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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
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Services

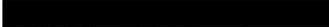


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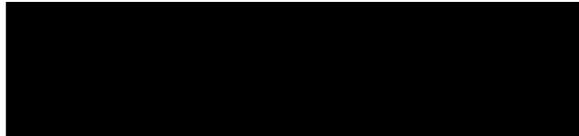
Office: VERMONT SERVICE CENTER

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:

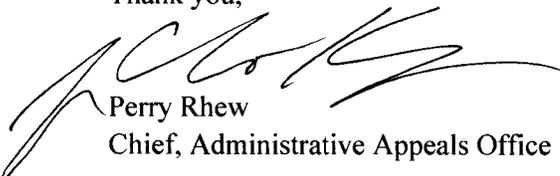


INSTRUCTIONS:

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 wife subjected the petitioner to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief reasserting the petitioner’s eligibility and 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).

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 –

(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 Jamaica who was admitted to the United States on January 28, 2007, as a nonimmigrant visitor. The petitioner married S-H¹, a U.S. citizen, on March 8, 2007 in Fort Lauderdale, Florida. The petitioner filed his first Form I-360 petition on June 5, 2008, and it was denied on March 26, 2010. The petitioner filed the instant Form I-360 petition on May 4, 2010. The director subsequently issued a Notice of Intent to Deny (NOID) the petition based on the determination that the petitioner failed to establish that his wife battered him or subjected him to 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 and counsel timely appealed.

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 ground for denial and the appeal will be dismissed for the following reasons.

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. The petitioner submitted two statements with his first Form I-360 petition. In his first statement, dated October 21, 2008, the petitioner recalled that in July 2007, the petitioner's wife started calling him names, asked him to leave their house, and told him that she was having a homosexual relationship with her best friend. He stated that he then moved out of their home and his wife continued

¹ Name withheld to protect the individual's identity.

her extramarital affair. In his second statement, dated February 3, 2010, the petitioner recalled that in June 2007, his wife started shouting at him during arguments about financial matters in front of her minor daughter. He stated that his wife's daughter became disrespectful towards him after witnessing her mother's actions. The petitioner recalled that his wife called him names when he questioned whether she was having a relationship with her best friend. He explained that he thinks his wife was already having an affair with her best friend when she married him. The petitioner's statements do not indicate that his wife ever battered him or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted letters from his friends, [REDACTED] and [REDACTED] with his first Form I-360 petition. The petitioner's friends explain that the petitioner's marriage ended after the petitioner learned that his wife was having an extramarital affair with her best friend. The statements from the petitioner's friends do not indicate that the petitioner's wife ever battered him or that her behavior involved extreme cruelty, as that term is defined in the regulations.

In his November 17, 2010 response to the NOID, the petitioner further stated that his wife made him feel worthless because she said that she was not satisfied when they were sexually intimate. He stated that his wife would also refuse to be intimate with him if he did not perform in the manner she requested. The petitioner's additional statements do not describe behavior that constitutes battery or extreme cruelty.

The petitioner also submitted an additional statement from [REDACTED] in response to the NOID. [REDACTED] stated that in July 2007 he witnessed an argument between the petitioner and his wife in which the petitioner's wife called the petitioner names. He stated that when the petitioner walked him to the front door, the petitioner's wife grabbed his shirt and asked where he was going. [REDACTED] recalled that in August 2007, the petitioner called him after he was told to leave his marital home. He stated that the petitioner then stayed with him for one year. [REDACTED] explained that the petitioner was teased by his colleagues after they learned that his wife is homosexual. Although [REDACTED] attested to his knowledge of the breakdown of the petitioner's marriage, he also fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty.

On appeal, the petitioner submits a fourth statement, dated June 25, 2011, in which he explains that he has been ridiculed by fellow Jamaicans residing in the United States because of his wife's homosexual affair. He asserts that his wife's openness to him and other individuals about her extramarital affair was disrespectful and abusive. He explains that he had previously not discussed certain incidents in his marriage because he did not want to expose himself to more psychological pain and humiliation. The petitioner also submits a third statement from [REDACTED] dated July 15, 2011. [REDACTED] states that the petitioner is being ridiculed by his colleagues because of his wife's extramarital affair. He explains that he did not previously discuss an incident he witnessed at the petitioner's home because the petitioner felt humiliated.

On appeal, counsel reiterates that the petitioner initially did not discuss all of the incidents in his marriage because in Jamaica the topic of homosexuality is taboo and is almost never openly discussed. Counsel provides three country condition reports on the topic of homophobia in Jamaica. We find

reasonable the petitioner's explanations of his failure to initially disclose certain incidents in his marriage. However, the relevant evidence does not demonstrate that the specific behaviors of the petitioner's wife constituted extreme cruelty. The petitioner discusses arguments in his marriage, his wife's extramarital affair, and their issues with sexual intimacy. The petitioner's friends similarly discuss their knowledge of the petitioner's marital arguments and the petitioner's wife's extramarital affair. Their letters do not establish, however, that the petitioner's wife's behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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 was not battered or subjected to extreme cruelty during his marriage. 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.