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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: **JAN 24 2012** Office: VERMONT SERVICE CENTER

FILE:

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 and 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; or entered into the marriage in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a letter, and additional affidavits.

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 native and citizen of Brazil. He entered the United States on November 1, 2003 as a nonimmigrant visitor with temporary authorization to remain in the United States until January 30, 2004. On March 30, 2009, he married M-S-¹ the claimed abusive United States citizen. On March 26, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner claimed on the Form I-360 that he resided with M-S- from April 1, 2009 until May 30 2009. On April 29, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty or that he had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, and an additional letter and affidavits.

Battery and/or Extreme Cruelty

In the petitioner's initial statement accompanying the Form I-360, the petitioner stated that after a few months of marriage, M-S- became aggressive and said unpleasant things to him and that she drank a lot of alcohol. The petitioner also stated that M-S- treated herself badly and did horrible things to him. He noted that she acted rudely to him and would talk down to him when visiting friends which made him feel embarrassed. He indicated that he started to see a psychologist and "[a]fter this, [they] talked and [he] decided to move to live in Sunset, San Francisco." The initial record also included an August 11, 2009 letter signed by [REDACTED] licensed clinical social worker, who stated that the petitioner had been receiving treatment since June 18, 2008 for a depressive disorder that became present after his relationship with his wife.²

In a January 14, 2010 affidavit signed by [REDACTED] noted that after the couple married, he met the petitioner at the gym and the petitioner told him that his marriage was not going very well as M-S- was abusing him and that he had started to see a psychologist. [REDACTED] declared that they came across M-S- who yelled and gestured wildly and that [REDACTED] intervened so that M-S- would not hurt the petitioner. [REDACTED] did not indicate when the alleged incident occurred. In a November 15, 2009 affidavit, [REDACTED] declared that the petitioner told her that M-S- was becoming aggressive toward him and was drinking heavily. [REDACTED] also indicated that she witnessed the petitioner leaving the house and M-S- "slamming the door almost in his face." [REDACTED] stated that the petitioner was sad and crying a lot and told her that M-S- was physically abusing him.

In response to the director's RFE, the petitioner declared: "[a] few months after our marriage, I saw a lot of changes in [M-S-]." He reiterated that M-S- would start fights, pick on him, and that this hurt him when she did it in front of friends. The petitioner stated that M-S- called him ugly while drunk in front of friends and another time she threw a beer in his face when eating dinner at home. The petitioner also provided a May 29, 2010 letter signed by [REDACTED] indicating

¹ Name withheld to protect the individual's identity.

² The AAO observes that the petitioner was previously married and the marriage dissolved on September 22, 2008; thus it appears the petitioner's social worker is referring to the petitioner's relationship with his first wife.

the petitioner had received treatment at the O.M.I. Family Center for Major Depressive Disorder, Single Episode and that he received weekly individual treatment from June 18, 2009 until October 1, 2009. [REDACTED] noted that the petitioner's depressed mood occurred after he experienced emotional and physical abuse by his wife and that after treatment his symptoms decreased significantly.

The petitioner provided a June 25, 2010 affidavit signed by [REDACTED] who declared that after a few months together the petitioner told him that M-S- was drinking and was aggressive with him and that he was looking for a psychologist. In a July 14, 2010 affidavit, [REDACTED] declared that in December 2008 the petitioner invited him to his marriage with M-S-, that the couple lived together from December 2008 until July 2009 and a few months later the petitioner told him that M-S- was drinking and was aggressive with him.

Upon review of the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty as those terms are defined in the statute and regulation.

On appeal, counsel for the petitioner provides an April 27, 2011 affidavit signed by M-S- who declares that she did not live a healthy lifestyle when married to the petitioner and that she verbally abused him. She notes that she went back to her ex-boyfriend while the couple was married and that this hurt the petitioner. In an April 28, 2011 affidavit, [REDACTED] declares that he noticed differences in the petitioner's attitude after he married M-S-. In a May 5, 2011 affidavit, [REDACTED] notes her belief that M-S- had not detached herself from a previous relationship and that this caused tension in the petitioner's marriage. The record also includes four additional affidavits that comment on the petitioner's good nature. The record on appeal also includes a May 2, 2011 letter signed by [REDACTED] indicating that the petitioner had scheduled an appointment with [REDACTED] for May 3, 2011.

Upon review of the record, the petitioner has not established that he was subjected to battery or extreme cruelty as defined in the statute and regulation. Neither the petitioner nor his affiants describe any physical confrontations between the couple in detail. Stating generally that M-S- became aggressive or on one occasion threw beer in his face is insufficient to establish the petitioner experienced battery perpetrated by M-S-. [REDACTED] statement that he once intervened so that M-S- would not hurt the petitioner does not provide the necessary underlying detail of the event to ascertain what actually happened. Similarly the petitioner failed to establish that he was subjected to extreme cruelty as that term is set out in the statute and regulation. The petitioner's indication that M-S- would drink and call him names does not include the necessary detail to ascertain that M-S-'s actions constituted extreme cruelty. The witnesses on the petitioner's behalf, including the affidavit of M-S-, do not provide the requisite information to conclude that M-S-'s behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over him.

