

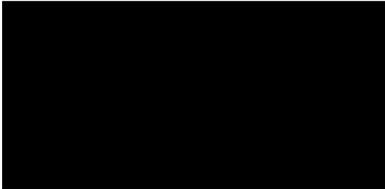
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Bq

DATE: **APR 24 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 been subjected to battery or extreme cruelty perpetrated by the United States Citizen (USC) spouse or he had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion and a statement. 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:

(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 is a citizen and native of Egypt. He claims he entered the United States in or about May 1997 without inspection. He married G-P,¹ the claimed abusive USC, on January 30, 2003. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on June 14, 2010. He states on the Form I-360 that he resided with the claimed abuser from January 2003 until June 2005. 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 been subjected to battery or extreme cruelty by the USC spouse or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, and a statement. Counsel asserts the director failed to analyze the credibility findings and dismissed the submitted evidence without a detailed analysis. Counsel avers that the affidavits submitted are descriptive and the director failed to give them proper weight. Counsel claims that the petitioner was clearly subjected to extreme cruelty and the abuse should not be dismissed as "unfortunate." Counsel contends that the director did not apply the "any credible evidence" standard but dismisses all evidence permitted by the regulation.

Preliminarily, the director applied the proper evidentiary standard when reviewing this matter. Section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." Section 204(a)(1)(J) of the Act. The evidentiary guidelines for demonstrating battery and extreme cruelty and good faith lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv) and (vii). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless. In this matter, the director considered the petitioner's statements, the statements submitted on his behalf, and the documentary evidence. The director set out the deficiencies in the RFE and requested evidence and explanations regarding the deficiencies. As the director ultimately determined, the statements and documentary evidence submitted are insufficient to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by the USC spouse or to establish his intent when entering into the marriage.

Battery or Extreme Cruelty

¹ Name withheld to protect the individual's identity.

In the petitioner's initial undated personal statement appended to the petition, the petitioner indicated the problems started in his marriage when G-P- would go out with her friends and come back home drunk or high from drugs. He noted: G-P- refused to have children; she tried to get him to do drugs; she called him derogatory names if he did not give her money; she was fired from her job; she was arrested many times for doing drugs; she became unkempt and did not keep the house clean; she cussed at him when he forgot to buy her cigarettes; and on August 25, 2003 when they were arguing over her friends being in the house she called the police and told them he was pushing her and he was arrested and locked up for one day. The petitioner also stated that in 2004 he had an affair and a child with another woman while married to G-P-. He indicated further that sometime in 2005, after the couple's immigration interview, he found that G-P- had locked herself in his bedroom with another man and told him to get out of the house when he discovered her there. The petitioner stated he was so upset he "wanted to hit her and did not want to see her face no more."

In an undated affidavit signed by [REDACTED] declared that G-P- looked like she was using drugs and the petitioner told him in 2005 that the couple was separating because of her drug abuse. In an undated affidavit signed by [REDACTED] declared that one time in 2004 he saw G-P- fighting with the petitioner because she wanted money and the petitioner would not give her money. In a January 13, 2010 letter signed by [REDACTED] stated that G-P- used drugs and the couple fought over money. In a January 21, 2010 statement signed by [REDACTED] declared that G-P- told her she was using drugs and she saw the couple arguing several times but she did not know why. In a January 15, 2010 letter, [REDACTED] stated that G-P- started hanging around the wrong kind of people and started demanding money from the petitioner and stopped caring about herself and her family. In a January 21, 2010 affidavit, [REDACTED] declared that sometime in 2005, the petitioner told him G-P- was driving him crazy and that they fought all the time. He stated that sometimes one of them would call him and he would have to go over and break up the fight and take one of them somewhere. He indicated that on one occasion, G-P- had all her stuff in trash bags and wanted to be taken to her mother's home.

In response to the director's RFE, the petitioner referenced his initial statement and listed acts he believed demonstrated abuse perpetrated by G-P- including:

- She was fired and started asking for money and would take money from his wallet;
- She called him derogatory names when he forgot to bring her cigarettes and her name calling was so loud the neighbors could hear leaving him feeling humiliated and embarrassed;
- In 2005 he found her in his bedroom with another man and they began arguing and she told him that he could not kick the man out and that he had to leave the house. While arguing she called him derogatory names in front of the man and he felt humiliated and degraded;
- If he did not have money she would mistreat him; and
- She had him locked up on false charges when he refused to condone her use of drugs.

