

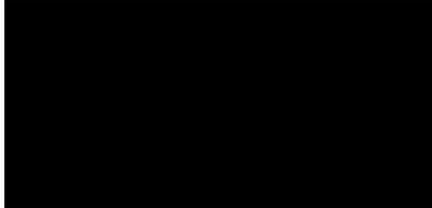
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Bq

DATE: **MAY 09 2012**

Office: VERMONT SERVICE CENTER

FILE:



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:



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) 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, 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 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.

* * *

(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 and citizen of Egypt. He entered the United States on or about October 29, 2001 as a B-2 visitor. On May 15, 2003, he married E-D-¹ the claimed abusive USC. On July 30, 2003, E-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the couple was interviewed regarding the Form I-130 on or about April 28, 2004. On September 26, 2007, E-D- withdrew the I-130 petition explaining the couple grew apart about two years into the marriage and she was starting the proceedings for an annulment or a divorce. The Form I-130 was denied on May 10, 2008. On April 14, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The record includes a copy of a divorce judgment issued and filed on March 30, 2010. Upon review of the insufficiency of the record, 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 denied the petition determining the petitioner had not established he had been subjected to battery or extreme cruelty

¹ Name withheld to protect the individual's identity.

perpetrated by E-D-. On appeal, counsel for the petitioner asserts that the petitioner has established that he was subjected to extreme cruelty perpetrated by his USC spouse and that the director erred when finding that the threats and harm the petitioner was subjected to were insufficient to constitute extreme cruelty. Counsel provides a brief in support of the appeal. The AAO has reviewed the record in its entirety.

Battery and/or Extreme Cruelty

The director considered the documentation previously submitted, including the petitioner's testimony, and the affidavits submitted on his behalf. The director determined based on the evidence in the record that the petitioner had not established that he had been subjected to battery during the marriage and that he had not established that he had been subjected to extreme cruelty as that term is set out in the statute and regulation. The director noted that "marital tensions and incompatibilities," such as the petitioner's mother-in-law's influence on E-D- and the couple's marriage, were not actions that constitute extreme cruelty as that term was envisioned by Congress when enacting the VAWA (Violence Against Women Act) statute.

On appeal, counsel for the petitioner asserts that the petitioner was subjected to severe and pervasive racism, verbal threats of deportation and physical harm, sabotage of his employment, and false documentation submitted to United States Citizenship and Immigration Services (USCIS) to ensure his deportation when he refused to comply with his former wife's demands. Counsel cites: *Dillard v. Roe*, 244 F.3d 758 (9th Cir. 2001), for the concept of a cycle of violence within intimate relationships; *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003), which instructs that one must consider the nature and effects of violence in intimate relationships and that the term extreme cruelty encompasses forms of domestic violence that are not physical; *United States v. Haggard*, 41 F.3d 1320 (9th Cir. 1994) finding extreme cruelty when a petitioner lied about the whereabouts of a missing child; *Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997), for not requiring a subjective intent to harm or punish in certain circumstances and still constitute harm; *Montecino v. INS*, 915 F.2d 518 (9th Cir. 1990) noting harm may be found even if the perpetrator had a rational and strategic purpose behind it; and *Mashiri v. Ashcroft*, 383 F.3d 1112 (9th Cir. 2004) noting threats of serious harm, particularly when combined with confrontation or other mistreatment, can be construed as maltreatment.

Counsel contends that as USCIS did not allege that the petitioner was untruthful or presented testimony that was not credible, the only legal issue that remains is whether the petitioner's testimony describes battery or extreme cruelty. Counsel avers that in this matter, the cumulative effects of the actions of the petitioner's USC spouse indicate an overall pattern of violence.

In the petitioner's initial March 27, 2009 personal statement, he indicated that at some point prior to his marriage to E-D-, her mother threatened both the petitioner and E-D- by indicating that if the petitioner took E-D- away from her, she would have him deported. He stated that his mother-in-law told him she knew people in Egypt who could hurt him in Egypt, that she demanded that he perform errands and work for her or she would have him deported, and that a few days before he married E-D-, she pushed him. In addition to the petitioner's references to the actions of his mother-in-law, he noted that E-D- would also mention that he was in the

United States illegally and that she would call his work and make an excuse about why he could not come in because she wanted him to be with her. The petitioner stated that subsequent to his marriage to E-D- on May 15, 2003, four days after E-D- turned 18, E-D- would tell him that she would accuse him of statutory rape. The petitioner also stated that E-D- wanted to keep the marriage a secret from her mother and that she was still being claimed as a dependent on her mother's tax returns and that he had to state that he was single when filling out paperwork for school. The petitioner indicated that E-D- told him that members of her family had guns and that her mother would harm him if she learned of the marriage. The petitioner stated further that E-D- criticized and insulted him because he was not rich enough and because he would not stand up against her mother. The petitioner claimed that whenever the couple fought, E-D- would blame their problems on his immigration status while also indicating that she could have him deported at any time. The petitioner indicated that even though he was working and going to school E-D- would ask him to help her or her mother and if he refused they both would threaten him with deportation. The petitioner noted that once E-D- threatened him with the police or her violent grandfather if he did not help her write her college papers. The petitioner stated that in February 2007, E-D- told him she wanted the marriage annulled and when he refused to agree to an annulment both E-D- and her mother threatened him with violence. The petitioner claimed that both E-D- and her mother continued to call and harass him for not agreeing to the annulment and that the threats became more specific and violent.

