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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**

B9

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

FILE: [REDACTED]

RE: Petitioner: [REDACTED]

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:

SELF-REPRESENTED

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: he had jointly resided with the claimed abusive United States citizen; he had been subjected to battery or extreme cruelty perpetrated by the United States citizen; or he had entered into the marriage in good faith. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a supplemental statement.

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.

* * *

(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 native and citizen of Kenya. He entered the United States on December 24, 1997 as a nonimmigrant F-1 student. On October 31, 2008, he married V-B-¹, the claimed abusive United States citizen. On February 25, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 11, 2010 and again on September 3, 2010, the director issued requests for evidence (RFE). Upon review of the record, including the petitioner's responses to the RFE, the director determined that the petitioner had not established that he had jointly resided with V-B-, that he had been subjected to battery or extreme cruelty, or that he had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, and a supplemental statement.

Residence

The petitioner in this matter indicated on the Form I-360 that he jointly resided with V-B- from October 2008 until January 2009 in Houston, Texas. In the petitioner's initial February 22, 2010 statement, he does not address the couple's joint residence. The application for marriage license lists the same address for the bride and groom. In response to the director's RFEs, the petitioner provided undated statements in which he referenced his previous testimony and insurance cards that do not reflect an address.

The director determined that the record was insufficient to establish that the petitioner had jointly resided with V-B-. On appeal, the petitioner asserts that he was working on including V-B- on his lease and adding her to his bank account when the marriage collapsed.

Upon review of the information in the record, we concur with the director's assessment of the evidence. The petitioner does not provide detailed information regarding the claimed joint residence. Although he states on the Form I-360 that he began living with V-B- in October 2008, he does not further expound upon the living arrangements either prior or subsequent to the marriage. He does not describe their jointly-owned belongings if any, he does not describe their home furnishings, and he does not describe their residence. He does not provide the necessary probative, consistent detail to establish that the couple resided together during the marriage.

¹ Name withheld to protect the individual's identity.

Upon review of the totality of the information in the record, the record does not include testimony or documentary evidence sufficient to establish that the petitioner resided with the claimed abuser.

Battery and/or Extreme Cruelty

The petitioner initially submitted a February 22, 2010 personal statement in which he declared that after the first month of marriage, the couple's differences became more apparent. The petitioner stated that the couple disagreed about the house cleaning, the use of their free time, and their finances. He noted that he stayed in the house on Sundays to watch sports which was an irritant to her. The petitioner noted that V-B- called him weak, made fun of his sexual ability, and used profanity when addressing him. The petitioner also noted that one night V-B- locked him out of their home and that she began to visit clubs without him and would drink excessively. The petitioner indicated his belief that V-B- was cheating on him and on January 17, 2009 he discovered V-B- in bed with two partners. The petitioner stated that he left the apartment and when he returned V-B- had packed all her possessions and left, taking all the photographs of their marriage. The petitioner stated that he has not contacted V-B- since that night. The petitioner stated further that the three months he was with V-B- almost drove him to a nervous breakdown and that he was depressed and began to drink heavily.

In response to the director's first RFE, the petitioner stated that V-B- abused him verbally a month into the marriage and the abuse grew into insults and physical confrontations such as poking him in the chest while abusing him verbally. The petitioner noted that his depression did not cease after his marriage failed and he depended on online counseling to find answers to his problems. He submitted copies of printouts of two articles; one article addressed domestic violence against men and the second article discussed Christian marriage counseling. He noted that he also attended several different churches to be part of a community.

In response to the director's second RFE, the petitioner added that V-B- was jealous and would not let him talk to other people, especially women, without causing an embarrassing exchange. He also added that he was shut off from contact with other people after his marriage including calling his family in Kenya, that V-B- became the sole manager of their money, and that she wanted him to stay at home and not talk to anyone. The petitioner added further that V-B- threatened him with violence and once pressed him up against a wall and that by the second month of the marriage she subjected him to all kinds of verbal and physical abuse.

Based on the information in the record, the director determined that the petitioner had not submitted sufficient probative testimony or other evidence that he had been subjected to battery or extreme cruelty.

