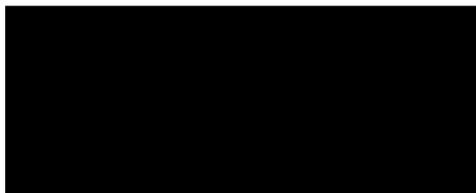


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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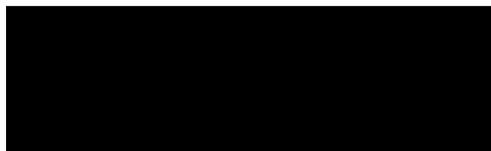


RE: Petitioner:



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 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 a United States citizen.

The director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States Citizen (USC) spouse. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and additional documentation.

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 pursuant to Section 204(a)(1)(A)(iii) of the Act are further set out 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 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.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The petitioner is a native and citizen of the Philippines. He claims he entered the United States in or about 1996 without inspection. On December 5, 2001, he married R-P-¹ the claimed abusive USC spouse. On September 26, 2003, R-P- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petition was approved on July 15, 2004. On April 27, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant and a Form I-485, Application to Register Permanent Residence or Adjust Status. The petitioner stated on the Form I-360 that he resided with R-P- from September 2000 until January 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 been subjected to battery or extreme cruelty by the USC spouse. On appeal, counsel for the petitioner asserts that the director did not give sufficient weight to the evidence

¹ Name withheld to protect the individual's identity.

regarding the petitioner's abuse but only focused on R-P-'s infidelity. Counsel contends that the petitioner was subjected to a series of actions, including battery, by his wife that caused him to suffer emotional and psychological abuse during his marriage. Counsel provides an article on domestic violence and an October 27, 2011 letter signed by [REDACTED] which supplements the previously provided psychological evaluation. Counsel also resubmits the petitioner's statement and other statements submitted on his behalf.

Battery and/or Extreme Cruelty

In the petitioner's initial statement, he indicated that at some point in the marriage R-P- became emotionally erratic, moody, and impatient and began demanding more money from him. He noted that she would try to provoke arguments as if to make him want to leave her. He stated that despite the provocation he held his temper but that in June 2006, R-P- left with the couple's two children. The petitioner indicated that while separated he learned that R-P- might be having an affair. He noted that he continued to help her financially and sometime in mid-2007, she asked that they live together again and they rented a three-bedroom house. The petitioner stated that in September 2008, his wife's niece came to live with them as she was having marital difficulties and that is when his wife began to behave erratically again. The petitioner indicated that his wife would stay out late and when he confronted her with her behavior she would yell, use derogatory language, and throw things at him. The petitioner noted that he would go to work with bruises from being hit by flying objects like flower vases and rubber slippers. The petitioner indicated further that in December of 2008 he noted that she had kiss marks on her skin and in a rage he was about to slap her but she kicked his shin and threatened him with deportation. The petitioner stated that each time he confronted her with her late night outs and neglect of their children she would start to dial 911 or pretend to call immigration authorities. The petitioner indicated that he felt that his wife no longer wanted to spend time with him as she would provoke fights and if she succeeded the fights would end with threats of his deportation. The petitioner noted that on December 15, 2008, his wife and her niece called the police but when the police arrived they did not find any proof of his wife and her niece's accusations that he had sexually harassed the niece, so they left. The petitioner indicated that a few days later, his wife changed the locks to the house and would not give him a new set of keys and when he called the police to ask about his rights to enter the house they told him he must get a court order to enter the house. The petitioner stated that on January 10, 2009 his wife told him she did not want him to come back anymore and in February he learned that she had asked his work to withhold 50 percent of his salary for child support or she would report that they had hired an illegal alien. The petitioner stated that he felt confused and betrayed and lived in fear of a threat of deportation. He noted that if he is deported he would be separated from his children. The petitioner also noted his worry that R-P- would hurt him because she knew she was the beneficiary of his life insurance policy.

[REDACTED] in a March 27, 2010 statement, provided information regarding the petitioner's interactions with R-P- that mirrored the petitioner's initial statement. She added that in November 2008, when the petitioner came to her house, he had a big gash below his right eye and he indicated that R-P- had thrown an ash tray at him that had "graced" his face when he questioned her regarding her late nights. [REDACTED] added further that when R-P- changed the

locks on the house in 2008 and the petitioner called the police asking about his rights, R-P- told the police that the petitioner had threatened her and the police warned the petitioner about threats and told R-P- to call 911 if the petitioner threatened to hurt her.