In a March 26, 2009 statement, [REDACTED] declared that E-D- introduced her to the petitioner in 2004 as her boyfriend although later [REDACTED] learned the couple married in 2003. [REDACTED] spoke of the couple's love for each other and noted E-D- and her mother fought a lot. In a February 19, 2009 statement, [REDACTED] declared he met the petitioner in 2004 and knew that the petitioner took a week off from his job in mid-2006 to be with E-D- when she was in the hospital. In a February 15, 2008 statement, [REDACTED] declared he had known the petitioner since 2002 and also knew E-D- very well. [REDACTED] also declared that the petitioner complained about his mother-in-law who many people thought was crazy and mentally unstable. [REDACTED] further declared that he was surprised when the petitioner told him in 2007 that many times E-D- and her mother had threatened him.

In response to the director's RFE, the petitioner provided a supplemental declaration dated December 19, 2010. He noted that the couple maintained two separate residences living sometime in E-D-'s mother's home and other times at various apartments in Los Angeles. The petitioner indicated that he would do whatever E-D- wanted for fear that her threats would result in his imprisonment or deportation. The petitioner noted that E-D- threatened that she would call the police and immigration to arrest him for tax fraud because he had filed as single when he was married. The petitioner indicated that E-D- wanted their marriage to be confidential to alleviate the pressure E-D- experienced from her mother and to prevent some of the threats that he was receiving from her mother. The petitioner stated that E-D- physically and emotionally abused him for years and then wanted to extend the torture by requesting an annulment and denying the relationship. The petitioner indicated that E-D- called him derogatory names and used his race and faith to humiliate him and would stand by when her mother and others verbally attacked him in a similar way. The petitioner also noted his belief that E-D- lied to USCIS about their relationship.

Upon review, the record does not include evidence that the petitioner was subjected to battery perpetrated by his USC spouse. The petitioner does not provide detailed information regarding specific acts during the marriage that constitute battery; rather the petitioner's claim relates to the alleged extreme cruelty perpetrated by his spouse. The petitioner, however, has provided only general statements regarding the threats he claims were pervasive. For example, the petitioner does not reveal the circumstances of where or when the threats allegedly took place, especially when he acknowledges that E-D- quite often stayed at her mother's house. Likewise, the petitioner's general indication that he felt like a slave and believed that he must do whatever was asked of him to avoid E-D-'s call to the police or immigration does not establish extreme cruelty. Similarly, the petitioner's testimony in response to the RFE which adds that his former spouse also called him derogatory names does not include the requisite detail to establish that he was subjected to extreme cruelty as that term is set out in the statute, regulation, and pertinent case law.

The petitioner has not provided probative evidence that he was subjected to actions or behavior by E-D- 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 established with detailed testimony that he was subjected to threatened acts of violence, that E-D-'s non-physical behavior was accompanied by any coercive actions or threats of harm, that her actions were aimed at insuring dominance or control over him, or that even on a cumulative basis, her threats were part of an overall pattern of violence or coercion. While the director's use of the term "marital tensions and incompatibilities," was unnecessary, we find no error in his ultimate determination that the cumulative behavior of the petitioner's former spouse did not constitute extreme cruelty.

Similarly, upon review of the statements of others offering testimony on the petitioner's behalf, there is no probative testimony describing specific incidents or events that constitute battery or extreme cruelty as that term is set out in the statute, regulation, or pertinent case law. We observe that [REDACTED] the only individual who mentions the petitioner's claim of abuse, indicated that he was surprised when the petitioner told him in 2007 that E-D- and her mother threatened him. Thus, these statements are not helpful in establishing that the petitioner was subjected to extreme cruelty perpetrated by his former spouse.

Upon review of counsel's citations to various cases, the AAO is aware of the concept of the cycle of violence referenced in *Dillard v. Roe*, 244 F.3d 758 (9th Cir. 2001). However, as observed above the petitioner in this matter has not provided detailed information establishing that he was subjected to a tension rising phase, a violence phase, and a honeymoon phase which is characterized as a cycle of violence, in his relationship with E-D-. Rather, the petitioner

initially did not provide testimony that he was subjected to derogatory name calling and threats from E-D- but noted only that her mother was a destructive presence in his relationship and marriage to E-D-. In response to the director's RFE, although the petitioner claimed he was subjected to almost daily threats, he failed to provide the circumstances of the threats or name calling by E-D-. The remainder of the cases cited by counsel concern the definition of a victim for the purpose of sentencing guidelines or the victim of persecution in an asylum context. These cases are not analogous to the matter at hand and do not assist in analyzing the concept of extreme cruelty in a domestic violence situation.

In this matter, the petitioner's testimony and the testimony submitted on his behalf is insufficient to establish that his spouse's actions constituted battery or extreme cruelty during the marriage as those terms are defined in the statute, regulation, and pertinent case law. The petitioner has not provided testimonial or other evidence on appeal sufficient to overcome the director's 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.