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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

PUBLIC COPY



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DATE: **MAY 07 2012**

Office: VERMONT SERVICE CENTER

File: 

IN 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:

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. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will remain denied.

The petitioner seeks immigrant classification pursuant to 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 (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 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.

* * *

(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 Senegal. He claims he last entered the United States on May 8, 2005 as a visitor. He married [REDACTED]¹ the claimed abusive USC spouse on [REDACTED] 2009. On June 28, 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 his USC spouse from June 2009 until April 2010. 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 to battery or extreme cruelty by the USC spouse. On appeal, the petitioner submits a personal statement, a June 3, 2011 statement signed by [REDACTED] and a May 28, 2011 supplemental psychiatric evaluation.

Battery or Extreme Cruelty

¹ Name withheld to protect the individual's identity.

The director discussed the deficiencies of the statement submitted by the petitioner as well as the statements of those who submitted statements on his behalf. In the petitioner's February 22, 2011 statement, the petitioner indicated that once [REDACTED] threw a lotion bottle at him and it hit him in the eye. On appeal, [REDACTED] declares that [REDACTED] poured a cup of water in the petitioner's food and then threw it at him and [REDACTED] indicates the petitioner reported that [REDACTED] poured hot coffee on him on one occasion. The petitioner in his statement, [REDACTED] in his statement, and [REDACTED] in the report do not provide probative testimony of the circumstances regarding any of these claimed incidents. There is insufficient information in the record to demonstrate that the incidents actually occurred and to conclude that the petitioner was a victim of battery in any instance. The record is insufficient to establish that the petitioner was subjected to battery.

The petitioner indicated in his February 22, 2011 statement that the couple argued because of their financial circumstances and that [REDACTED] refused to be intimate with him and would threaten to call immigration and have him deported. The petitioner also stated that [REDACTED] would embarrass him in front of friends and family and he learned that she was having an affair with her former boyfriend. As the director observed, the January 26, 2011 psychological evaluation attributed the petitioner's symptoms to the threat of deportation, inadequate health care services, inadequate finances and insufficient welfare support while also noting that the petitioner's on-going emotional and functional hardship was caused by both the extreme cruelty perpetrated by his wife as well as the by the severe symptoms of his untreated mental illness.

As the director determined the petitioner's testimony and the testimony of the individuals submitting statements on his behalf regarding his spouse's actions does not demonstrate that her behavior was accompanied by coercive actions or threats of physical or psychological violence, or that her behavior was part of an overall pattern of violence. While the director's reference to marital tensions and incompatibilities was unnecessary the director's ultimate conclusion that the petitioner had not been subjected to battery or extreme cruelty was proper.

The petitioner's additional testimony on appeal fails to describe specific instances of conduct by [REDACTED] establishing that she subjected him to her control or to a form of extreme cruelty as that term is defined in the statute, regulation, and pertinent case law. Upon review of the petitioner's statements, he has not provided probative testimony that he was subjected to actions or behavior by [REDACTED] 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)). Moreover, the petitioner's initial testimony that [REDACTED] refused to be intimate with him appears to conflict with his statement on appeal that he went along with [REDACTED] demand for sex because he was afraid of her or because he loved her. Likewise, [REDACTED] affidavit on appeal, does not provide specific instances of behavior on the part of [REDACTED] that establish the petitioner was subjected to extreme cruelty.

The psychological evaluation addendum does not cite further instances of behavior by [REDACTED] that is described in sufficient detail to ascertain the actuality of the incidents and whether they constitute extreme cruelty as that term is set out in the statute, regulation, and pertinent case law. Upon review of the evaluation and the addendum, the psychotherapist does not offer a specific diagnosis that is causally connected to specific behavior enacted by [REDACTED]

Upon review of the record on appeal, the petitioner does not provide sufficient testimony or evidence to overcome the director's determination.

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.