In the March 13, 2009 psychological evaluation, prepared by [REDACTED] report of the petitioner's interactions with his wife also mirrors the petitioner's statement. [REDACTED] diagnosed the petitioner with major depressive disorder and noted that the petitioner presented "with the psychological pattern of abuse, having lived many days with depression, pent up anger, fear and frustration because of his wife's erratic and abusive behavior." [REDACTED] opines: the petitioner "is in this vulnerable immigration position because of his abusive wife."

In response to the director's RFE, the petitioner provided statements from [REDACTED] and [REDACTED]. [REDACTED] noted his wife, R-P-'s niece, left him to be with her aunt. He noted that he came to California in December 2008 when he learned that his wife had accused the petitioner of sexual harassment. [REDACTED] indicated that when he arrived in California he learned that his wife had fabricated her story. [REDACTED] stated that several days after his arrival the petitioner called him and told him that R-P- had locked him out of their house and when he went to the couple's house he saw the petitioner outside "fuming mad" and learned that the petitioner had seen a man inside the house. [REDACTED] noted that the following day he accompanied the petitioner to his house and the locks had been changed and when the petitioner called the police, R-P- asked the police to apprehend the petitioner as he was an illegal alien but the police officers just left after telling the petitioner he must get a court order to get inside the house. [REDACTED] reported that he was with the petitioner in January 2009 when the petitioner called R-P- and heard her shouting at the petitioner and telling him to get his things from the house and not come back and telling him if he did not stop snooping around she would call the police and immigration.

In [REDACTED] statement, [REDACTED] indicated that the petitioner's situation with R-P- was aggravated by the fact that he could not apply for a green card because he entered the United States as a crewman which impacted the couple financially. [REDACTED] added that R-P- went on spending sprees and trouble between the couple escalated when collection agencies started calling. [REDACTED] also indicated R-P- had an affair but that the relationship of the couple was patched up in September 2008; however, with the arrival of R-P-'s niece R-P- began to act erratically again. [REDACTED] reported that in November 2008 R-P- threw an ash tray at the petitioner after her niece told her that the petitioner had accosted her and that although the petitioner wanted to retaliate, he did not because the children were there. [REDACTED] does not indicate how he learned of this alleged incident. [REDACTED] also provided similar information regarding the petitioner's contact with R-P- as set out by the petitioner and [REDACTED].

The director considered the petitioner's testimony, the affidavits submitted on his behalf, and the documentary evidence submitted by the petitioner. The director determined that the petitioner's reference to his spouse's infidelity, alcoholism, and episodic acts of anger were insufficient to establish the petitioner had been subjected to battery or extreme cruelty for immigration

purposes. The director noted that marital tensions and incompatibilities do not constitute extreme cruelty and that the evidence submitted did not establish that the petitioner's marital difficulties were beyond those encountered in many marriages. The director discounted the psychological evaluation submitted because [REDACTED] did not witness the alleged abusive behavior and instead based the evaluation on the petitioner's statements taken in one session. The director noted that the petitioner had not sought additional treatment even though [REDACTED] had recommended that he do so.

On appeal, counsel for the petitioner asserts that the director did not fully consider the petitioner's statement or the statements submitted on his behalf and just focused on the petitioner's claim that his wife committed adultery. Counsel references the petitioner's statement indicating that R-P- threw things at him, cursed and threatened him with deportation, and would not allow his children to speak with him and contends that the petitioner's statement establishes that he was subjected to physical abuse and extreme cruelty. Counsel provides an article on domestic violence that includes examples of abuse such as name calling and actual or threatened physical harm.

Counsel avers the director improperly dismissed [REDACTED] evaluation as [REDACTED] a trained psychologist, does not have to witness abuse to determine that the petitioner was a victim of abuse. Counsel contends that the statements of [REDACTED], and [REDACTED] corroborate the petitioner's claims that he was physically abused by thrown objects and was subjected to extreme cruelty by R-P-'s taunts and threats of deportation.

The record on appeal also includes a supplemental letter signed by [REDACTED] indicating that her initial report was conducted over the course of three sessions. She opines that the marriage was not simply a discordant one but was marked by a dangerous and profoundly damaging cycle of violence. [REDACTED] indicates that although there was some physical violence in the relationship such as pushing and throwing objects in anger, the vast majority of the abuse was psychological and emotional. [REDACTED] opines that the petitioner was affected by R-P-'s threats of deportation and her prevention of him seeing their children and that the petitioner's symptoms of major depressive disorder developed as a result of the extreme cruelty he endured from his spouse.