The record also included information regarding arrests of G-P- in 2000 and 2001 on charges of theft and robbery, charges that were either dismissed or disposed by nolle prosequi.

The director noted that the petitioner described “unfortunate situations” and “marital incompatibility issues” not issues of battery or extreme cruelty for immigration purposes.

On appeal, counsel for the petitioner asserts that the abuse perpetrated by G-P- factually and legally rises to the level of extreme cruelty and abuse and must not be dismissed as merely “unfortunate.”

The petitioner in this matter does not claim and the record does not demonstrate that he was subjected to battery, but rather he and his counsel claim that he was subjected to extreme cruelty. Upon review, the petitioner’s description of interactions with his spouse does not describe behavior that constitutes extreme cruelty under the statute, regulations, and case law. The petitioner has not provided specific detailed evidence of acts on the part of his 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 G-P-’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)). While the director’s use of the terms “marital tensions and incompatibilities” and “unfortunate situations” was unnecessary, we find no error in his ultimate determination that the behavior of the petitioner’s spouse did not constitute extreme cruelty.

The petitioner’s description of arguing because of G-P-’s use of drugs does not include information establishing that G-P- exercised control over the petitioner. The record does not include a copy of the police report of the petitioner’s arrest during one of those arguments. The petitioner’s claim that G-P- had him locked up on false charges because she had access to and abused the U.S. legal system is not substantiated in the record. The petitioner’s description of G-P-’s actions and behavior including her use of drugs, her derogatory name calling heard by neighbors, her alleged infidelity, and the petitioner’s arrest fails to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that G-P-’s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. Similarly, the arrest of G-P- on charges of theft and robbery in 2000 and 2001 do not establish that the petitioner was subjected to battery or extreme cruelty during the marriage. The petitioner’s statement that on occasion he was so upset he “wanted to hit her and did not want to see her face no more” and his statements evidences the acrimony between the couple but is insufficient to establish that the petitioner was the victim of extreme cruelty perpetrated by the USC spouse.

Upon review of the statements submitted on his behalf, the declarants 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. The declarants do not describe the circumstances or the detail of the arguing they allegedly witnessed between the couple. [REDACTED] declaration that sometimes he would have to go over and break up a fight between the couple does not include the requisite detail establishing that the petitioner was subjected to battery or extreme cruelty. The testimony of the affiants is insufficient to conclude that the petitioner was subjected to battery or extreme cruelty perpetrated by his USC spouse.

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. We find no error in the director's 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 provided details regarding his initial introduction to G-P- in 2002 and then a broad overview of their subsequent dating and marriage. The petitioner stated that other individuals knew the couple and knew that they were dating and then married. He indicated that he had informed his family in Egypt of the impending wedding and that his family sent gifts. The petitioner's statements do not include probative information regarding his decision to marry, the couple's wedding, their shared residence, or their shared experiences prior to the marriage or in the year of marriage prior to the claims of abuse. The petitioner's testimony lacks the requisite detail that would assist in ascertaining his intentions when entering into the marriage. Providing an overview of events and occasions does not provide the insight into the petitioner's intentions when entering the marriage.

The statements of [REDACTED] and [REDACTED] indicate generally that they went out with the couple on several different occasions, that they visited the couple in their apartment on different occasions, and that when they first met G-P- she seemed like a nice person. [REDACTED] and [REDACTED] note that they could see the couple was in love. However, general statements and lists of generally described occasions indicating the couple was together prior to and subsequent to the marriage fail to provide insight into the petitioner's intent when entering into the marriage.

The director noted the deficiencies of the documentary evidence submitted in the RFE and again in his decision. To reiterate, the photographs submitted depict certain occasions but provide no probative evidence of the petitioner's intent when entering into the marriage. The phone and BGE bills show that the bills were mailed to a claimed joint residence but do not provide evidence of the petitioner's intent prior to or during the marriage. The lease shows that the couple signed a lease for a joint residence but does not demonstrate the petitioner's intent when entering into the marriage.

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 general claim of abuse. 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. The petitioner has provided a broad overview of a relationship allegedly beginning in 2002 with the claimed joint residence ending in June 2005. Counsel's assertion that the director did not give sufficient weight to the submitted evidence is unpersuasive. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to establish that he was subjected to battery or extreme cruelty by his 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.