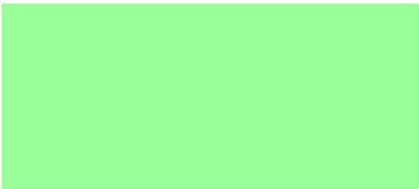




U.S. Citizenship
and Immigration
Services

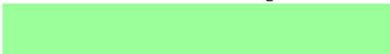
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Date: **JAN 22 2013**

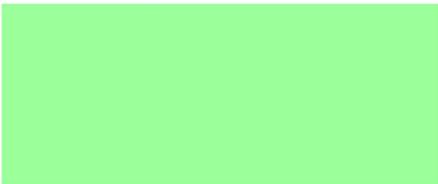
Office: VERMONT SERVICE CENTER

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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 his United States citizen spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage.

On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant 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, 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 further 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 further explicated 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 or the self-petitioner's child, 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 further explicated 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States as a P-3 nonimmigrant on April 10, 2004. The petitioner married [REDACTED] a U.S. citizen, in Port Chester, New York on November 23, 2005. The petitioner filed the instant Form I-360 on November 15, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty by [REDACTED] against him. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The petitioner initially submitted a personal affidavit, a psychological evaluation from [REDACTED] a letter from a case manager at [REDACTED] and an affidavit from friend [REDACTED] as evidence of the alleged abuse inflicted upon him by [REDACTED]. In response to the RFE, the petitioner submitted a second personal affidavit.

In his first affidavit, the petitioner stated that soon after their marriage, [REDACTED] changed and she began misusing their shared household funds. He stated that at around this same time, [REDACTED] told him that she had three children who were being cared for her by her parents. The petitioner stated that [REDACTED] had previously told him that her parents were deceased and had never mentioned having any children. The petitioner recounted that after this admission, the children came to stay with them during the weekends and returning to [REDACTED] parents' home during the week. He stated that he began giving weekly payments to J-M's parents for childcare costs and when he requested to meet them, [REDACTED] became verbally abusive and less intimate with him. He stated that she stole from him and would disappear from their home frequently without contact for days at a time, including a two-week period when [REDACTED] was eight months pregnant with their child. Apart from this incident, the petitioner did not provide any probative details about [REDACTED] treatment of him. He also did not cite to specific examples or incidents of abuse. The petitioner's statements did not demonstrate that [REDACTED] behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In his second affidavit, the petitioner stated that [REDACTED] was very controlling about their money and verbally abusive. He stated that she was unfaithful and on one occasion when he found her with someone else in their home, she physically attacked and injured him. He recounted that he did not call the police or seek medical treatment because she threatened to have him deported. The petitioner did not provide further, probative information about this incident or any other incident of battery or extreme cruelty. In her affidavit, [REDACTED] briefly recounted that in March of 2006, the petitioner told her that [REDACTED] had changed since their marriage and was spending all of their money buying alcohol. [REDACTED] mentioned that on one occasion when she was speaking with the petitioner on the telephone, she heard [REDACTED] scream and shout at the petitioner. She stated that she urged him to call the police but did not describe whether she witnessed specific incidents of abuse or otherwise establish her knowledge of such abuse.

The psychological evaluation by [REDACTED] and the letter from [REDACTED] a [REDACTED] at [REDACTED] also failed to establish that the petitioner was subjected to battery or extreme cruelty. [REDACTED] stated that the petitioner suffered from major depressive disorder brought on by [REDACTED] abusive behavior. While we do not question [REDACTED]'s expertise, her assessment provided no further, substantive information regarding the claimed abuse. Likewise, the letter from [REDACTED] summarized what the petitioner recounted to her and provided no further, substantive information regarding [REDACTED] treatment of the petitioner.

On appeal, counsel argues that the petitioner has demonstrated that he has been battered and subjected to extreme cruelty by [REDACTED]. The petitioner resubmits the psychological evaluation, letter from [REDACTED]. As new evidence, the petitioner submits an affidavit from his aunt, [REDACTED] and a photograph of his arms showing markings or scars that he claims resulted from [REDACTED] abuse. [REDACTED] states that she rented a room in her apartment to the petitioner and [REDACTED]. She states that she noticed that the petitioner was treated "badly" by [REDACTED] and that [REDACTED] called him names. She further states that she witnessed [REDACTED] be physically violent towards the petitioner, threaten to have him deported, and disappear for days, weeks, or months at a time. She does not describe specific incidents of abuse or otherwise establish her knowledge of such abuse. The photograph also fails to establish that the petitioner was battered by [REDACTED]. The photograph only shows portions of an individual's two arms. It does not show the individual's face or otherwise identify the pictured individual as the petitioner. There is also no indication from the photograph alone that the scars resulted from wounds inflicted on him by [REDACTED] as claimed. Further, no other evidence regarding this incident was submitted below or on appeal. The petitioner did not describe in his affidavits an incident in which [REDACTED] hurt his arms. Instead, he mentions one occasion where he claimed she cut him on both hands causing them to bleed but did not provide additional, probative evidence regarding these claimed injuries. When viewed in the aggregate, the relevant evidence in the record is insufficient to establish that [REDACTED] battered the petitioner, or that her behavior constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

In these proceedings, 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.