On appeal, the petitioner asserts that he suffered emotionally, psychologically, and physically through the course of his marriage. He states that he did not seek counseling because he was ashamed and only sought online counseling. He notes that he probably would have sought help from the police or a marriage counselor had the marriage lasted longer. He observes that possibly because of cultural differences he found V-B-'s behavior shocking and unbelievable.

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. The petitioner initially does not reference any physical confrontations. In his response to the director's first RFE, he indicated that V-B- accompanied her verbal abuse by poking him in the chest. In his response to the director's second RFE, the petitioner further expands upon the physical confrontations by indicating he was once pressed up against a wall, that she threatened him with physical violence, and subjected him to physical abuse. The petitioner does not provide the requisite detail regarding specific instances of the claimed physical abuse. Moreover, the petitioner does not explain why his first statement mentions no physical altercations and each of his additional statements escalates the alleged physical abuse. The AAO finds that the escalation of physical abuse amounts to inconsistent testimony and undermines the credibility of the petitioner's testimony. The petitioner has not established that he was subjected to battery perpetrated by V-B-.

The petitioner also fails to establish that he was subjected to extreme cruelty as that term is defined in the statute and regulation. He includes general statements regarding his wife's use of profanity and derogatory statements regarding his sexual ability and references his wife's disrespect and infidelity. The petitioner, however, fails to provide specific testimony of the verbal abuse allegedly suffered and he does not specifically describe instances of exploitation, forced social isolation, psychological abuse, or control perpetrated by V-B-. Again, the petitioner provides inconsistent testimony. In his first iteration describing the couple's marital difficulties, the petitioner notes that he preferred to stay at home on certain days and that this upset his wife. In response to the director's RFE, the petitioner changes the dynamics of the relationship to reflect that his wife forced his social isolation by her jealousy and actions. The claims made by the petitioner fail to credibly establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that V-B-'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 him.

Upon review the petitioner has not credibly established that V-B-'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 V-B-'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 in this matter lacks the requisite probative, credible detail demonstrating that V-B-'s generally described 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 February 22, 2010 personal statement, he stated generally that he met V-B- at a club while celebrating his August 27 birthday. He indicated that they exchanged phone numbers and in subsequent meetings exchanged information about their contrasting upbringing and that a month later he proposed marriage. He noted that the couple decided to live together to pool their resources and that he wanted to make it right by entering into marriage. The petitioner also provided a health insurance card issued to V-B- effective January 1, 2010. In response to the director's first RFE, the petitioner noted that he was in the process of including V-B- in all aspects of his life and that he intended to lead a good married life, but that their marital problems came in the way. In response to the director's second RFE, the petitioner stated that the insurance policy was activated in the month of November, two months prior to the couple's separation. He reiterated that the couple met at a nightclub and although they had lived vastly different lives, their different upbringing was a topic for endless talks and poking fun at each other. The petitioner stated that he entered into the marriage with every intention of providing for his wife and future children.

The director determined that the petitioner had not established that he had entered into the marriage in good faith.

On appeal, the petitioner's asserts that he married V-B- in good faith and that when he married he was unaware of any immigration benefits that would protect him from abuse.

In this matter, upon review of the petitioner's statement in support of the petition, he provides an overview of meeting V-B-, dating, and marrying. He does not provide a detailed description of his interactions with V-B- prior or subsequent to the marriage. Although the petitioner professed that his intent in marrying V-B- was to establish a life together, he does not provide the requisite underlying detail necessary to support and ascertain his actual intent when entering into the marriage. The record does not contain probative testimony regarding his courtship with V-B-, the types of activities they enjoyed together in detail, or his interactions with V-B- except as it relates to the claim of abuse. The petitioner's testimony does not convey the meaningful detail necessary to ascertain the petitioner's intent when entering into the marriage.

Regarding the insurance card and policy issued to V-B-, the petitioner does not provide documentary evidence in support of his assertion that the policy was actually issued in November 2009, one month after their marriage and two months prior to their separation. Neither the insurance cards nor the policy printout provided for the record shows the couple's address or the date of application. The record does not include sufficient data establishing that the policy was issued prior to the effective date listed on the insurance cards as January 1, 2010. Moreover, again upon review, the petitioner's testimony is of little probative value as it lacks detail establishing his 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 V-B- 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.