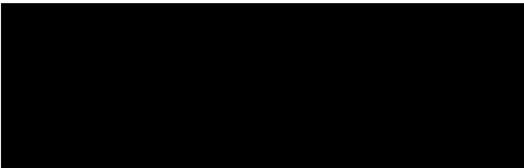
DATE: **APR 03 2012** Office: VERMONT SERVICE CENTER

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:

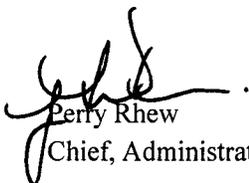


INSTRUCTIONS:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 a United States citizen.

The director determined that the petitioner had not established: he had jointly resided with the United States Citizen (USC) spouse; he had been subjected to battery or extreme cruelty perpetrated by the USC spouse; or he had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a brief, the petitioner’s additional statement, and previously submitted documentation. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 citizen and native of Cambodia who claims he entered the United States on January 20, 2002. He married [REDACTED]¹ the claimed abusive USC, on January 30, 2008. The record includes a judgment dissolving the marriage on May 1, 2009. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 2, 2009. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established: he had jointly resided with the USC spouse; he had been subjected to battery or extreme cruelty by the USC spouse; or he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, a brief, the petitioner's statement, and previously submitted documentation. Counsel asserts the director failed to fully consider the petitioner's statements, the affidavits submitted from third parties on the petitioner's behalf, and the petitioner's psychological evaluation.

Joint Residence

The petitioner states on the Form I-360 that he resided with his spouse from February 2008 until August 2008. The director set out the deficiencies in the evidence submitted regarding the couple's joint residence. The director specifically noted: the petitioner did not provide testimony regarding the couple's claimed joint residence; the affiants who submitted testimony on his behalf did not provide a description of the claimed joint residence; and the documentary evidence of a mutual address and the petitioner's business address are insufficient to establish that the couple actually jointly resided at the address.

¹ Name withheld to protect the individual's identity.

On appeal, counsel asserts that the petitioner lived with friends prior to his marriage so received all his mail at his donut shop and that upon marriage the petitioner and his former wife rented a room from one of her friends. Counsel references a health insurance policy, a medical insurance card, and another document from the insurance company that indicates the residential address of the couple is on [REDACTED] not the address of the petitioner's donut shop. Counsel contends that the petitioner's friends all referenced the petitioner's living arrangements. The petitioner does not provide additional testimony regarding the claimed joint residence in his statement submitted on appeal.

Upon review of the petitioner's statements, the statements submitted on his behalf, and the documentary evidence submitted, the petitioner has not provided probative testimony establishing that he jointly resided with his former spouse. The petitioner does not describe their home furnishings, their neighbors, any of the jointly-owned belongings, or any of their daily routines within the residence. The affidavits of the petitioner's friends, although referencing that the couple lived together, do not provide detailed testimony regarding the joint residence of the couple. Upon review of the totality of the information in the record, the record does not include probative testimony or other evidence establishing the petitioner jointly resided with his former spouse during their marriage.

Battery or Extreme Cruelty

In the petitioner's initial June 18, 2009 personal statement, he declared: his wife was unfaithful and had a child born on December 23, 2008 with another man; she spent money meant to pay bills and other essentials on herself which created hardship on his personal and business credit rating; she threatened to call the police to wrongfully accuse him of abusing her; and she called him and his family derogatory names.

The record also included a March 23, 2009 intake evaluation prepared by the office of [REDACTED] [REDACTED] which included notes and a checked box indicating that the petitioner suffered from mild depression.

In response to the director's RFE, the petitioner provided a second personal statement dated March 31, 2010. The petitioner stated that his former spouse berated him and insulted him and his family in front of friends and made fun of his culture and nationality. The petitioner noted that his friends became alienated because they did not want to come over to see the way [REDACTED] treated him. The petitioner indicated that his former spouse would come home late and yell at him and he could not sleep. The petitioner reiterated that [REDACTED] used money he had given her to pay bills on herself and that she would threaten to call the police and accuse him of physically attacking her. The petitioner also stated that things got worse when she got pregnant and that he eventually learned that another man was the father of the child.