Upon review of the record, the petitioner has not established that he was subjected to battery. Although the petitioner indicated that his spouse threw things at him in anger which resulted in bruising, the petitioner does not provide descriptive detail of the totality of the circumstances of these events and the claimed resulting injuries. The petitioner's statement that on occasions he was enraged by his spouse's staying out late and her affair and had to restrain himself from physical violence is an acknowledgment of the mutually combative nature of the relationship. There is insufficient evidence to ascertain that R-P- was the aggressor in each of these incidents. The petitioner does not provide an account of being hit with an ash tray as is set out in the statements of [REDACTED] and [REDACTED]. Moreover, [REDACTED] in her report on appeal does not attribute physical abuse as the cause of the petitioner's depressive disorder. The petitioner's testimony and the testimony on his behalf are insufficient to establish the petitioner was subjected to battery perpetrated by R-P-.

The petitioner's statement also fails to establish that he was subjected to extreme cruelty perpetrated by R-P-. Although the petitioner claims that R-P- threatened him with deportation, he notes that the threats occurred when the couple fought over R-P-'s staying out late, her involvement with another man, and his perception that she neglected their children. He acknowledges that during these fights he also was angry. His general reference to threats of deportation or of calling the police does not include sufficient detailed evidence to determine that R-P- used the threats as a method of control. Although the petitioner stated that his wife would not let his children speak with him, the circumstances surrounding her refusal as generally referenced involved his wife's refusal to allow him into the house to continue their relationship and to avoid detection of her affair. The petitioner's reference to his wife's interference with his work and her demand that he pay child support is not sufficiently described to conclude that she was subjecting him to duress, intimidation, or control. Similarly, his indication that he believed his wife no longer wanted to spend time with him and would threaten him with the police or deportation accompanied by his testimony that he wanted to continue the relationship when she did not does not establish that the petitioner was the victim of extreme cruelty as that term is set out in the statute, regulation, and case law. The petitioner also has not provided the police reports of the two occasions when the police were called to intervene in the domestic disputes between he and his wife and he does not offer an explanation of his failure to do so.

In this matter, although the director's use of the terms "marital tensions and incompatibilities" was unnecessary, the petitioner has not provided sufficient detailed, probative evidence to establish that he was subjected to specific incidents or events that constitute extreme cruelty as that term is defined in the statute, regulations, and case law. He has not provided probative testimony that he was subjected to actions or behavior by R-P- 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. 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 petitioner has not described instances of verbal abuse or manipulation in sufficient detail to demonstrate he was subjected to intimidation, coercion, duress, or threats or acts of violence during the marriage.

Upon review of the statements submitted on his behalf, the statements provide the same general information as set out in the petitioner's statement. [REDACTED] also noted she learned that the petitioner had been warned by the police regarding threats made by the petitioner. [REDACTED] also reported that the petitioner was "fuming mad" when he was locked out of his house and that he heard R-P- yelling at the petitioner and telling him she would call the police and immigration if he did not stop snooping around. [REDACTED] provides information regarding the petitioner's financial difficulties as a result of R-P-'s spending sprees, information not mentioned by the petitioner in his statement. As noted above, [REDACTED] does not reveal how he learned of the particular incidents. The statements when reviewed in their totality do not provide sufficient

probative detail of particular incidents or events that demonstrate the petitioner was the victim of extreme cruelty as that term is set out in the statute, regulation, and case law.

Upon review of the evaluations prepared by [REDACTED], although [REDACTED] recites similar information as provided in the petitioner's statement, she does not identify particular events but rather notes that the petitioner presented "with the psychological pattern of abuse, having lived many days with depression, pent up anger, fear and frustration because of his wife's erratic and abusive behavior." R-P-'s erratic and abusive behavior, however, is not sufficiently described to conclude that the petitioner was subjected to extreme cruelty as set out in the statute, regulation, and case law. [REDACTED] does not support her opinion that the petitioner "is in this vulnerable immigration position because of his abusive wife" with specific incidents and the circumstances of the incidents. We do not question [REDACTED] expertise and agree that she is not required to actually witness specific behavior to analyze the petitioner's mental condition; however, she must identify with specificity the particular events that result in her opinion that the petitioner's marriage was marked by a dangerous and profoundly damaging cycle of violence. In this matter, neither the petitioner nor the affiants who provided statements on his behalf have identified with probative detail the circumstances surrounding specific events to establish that the petitioner was the victim of extreme cruelty as that term is set out in the statute, regulation, and pertinent case law.

The articles submitted by counsel on appeal describe general situations of domestic abuse including name calling and actual or threatened physical harm. In this matter, the petitioner has failed to provide sufficient detailed probative testimony to establish that he was subjected to actual harm perpetrated by R-P- or that he was subjected to specific behavior by R-P- that constituted extreme cruelty as that term is set out in the statute, regulation, and pertinent case law. The petitioner has not provided testimonial or other evidence on appeal sufficient to overcome the director's ultimate decision.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reason. 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.