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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

[redacted]

B9

DATE: JAN 30 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:

[redacted]

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 been subjected to battery or extreme cruelty perpetrated by the United States citizen. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief.

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.

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.
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> * * *
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> (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.

Facts and Procedural History

The petitioner is a native and citizen of Germany. He last entered the United States on January 12, 2005 as an F-1 nonimmigrant student. On May 15, 2006, he married J-H-,[1] the claimed abusive United States citizen (USC) spouse. On July 30, 2009, 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 his USC spouse from March 2005 until July 2007. The director issued a Notice of Intent to Deny (NOID) the petition and upon review of the evidence, including the petitioner's response to the NOID, determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his USC spouse. Counsel for the petitioner timely submits a Form I-290B, and a brief in support of the appeal.

Battery and/or Extreme Cruelty

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[1] Name withheld to protect the individual's identity.

In the petitioner's April 27, 2009 statement accompanying the Form I-360, the petitioner stated that the first couple of months of marriage were great but that their lives began to change in the fall of 2006. The petitioner noted that his USC spouse began going out with a friend to nightclubs and that her behavior began to change. He indicated that J-H- became cold, distant, and mean and that she would yell at him for anything and everything. The petitioner stated that on Christmas Eve of 2006 he saw her sharing an intimate moment with another man and when he confronted her she called him names and told him if he did not like it he could leave. The petitioner also indicated that his USC spouse asked for money, changed the passwords on their business account and moved out of the marital home leaving him to pay the mortgage and utility bills. The petitioner noted that he turned to alcohol and although his spouse never hit him she hurt him in other ways by knowingly inflicting pain and throwing away their life together.

In response to the director's NOID, the petitioner provided a May 12, 2010 statement in which he reiterated that his spouse openly dated other men, called him names, and left him to run their business and pay the bills. He noted that his wife told him that if he did not pay the mortgage she would not process his immigration papers and that he later learned that she had withdrawn the immigration papers she had filed on his behalf. The petitioner also indicated that his spouse asked him not to hang out with his friends, took merchandise from their home, and provided an anonymous tip to the authorities that he was selling counterfeit merchandise which caused his arrest.

The affidavits of the petitioner's sister and his friend submitted below provide similarly general information as to the petitioner's account of his interactions with his spouse as those interactions relate to the petitioner's claim of emotional and financial abuse.

The record also included a September 4, 2008 psychiatric evaluation report prepared by diagnosed the petitioner with "Major Depressive Disorder because of his wife being unfaithful, throwing him out of the house, and destroying him on a financial basis." opined: "he has been emotionally, economically and socially abused."

Upon review of the record, the director determined that the petitioner had not provided probative evidence that he had been subjected to battery or extreme cruelty perpetrated by his USC spouse.

On appeal, counsel asserts that the facts demonstrate that the petitioner's spouse subjected him to control through psychological means including emotional abuse, humiliation, degradation, isolation, and economic coercion. Counsel references 8 C.F.R. §§ 1240.58(b) and 1240.58(c) and contends that the petitioner has satisfied the factors found in 8 C.F.R. §§ 1240.58(b)(1),(2),(4),(5),(7), and (9) as well as factors found in 8 C.F.R. §§ 1240.58 (c)(1) and (2).

Preliminarily, counsel's references to 8 C.F.R. §§ 1240.58(b) and 1240.58(c) are not applicable to the Form I-360 immigrant petition filed before United States Citizenship and Immigration Services (USCIS). The sections of the Code of Federal Regulations referenced apply to a petitioner's request for cancellation of removal, a matter not properly before USCIS or the AAO.

Upon review of the evidence in the record, including the petitioner's statements, the statements of his sister and friend, as well as the psychiatric evaluation prepared by the petitioner has not established that he was subjected to battery or extreme cruelty as those terms are set out in the applicable statute and regulation.

The petitioner does not claim and the record does not demonstrate that the petitioner was subjected to battery, rather the petitioner's claim centers on extreme cruelty perpetrated by his spouse. The petitioner's description of his wife's infidelity, verbal name calling, and her failure to contribute economically to the marriage do not describe specific behavior that constitutes extreme cruelty under the statute and regulation. Although his spouse called him names and threatened to withdraw his immigration papers if he did not pay the mortgage, the petitioner did not offer probative testimony establishing that his spouse'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 did the petitioner's testimony establish that his spouse'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 does not describe acts of social isolation and economic coercion perpetrated by his spouse in sufficient probative detail to establish that he was subjected to extreme cruelty as that term is set out in the applicable statute and regulation.

Similarly, the petitioner's sister and friend do not describe in specific detail any particular instance on the part of the petitioner's wife that constitute extreme cruelty pursuant to the statute or regulation.

does not provide the requisite information to ascertain that the petitioner's wife's actions constituted extreme cruelty as that term is defined in the statute and regulation. The evaluation does not provide substantive, probative information describing behavior that includes actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. The evaluation does not sufficiently show a causal connection between behavior constituting extreme cruelty as set out in the statute and regulation and the petitioner's condition.

Upon review of the petitioner's testimony and the testimony submitted on his behalf, the record lacks the requisite probative detail demonstrating that he was subjected to battery perpetrated by his wife or that his wife's conduct was a form of extreme cruelty under the statute and regulation. The petitioner has not established that he was subjected to battery or conduct that constitutes extreme cruelty as defined in the statute and regulation.

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.