The petitioner also provided a statement signed by [REDACTED] who noted that the petitioner had changed from a happy man to a man with symptoms of depression. [REDACTED] noted that he had treated the petitioner traditionally for his symptoms but he does not state the cause of the petitioner's depression. In a March 30, 2010 affidavit signed by [REDACTED] declared that

he had known the petitioner since December 2005 and knew that he had married. He indicated that around July 2008 he saw the petitioner's car in the parking lot of the petitioner's business after business hours and stopped to see what was happening and found that the petitioner had been sleeping in his car. [REDACTED] noted the second time he encountered the petitioner sleeping in his car, the petitioner confessed that he and his former spouse were having problems and they were going through a divorce. In a March 31, 2010 affidavit signed by [REDACTED] declared that he met the petitioner around June 2003 and that he and his wife and the petitioner and [REDACTED] visited together. [REDACTED] indicated that in April 2008, his wife and [REDACTED] were shopping and [REDACTED] borrowed \$1,700 from his wife to buy a purse even though the petitioner had told her they could not afford the purse. [REDACTED] noted that [REDACTED] called the petitioner derogatory names in front of his friends and that the petitioner reported that she used the money meant to pay utility bills to buy herself items. In a March 31, 2010 affidavit signed by [REDACTED] declared that he had known the petitioner since December 2002 and that after his marriage he began to see less and less of [REDACTED] with the petitioner. He noted that when he visited and [REDACTED] was at home she would yell and curse at the petitioner and so he eventually stopped visiting the petitioner at their house. [REDACTED] also indicated that the petitioner borrowed money from him which he later learned was to pay the rent and utility bills for the petitioner's donut shop. He noted that the petitioner later told him that [REDACTED] used money intended to pay the bills on herself and when the couple argued [REDACTED] threatened to call the police to report the petitioner's immigration status. [REDACTED] indicated further that in July 2008, the petitioner told him that [REDACTED] called him derogatory names and that the petitioner suspected she was having an affair.

Upon review of the petitioner's statements and those of his friends, the director noted that the information in the record reflected "marital tensions and incompatibilities." The director noted further that [REDACTED] had not provided an evaluation of the petitioner. The director determined that the petitioner had not provided probative testimony demonstrating that he had been subjected to battery or extreme cruelty.

On appeal, counsel for the petitioner asserts that the petitioner's friends all had provided insight into the abuse suffered by the petitioner and that the petitioner's divorce decree indicates the parties were divorced because of the cruel treatment of [REDACTED] adulteress actions during the marriage. Counsel contends that the petitioner's consultation with a psychologist shows the petitioner sought help to overcome the abusive nature of his former spouse. Counsel asserts that the petitioner's former spouse's conception of a child outside of the marriage is a form of extreme cruelty. The petitioner in his statement on appeal indicates that he learned his former spouse was pregnant in April 2008 and later learned that the child was not his child. The petitioner reports that in April 2008, [REDACTED] bought an expensive purse he could not afford and when he said anything about her bad shopping habits she spoke to him derogatorily and threatened to send him back to Cambodia.

The petitioner does not claim and the record does not reveal any incidents of battery; rather the petitioner bases his claim on being subjected to extreme cruelty by his former spouse. The petitioner's indication that his former spouse was financially irresponsible, called him derogatory names in front of others, and had an adulteress affair that resulted in the conception of a child outside of wedlock are not acts that constitute extreme cruelty under the statute, regulations, and case law. The petitioner has not provided specific detailed evidence of acts on the part of his former

spouse that are 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 [REDACTED] 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)).

Upon review of the statements submitted on his behalf, the affiants do not provide the requisite detail of the circumstances of any behavior that constitutes extreme cruelty as that term is defined in the statute, regulations, or case law. Similarly, the psychological record submitted does not causally connect the petitioner’s symptoms of mild depression to specific acts or behavior that constitute extreme cruelty pursuant to the statute, regulation, or case law.

