

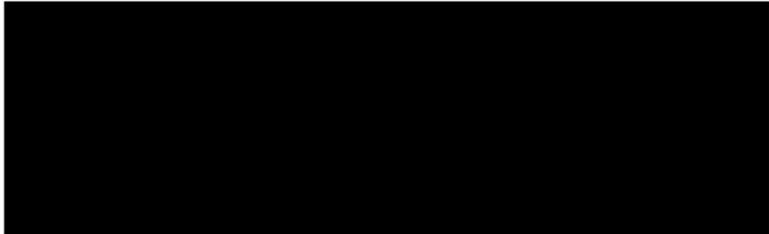
Administrative Review
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



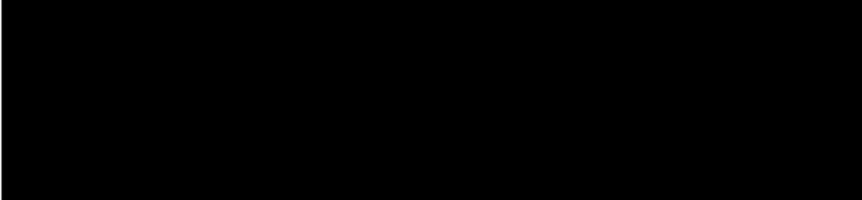
B9.

DATE: **JUN 07 2012** OFFICE: VERMONT SERVICE CENTER



IN RE: 

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (the director) denied the immigrant visa petition and affirmed his decision in response to a subsequent motion to reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

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 denied the petition on the basis of his determination that the petitioner failed to establish his ex-wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of the Philippines who entered the United States on February 18, 2006. He married P-Q-,¹ a citizen of the United States, on July 26, 2006 and they divorced on December 5, 2007. The petitioner filed the instant Form I-360 on April 12, 2007. The director issued a subsequent request for additional evidence (RFE) and the petitioner, through counsel, filed a timely response. After considering the evidence of record, including counsel's response to the RFE, the director denied the petition on April 23, 2009. On March 16, 2011, the director affirmed his previous decision denying the petition.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, we find additionally that he has also failed to establish his requisite good moral character. However, although we agree with the director's determination that the beneficiary is ineligible for the benefit sought, the matter

¹ Name withheld to protect individual's identity.

must nonetheless be remanded for issuance of a notice of intent to deny (NOID) the petition in accordance with 8 C.F.R. § 204.2(c)(3)(ii) as in effect on the date this petition was filed.²

Battery or Extreme Cruelty

In his April 10, 2007 letter submitted below the petitioner claimed that P-Q- was verbally abusive; took financial advantage of him and his friends; stayed out late; abused alcohol; and was unfaithful. He also claimed that he contracted the sexually-transmitted disease gonorrhea from P-Q-.

The petitioner also submitted below letters from his friends [REDACTED] and [REDACTED] from P-Q-'s sister [REDACTED] and from P-Q-. [REDACTED] claimed that although he allowed P-Q- and the petitioner to access his cellular telephone plan, he was forced to suspend the account when P-Q- exceeded his monthly usage allowance. He also repeated the petitioner's claim regarding P-Q-'s alleged transmission of gonorrhea. [REDACTED] claimed that P-Q- told him she hated the petitioner and no longer wanted to live with him, and that although he gave P-Q- money so she could move from West Virginia to California she did not use the money for that purpose. [REDACTED] stated that P-Q- was verbally abusive, unfaithful, abused alcohol, and stayed out late. In her letter P-Q- expressed her love for the petitioner and her sorrow over the end of the relationship.

Finally, the petitioner submitted copies of medical documents indicating he was tested for several conditions, including gonorrhea, on October 2, 2006.

The director found that the petitioner failed to demonstrate that P-Q-'s behavior constituted battery or extreme cruelty. In his briefs submitted on motion and on appeal, counsel summarizes the testimony submitted below and argues that P-Q- subjected the petitioner to both physical and emotional abuse. He argues that P-Q-'s alleged transmission of gonorrhea to the petitioner was an act of physical abuse, and he submits information regarding the criminal penalties the States of Alabama and Florida impose for knowingly infecting another with a sexually transmitted disease. Citing to the statute and to *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003), counsel asserts that the term "extreme cruelty" should be liberally interpreted in a manner "which strongly favors petitioners." and argues that P-Q-'s behavior meets that standard.

