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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: JUL 0 5 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, or a request for a fee waiver. **Do not file any motion directly with the AAO.** 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. 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, 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.
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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.

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 of Turkey. He claims he last entered the United States on December 12, 2000 on a B-1 visitor visa. On October 28, 2008, he married G-S-,[1] the claimed abusive USC spouse. A Judgment of Divorce terminating the marriage was issued on June 23, 2010 and filed August 12, 2010 in the County Clerk's Office in New York.[2] On July 22, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner stated on the Form I-360 that he resided with G-S- from 2005 until 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

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

[2] On November 9, 2011, an order vacating the final orders of custody and protection entered on April 5, 2010 were set aside; however, the record does not include evidence that the Judgment of Divorce, issued June 23, 2010 and filed August 12, 2010, was set aside.

to battery or extreme cruelty by the USC spouse. On appeal, the petitioner states he is submitting additional proof that will support his petition. The petitioner provides five police reports, affidavits from and litigation documents regarding the custody of his son. The petitioner also re-submits previously provided documentation.

Battery and/or Extreme Cruelty

In the petitioner's initial statement, he indicated that shortly after he met G-S- in April 2004 she became pregnant and started demanding money to have the baby. The petitioner stated that once G-S- came to his house and demanded money and when he opened his door she broke a bottle and put the glass to his neck and he started bleeding. He indicated that he returned to his room and ignored her. The record on appeal includes a police report regarding an incident on December 25, 2004, wherein the petitioner reported that his ex-girlfriend (G-S-) struck him with a screwdriver and bit him on the stomach. The petitioner told the police the couple was not living together.

The record shows the petitioner's child with G-S- was born June 9, 2005. The petitioner noted in his statement that he had an on and off again relationship with G-S- who always demanded money. He also indicated that G-S- refused to allow him to see his son and called the police when he attempted to do so. The record on appeal includes a January 26, 2008 police report wherein the petitioner reported that G-S- filed a false police report against him, that she sent him threatening text messages, and that she threatened she would continue to have him arrested. The record on appeal includes a February 15, 2008 police report wherein the petitioner reported that G-S- threatened to have him arrested when he tried to see his son even though he had a court order to visit his son. In March 2008 the family court ordered that the petitioner have supervised visits with his son. The petitioner noted that at some point he and G-S- reconciled and the couple married on October 28, 2008. The petitioner stated that the couple lived together for a few months. He noted that he saw her beating his son on one occasion, she broke stuff in the house, and she called the police and made a report against him. The record includes a police report regarding a June 6, 2009 incident wherein the petitioner reported that after a verbal dispute with G-S-, she threatened to have someone kill him. The petitioner noted that he moved out of the house shortly thereafter. As observed above, the divorce judgment terminating the marriage was filed in August 2010. The record on appeal includes a September 5, 2011 police report wherein the petitioner reported that his ex-wife was constantly fighting with him and making false reports regarding domestic issues.

The record on appeal also includes an affidavit signed by , the petitioner's attorney in a criminal action based on G-S-'s accusation that the petitioner was stalking her. declares that the criminal action arose because G-S- had the petitioner arrested after G-S- was served with a visitation petition regarding their child. notes that an order of protection filed against the petitioner by G-S- was vacated and he attaches a copy of a November 15, 2011 order vacating the order of protection and G-S-'s final orders of custody. also notes his belief that there was a deficiency in the proof of service for the default divorce judgment and thus the divorce granted on grounds of cruel and inhuman treatment is void. The

record on appeal also includes a letter written by who declares that the petitioner's "wife" had confronted the petitioner several times at his place of business in 2007. in a December 26, 2011 letter confirms that G-S- verbally insulted the petitioner at his uncle's mechanic's shop in 2007.

The petitioner also re-submits a psychological report prepared by , Ph.D. on September 7, 2011. noted that the petitioner had difficulty remembering dates but reported that he thought he and G-S- began to live together in 2004 or 2005 and that G-S- became more "assaultive." indicated the petitioner reported that for a period of about three years he was harassed by police and that there were occasions when he was taken to the police station and jailed based on false accusations by G-S-. stated that the petitioner's complaints against G-S- were repeatedly dismissed by the police and he perceived that the police believed he was the aggressor, not G-S-. indicated the petitioner's report that in 2007 or 2008, both parents were given visitation rights to the couple's son and that the couple made peace and married in October 2008. The petitioner reported to that at some point, G-S- reported him to the police again and thereafter the petitioner moved to Pennsylvania. opines it is likely the petitioner was experiencing Acute Stress Disorder and "he certainly appears also to have been traumatized and abused."

Upon review of the record, the petitioner has not established that he was subjected to battery while married to G-S-. We have reviewed the police reports dated December 25, 2004, January 26, 2008, and February 15, 2008. Although the police report dated December 25, 2004 indicates that the petitioner was struck by a screwdriver and was bitten by G-S-, the petitioner stated that G-S- cut him with a broken bottle during this incident. There is insufficient consistent detail to establish the circumstances of the incident in 2004 to establish the petitioner was subjected to battery. Moreover, this incident occurred prior to the petitioner's marriage to G-S- and while the couple was not living together.

The petitioner also referred vaguely to fighting and arguing and claimed that G-S- made false accusations against him resulting in his arrests. The police reports dated January and February 2008 which also occurred prior to the petitioner's marriage to G-S- relate the petitioner's complaint that G-S- called police when he tried to see his son. Similarly, the police report dated June 9, 2009, which occurred during the marriage reports that the couple had a verbal dispute and that G-S- threatened to have someone kill him. Neither the police report nor the petitioner's statement provides sufficient detail of the circumstances of this or previous incidents to conclude that G-S- used threats as a method to control the petitioner. Likewise, the September 15, 2011 police report regarding the petitioner's complaint that G-S- continued to fight with him after the dissolution of the marriage does not include the necessary evidence to establish that G-S- subjected the petitioner to duress, intimidation, or control. The generality of the petitioner's statement and the lack of information in the police reports regarding the specific nature of the threats, verbal abuse, or harassment are insufficient to establish that the petitioner was subjected to extreme cruelty as that term is defined in the statute, regulation, and pertinent case law. The police reports submitted on appeal, while confirming the mutual conflict that occurred between the petitioner and G-S-, do not provide sufficient evidence to establish that the petitioner was the victim of extreme cruelty perpetrated by G-S-.

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 G-S- 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.

The AAO has reviewed the totality of the record, including the police five police reports, the petitioner's vague statement, and the testimony of others submitted on his behalf. Upon review, the record is deficient in providing a consistent and detailed description of specific incidents that establish a pattern of abuse. Similarly, [redacted] general opinion that the petitioner was experiencing Acute Stress Disorder and that the petitioner appeared to have been traumatized and abused does not offer a specific diagnosis causally connected to specific incidents of abusive behavior perpetrated by G-S-. [redacted] has not identified specific conduct that supports an opinion that the petitioner was subjected to a cycle of violence.

The AAO acknowledges the mutual conflict that arose between the petitioner and G-S- prior to their marriage regarding the care and custody of their son and that the couple's subsequent marriage did not ameliorate their conflict. However, the petitioner's testimony, the statements of others submitted on appeal, and other evidence of record lack probative detail of particular incidents or events that demonstrate the petitioner was the victim of battery or extreme cruelty as that term in set out in the statute, regulation, and case law. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. 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.