The court in the divorce action terminating the petitioner’s marriage lists the grounds for dissolution as “insupportability, cruel treatment and [REDACTED] committing adultery during the marriage; however, such findings are of little probative value because the judgment states that the petitioner’s former spouse did not appear in court and did not file any counterclaims, hence, the divorce was granted in default. Furthermore, the petitioner has not presented any evidence that the terms “insupportability, cruel treatment and [REDACTED] committing adultery during the marriage” as cited in the judgment of divorce are equivalent to the definition of battery or extreme cruelty as set out in the regulation at 8 C.F.R § 204.2(c)(1)(vi).

The petitioner’s testimony and the testimony submitted on his behalf is insufficient to establish that his former spouse’s actions against him constituted battery or extreme cruelty during the marriage as those terms are defined in the statute, regulation, and case law. While the director’s use of the terms “marital tensions and incompatibilities” was unnecessary, we find no error in his ultimate determination that the behavior of the petitioner’s spouse did not constitute battery or extreme cruelty. The petitioner has not provided testimonial or other evidence on appeal sufficient to overcome the director’s decision on this issue.

Good Faith Entry into Marriage

The petitioner initially did not indicate how he met his former spouse. In his statement in response to the director’s RFE, the petitioner indicated that during the courtship and at the beginning of the marriage, the relationship was strong and the couple was happy together. On appeal, the petitioner adds that he met his former spouse at his donut shop. He states that he found out what items she liked and would make them for her. The petitioner indicates he “won [his] date” with [REDACTED] and in November 2007 she agreed to marry him.

The petitioner’s friend, [REDACTED] noted he occasionally saw the couple at celebrations, family and friends’ gatherings, birthday parties and other events. [REDACTED] indicated he and his wife invited the couple to go out with them and that his wife and [REDACTED] went shopping together on one

occasion. ██████ stated that the petitioner shared that he was very happy with his life after marriage and he often saw the couple together at friends' parties or on the weekends when they would go out together.

The petitioner provided copies of bank statements, a health insurance policy purchased in May 2008 effective June 2008, and a car insurance card showing the effective date of the policy as in May 2008. On appeal, counsel submits additional information regarding the petitioner's car insurance and a copy of the petitioner's 2008 IRS Form 1040 showing he was married filing separately. The record also includes a number of photographs of the couple. Counsel asserts the affidavits submitted and the documentary evidence should be acceptable in light of the petitioner's early divorce proceedings after finding out ██████ was pregnant with another man's child.

Upon review of the petitioner's statements, he has not provided a probative account of his courtship, his decision to marry, the couple's shared residence(s) or shared experiences, except as it relates to the claim of abuse. The petitioner's testimony lacks probative detail that provides insight into his intentions when entering into the marriage. The statements of the petitioner's friends do not include probative detail of their observations of the interactions of the couple and thus are also insufficient evidence of the petitioner's intent when entering into the marriage. General statements are insufficient to establish intent in this regard. The director noted the deficiencies in the documentary evidence submitted and we further observe that the documentary evidence does not establish the petitioner's intent when entering into the marriage. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Qualifying Relationship

Beyond the director's decision, we find that the petition is also not approvable because the record fails to establish that the petitioner has a qualifying relationship as the spouse of a USC and is eligible for immediate relative classification based on a qualifying relationship with his former wife. An alien who has divorced a USC may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As previously noted, the petitioner in this matter was divorced from his spouse on May 1, 2009 and he filed the instant Form I-360 on July 2, 2009. As the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his former spouse, he has also failed to make the causal connection between his divorce and any abuse. Accordingly, the petitioner is also not eligible for the benefit he seeks because he did not establish a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen, and is eligible for immediate relative classification based on a qualifying relationship with his former wife.

Conclusion

The petitioner has not established a qualifying relationship with his former spouse or that he is eligible for immigrant classification based on that relationship. He has failed to establish that he

jointly resided with the claimed abusive spouse, that he was subjected to battery or extreme cruelty by his former spouse, or that he entered into the marriage in good faith. 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.