The relevant testimony submitted below and counsel's arguments made on appeal do not establish that P-Q- subjected the petitioner to battery or extreme cruelty during their marriage. Counsel's claim that P-Q- subjected the petitioner to physical abuse by infecting him with gonorrhea is not persuasive for several reasons. First and foremost, the record does not establish that the petitioner was ever infected with gonorrhea. Although the record contains medical documents including a laboratory order containing "diagnostic symptoms" of "urethral discharge, poss. Gonococcal," an order that the petitioner to tested for human immunodeficiency virus (HIV) and "RPR or VDRL,"

² See 72 Fed. Reg. 19100 (April 17, 2007), wherein U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs which became effective on June 18, 2007, after this petition was filed.

and as handwritten notes stating “possible gonococcal,” no document provides a definitive, legible diagnosis of gonorrhea. In fact, the document titled “Specimen Inquiry” specifically stated that the petitioner’s specimen had not been transported in a “proper charcoal transport media suitable to recover neisseria gonorrhoeae/fastidious organisms for genital specimens,” and suggested “reculturing [the] specimen using proper transport media.” Nor did the petitioner establish that he contracted his alleged gonorrheal infection from P-Q-. The criminal liabilities imposed by the States of Alabama and Florida upon those who knowingly spread sexually transmitted diseases are irrelevant because this case arose in neither state. The petitioner has failed to establish that P-Q- transmitted gonorrhea to him as an act of physical abuse for all of these reasons, and he alleges no other incidents of physical abuse perpetrated by P-Q- during their marriage. Accordingly, he has failed to establish that P-Q- subjected him to battery during their marriage.

Nor does the relevant evidence establish that P-Q-’s behavior constituted extreme cruelty. Her alleged passage of gonorrhea to him does not constitute extreme cruelty because the record does not establish she did so and did so knowingly, and that she did so as an act of violence, coercive control, or any of the other actions listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. Nor are the reported behaviors, which include staying out late, sexual infidelity, and abandonment, comparable to any of the behaviors described at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. The petitioner’s claims of verbal abuse are not sufficiently developed for a finding of extreme cruelty, as he and his affiants failed to describe specific instances of such abuse in probative detail. His claims of financial abuse by P-Q- were also lacking in probative detail, and her alleged acts of financial abuse described by [REDACTED] and [REDACTED] were perpetrated against them rather than against the petitioner. Nor did [REDACTED] or P-Q- describe any specific incidents of abuse in probative detail.

To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act the statute and regulation require that the non-physical cruelty be extreme. *See Hernandez v. Ashcroft*, 345 F.3d at 840 (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The relevant evidence does not establish that P-Q-’s behavior involved psychological abuse or exploitation, that it was part of an overall pattern of violence, or that it was otherwise comparable to any of the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. Considered in the aggregate, the relevant evidence fails to establish that P-Q- subjected the petitioner to battery or extreme cruelty during their marriage as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

Beyond the decision of the director, we find additionally that the petitioner failed to establish he is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner’s good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in April 2004 and ending in April 2007). Although the record contains a criminal background check issued by the California Department of Justice on November 27, 2006, this document does not cover the five-month period of time that

elapsed between its issuance and the date the petition was filed. The petitioner therefore cannot be deemed a person of good moral character as required by section 204(a)(1)(A)(iii)(II) of the Act. For this additional reason, the petition may not be approved.

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that P-Q- subjected him to battery or extreme cruelty during their marriage. Beyond the decision of the director, he has also not established that he is a person of good moral character.³ Although the record establishes that the petitioner is ineligible for the benefit sought, the matter must nonetheless be remanded on technical grounds for issuance of a NOID in accordance with 8 C.F.R. § 204.2(c)(3)(ii) as in effect on the date this petition was filed. Upon affording the petitioner the opportunity to respond to his NOID, the director shall issue a new decision based on the relevant evidence as it relates to the regulatory requirements for eligibility. On remand, the director need only address the matters before the AAO on appeal.

As always, 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).

ORDER: The director's decision is withdrawn. The petition is remanded to the director for issuance of a NOID and eventual entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).