Upon review of the letters signed by [REDACTED] does not offer a diagnosis that is causally connected to specific behavior of M-S-. Her letters do not provide substantive,

probative information detailing specific behavior on the part of M-S- but rather generally state that M-S- was emotionally and physically abusive. There is no information in the record that M-S-'s conduct included threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

The petitioner fails to provide specific testimony of the verbal or emotional abuse allegedly suffered and he does not describe specific instances of exploitation, forced social isolation, psychological abuse, or control perpetrated by M-S-. Upon review, the petitioner has not offered probative testimony establishing that M-S-'s actions were 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 M-S-'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)).

The petitioner’s testimony and the testimony submitted on his behalf lacks the requisite probative detail demonstrating that M-S-'s conduct was a form of extreme cruelty under the statute and regulation. Based upon a review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery or conduct that constitutes extreme cruelty as defined in the statute and regulation.

Good Faith Entry Into Marriage

In the petitioner’s initial personal statement, he stated generally that he met M-S- at a gym where he taught martial arts classes. He noted that the couple went on a dinner date and discussed various topics and texted messages to each other. The petitioner noted that they continued to date and over the next year and a half he would go to her house to sleep during the week and in January 2009 he proposed. The petitioner stated that the couple married on March 30, 2009, went to Healdsburg, California for their honeymoon, and that he moved into M-S-'s house with her two children on April 1, 2009.

In the February 25, 2010 affidavit of [REDACTED] he declared that he had known the petitioner for some time, and he became good friends with the petitioner and M-S- and attended functions with them and witnessed a strong union of love between the two. In the affidavit of [REDACTED] declared that the petitioner and M-S- attended festivities at her home and they had fun doing things together and she believed the couple had common interests. The petitioner also submitted copies of two bank statements for periods from June 16, 2009 to August 17, 2009 issued from an account in both the petitioner and M-S-'s names. The record also includes a September 2, 2009 letter from the bank addressed to both the petitioner and M-S-.

In response to the director's RFE, the petitioner noted that he had a relationship with M-S- for almost 18 months and at the beginning of their marriage they got along with one another really well. In the affidavit of [REDACTED] stated that he knew that the couple lived together from March 2009 until June 2009, that he was invited to their house many times, and that he believed their union was based on love and affection. In the affidavit of [REDACTED] declared he had known the couple since 2008 and had socialized with them on many occasions and the couple was happy with each other. [REDACTED] also noted that in December 2008, the petitioner invited him to his wedding and that he knew that the couple lived together from December 2008 until July 2009.

The petitioner also submitted copies of two checks he had written on the joint bank account to the Department of Homeland Security in April 2009, a change of address notification to the U.S. Post Office noting his new address beginning June 10, 2009, and photographs of the couple. The record also included a bank statement for April 6, 2009.

Based on the record, the director determined that the petitioner had not established that he had entered into the marriage in good faith.

On appeal, counsel for the petitioner provides an affidavit from M-S- who declares that the couple married in good faith and that they legally married and lived together as man and wife. The record also includes affidavits from [REDACTED] and [REDACTED] who attest that they knew the couple, attended events with them, and believed the marriage was genuine.

In this matter, the petitioner provides an overview of his initial contact with M-S-; he does not provide a detailed account of the couple's courtship but states generally that they dated, he proposed in January 2009 and the couple married in March 2009. He fails to describe, in any meaningful detail, their decision to marry; their engagement; their wedding; or any of their shared experiences. Although the petitioner professes that the couple was very happy and that they had a normal, satisfying married life, he does not provide the necessary underlying detail in either of his two statements regarding their relationship and interactions. His statements are insufficient to support and ascertain his actual intent when entering into the marriage.

The affiants who submit testimony on the petitioner's behalf, including M-S-, also fail to provide probative details regarding their observations of the petitioner's allegedly good faith entry into marriage. The affidavits contain only general statements regarding the petitioner's relationship with M-S-; the affidavits do not provide consistent chronological detail or detailed descriptions of their claimed observations of the couple's interactions. [REDACTED] provides an inconsistent account of the petitioner's alleged residence with M-S-.

As the director determined, the bank statements do not show that the couple commingled assets or intended to establish a life together. The photographs, while showing that the couple spent time together, do not establish the petitioner's intent when entering into the marriage. Moreover, the petitioner's own testimony and the testimony of the individuals submitting affidavits on his behalf do not provide sufficient detailed information to establish the petitioner's intent when entering into the marriage. Upon review of the totality of the record in this matter, the record

does not include sufficient probative evidence establishing that the petitioner entered into marriage with M-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

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