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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 06 092 51685

Office: VERMONT SERVICE CENTER

Date: **MAR 06 2009**

IN RE: Petitioner: [REDACTED]

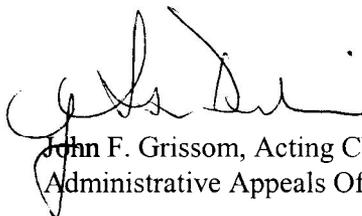
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 under section 204(a)(1)(A)(iii) of 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 because the petitioner did not establish that he married his wife in good faith and that his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and copies of documents previously submitted.

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:

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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(ix) *Good faith marriage*. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition filed 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.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Peru who entered into the United States without inspection on or about December 23, 1999. On February 4, 2001, the petitioner married D-P-¹, a U.S. citizen, in Lakewood, New Jersey.

¹ Name withheld to protect individual's identity.

D-P- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on February 13, 2002.

The petitioner filed the instant Form I-360 on February 8, 2006. On May 4, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage and battery or extreme cruelty. The petitioner, through counsel, requested additional time to respond. On July 25, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite good-faith entry into the marriage and battery or extreme cruelty. The petitioner, through counsel, timely responded to the NOID with additional evidence. On March 21, 2007, the director denied the petition on the two aforementioned grounds. Counsel timely appealed.

On appeal, counsel states that the evidence demonstrates that the petitioner's wife had the requisite intent to control the petitioner through systemic psychological attacks and economic coercion. Counsel also states that the systemic psychological attacks and economic coercion were a pattern of purposeful behavior of control.

Counsel's claims and the evidence submitted on appeal fail to establish the petitioner's good-faith entry into the marriage and battery or extreme cruelty.

The record contains the following, relevant evidence:

- The petitioner's affidavits, dated January 24, 2005 and June 19, 2006;
- The affidavits from the petitioner's uncle, [REDACTED] dated November 18, 2005 and June 20, 2006;
- The affidavit from the petitioner's uncle and landlord, [REDACTED], dated November 21, 2005;
- The affidavit from the petitioner's employer, [REDACTED] dated June 26, 2006;
- The November 18, 2005 psychological report of the petitioner by [REDACTED];
- The September 20, 2006 letter from [REDACTED] in Oakhurst, New Jersey; and
- Three bank statements.

Good Faith Entry into Marriage

In his June 19, 2006 affidavit, the petitioner states that he first met D-P- at the apartment complex where he lived with his uncle and that they became close friends until they married on February 2, 2001. The petitioner reports that they lived in her apartment for awhile, that they subsequently moved to another apartment within the same complex, and that in November 2002, they moved to his uncle's house in Toms River, New Jersey because the rent was cheaper.

Information on the petition reflects that the petitioner and his wife lived together from February 2, 2001 until January 2004. The record, however, contains only intermittent joint documentation, comprising

three bank statements for a checking account, dated March 21, 2003, April 22, 2003, and June 20, 2003, respectively, reflecting balances of \$16.15, \$16.15, and -\$49.45, respectively.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the lack of probative detail and substantive information in the petitioner's testimony regarding how he met his wife, their courtship, decision to marry, wedding, and shared residences and experiences, significantly detracts from the credibility of his claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

In his January 24, 2005 affidavit, the petitioner states that his wife had a bad attitude and was extremely cruel and abusive to him. He also states that she smoked continuously, which gave him a bad headache, and that she pushed him around and said demeaning things about his country, his religion, and his manhood. The petitioner states further that his wife brought guys into their apartment who made fun of him because he did not speak English and was afraid of his wife. He states further that his wife abandoned his visa application as a form of punishment to him and that she left New Jersey for New York in 2004.

In his June 19, 2006 affidavit, the petitioner additionally states that even though his wife worked, he was the only one paying the rent and electricity bills. He also states that his wife isolated and berated him when her friends were around, which affected his life, his confidence, and his job performance. He states that he is still paranoid about whether she will try to get "immigration" to come and get him. The petitioner concludes that he still feels very depressed because of his experiences with her and that he cries a lot about his life because he did not deserve that kind of abuse.

The petitioner does not explicitly state or otherwise indicate that his wife subjected him to battery. Accordingly, we will only discuss the petitioner's claim of extreme cruelty. The petitioner's testimony does not indicate that his wife's behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not describe in probative detail any particular incidents where his wife threatened him with physical or mental injury. The petitioner's statements regarding his wife pushing him around, insulting his English speaking abilities, his religion, and his manhood do not establish that his wife subjected him to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence.

The affidavits from the petitioner's two uncles and from his employer confirm that the petitioner had marital problems. The petition's uncle, [REDACTED], also reports several behaviors of the petitioner's wife that the petitioner himself does not discuss in his affidavits. For example, [REDACTED] states that

the petitioner's wife threatened to leave him if he did not admit to cheating on her, and that the petitioner's wife had a gambling problem. Yet the petitioner discusses neither of these behaviors of his wife in his own statements. The petitioner's other uncle, [REDACTED] reports that the petitioner's house was always noisy and smoky from cigarettes, and that it had constant, in-and-out traffic. The petitioner's employer, [REDACTED], reports that about six months into the petitioner's marriage, the petitioner's demeanor drastically changed, and that he was late for work and seemed sluggish and depressed. These affidavits do not establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage.

The November 18, 2005 letter from [REDACTED] and the September 20, 2006 letter from [REDACTED] in Oakhurst, New Jersey, also fail to establish that the petitioner's wife subjected him to extreme cruelty. [REDACTED] who interviewed the petitioner on October 27, 2005 for an unspecified length of time, stated that the petitioner demonstrated immaturity and that he spoke predominantly about the events that occurred in his marriage to D-P-. [REDACTED] reiterates the petitioner's claims of his wife making fun of his accent and smoking continually in the house. Again, [REDACTED] also reports behaviors of the petitioner's wife that the petitioner himself does not discuss in his own affidavits. For example, [REDACTED] states that the petitioner's spouse repeatedly cheated on him in their marital bed and that she took his entire paycheck and gave him only a lunch allowance. Again, the petitioner discusses neither of these behaviors of his wife in his own statements. [REDACTED] finds that the petitioner suffers from depression brought about by spousal abuse and immaturity. She concludes: "[The petitioner]" will most likely need further psychological sessions to help him cope with, and recover from the psychological abuse related to his wife's treatment of him."

In the September 20, 2006 letter from [REDACTED] MSW-LCSW, states that the petitioner attended ten psycho therapy sessions since June 27, 2006, to resolve his depression due to a past failed relationship. [REDACTED] also states that the petitioner is doing well.

While we do not question the expertise of [REDACTED] and [REDACTED] their testimony fails to establish that the behavior of the petitioner's wife rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). [REDACTED] briefly attested to the petitioner's depression, but attributes it to the petitioner's own immaturity and his wife's abuse, including some behaviors that do not appear in either of the petitioner's own affidavits. It is noted that these inconsistencies detract from the probative value of [REDACTED] testimony. It is also noted that although [REDACTED], states that the petitioner has attended ten psycho therapy sessions to resolve his depression from a past failed relationship, she does not describe any incidents of physical abuse or emotional abuse. Neither [REDACTED] nor [REDACTED] provides substantive, probative information indicating that the behavior of the petitioner's wife included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

The petitioner does not claim and the record does not indicate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife subjected him to

extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he entered into marriage with his wife in good faith and that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.