

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

BO

FILE:

[REDACTED]
EAC 05 224 50858

Office: VERMONT SERVICE CENTER

Date:

FEB 16 2007

IN RE:

Petitioner: [REDACTED]

PETITION:

Petition for Immigrant Battered 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.


Robert P. Wiemann, 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 his wife battered or subjected him to extreme cruelty.

On appeal, counsel submits a brief.

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 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 . . . , 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 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.

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Haiti who was last paroled into the United States on December 8, 2002. On March 23, 2001, the petitioner married N-P-¹, a U.S. citizen, in Florida. The petitioner filed his Form I-360 on August 8, 2005. The director subsequently issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty. The petitioner, through counsel, responded to the RFE and the NOID with additional evidence. On July 27, 2006, the director denied the petition for lack of the requisite battery or extreme cruelty.

On appeal, counsel claims that the director “failed to apply the ‘any credible evidence’ standard” and asserts that the petitioner met his burden of proof. Counsel has conflated the statutory mandate to consider any credible evidence with the burden of proof applicable in this case. In all visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Although section 204(a)(1)(J) of the Act requires Citizenship and Immigration Services (CIS) to consider any credible evidence relevant to the petition, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [agency].” 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

¹ Name withheld to protect individual's identity.

Accordingly, not all relevant evidence submitted by a self-petitioner may be found credible and evidence that is deemed credible may not necessarily be sufficient to establish a self-petitioner's eligibility by a preponderance of the evidence

In this case, the director addressed all the relevant evidence submitted by the petitioner. We concur with the director's determination that the petitioner failed to demonstrate that his wife battered or subjected him to extreme cruelty. Counsel's claims on appeal fail to overcome the ground for denial.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's June 10, 2005 affidavit;
- The Miami Dade, Florida Police Department Complaint/Arrest Affidavit and related Jail Booking Record, which identify the petitioner as the defendant in an alleged incident of aggravated assault, domestic violence on November 15, 2004;
- A letter from the Clerk of the Circuit Court of the Eleventh Judicial Court of Florida stating that a charge of aggravated assault against the petitioner filed on November 15, 2004 was disposed as "nulle pros" on May 9, 2005;
- Copies of two prescriptions for the petitioner dated February 28, 2006; one prescription dated June 12, 2006 and a corresponding pharmacy prescription profile of the petitioner;
- A letter from the petitioner's physician, [REDACTED], dated April 4, 2006; and copies of the petitioner's medical records from [REDACTED] office dated between February 28 and June 21, 2006; and
- A psychiatric evaluation of the petitioner written by [REDACTED] and dated June 12, 2006.

In his affidavit, the petitioner states that his wife would frequently yell and scream obscenities at him and would threaten to leave him after their baby was born and sue him for child support. In August 2002, the petitioner reports that his wife threw his belongings out of the house while he was out of the country. In December 2002, the petitioner states that his wife refused to sign a waiver form for him at their immigration interview. The petitioner reports that his wife threw him out of their home for the final time in August 2003, although he continued to receive mail at her residence.

In November 2004, the petitioner states that he went to his wife's place of employment to get a document that had been mailed to him at her home, but she refused to give it to him. After he left, the petitioner opines that his wife went home and called the police and falsely accused him of threatening to kill her with a weapon. The petitioner states that he went to his wife's home after his sister called and told him that the police had arrived. The petitioner reports that after the police searched his car and did not find a weapon, they realized his wife had lied about the weapon, but the petitioner states, "They said they would either arrest me or [my wife] because it was a domestic violence issue." The petitioner states that he was fingerprinted, but bonded out immediately and never went to jail. The petitioner

reports that the charges against him were eventually dropped because his wife “saw that all [his] family and friends revolted against her for making up these stories.”

The police complaint/arrest affidavit states that on November 15, 2004, the petitioner’s wife reported that the petitioner was upset that she had opened a letter addressed to both of them and had driven to her home and threatened to kill her while holding a handgun. The reporting officer states that during their interview with the petitioner’s wife, the petitioner called her and told her that he was going to her home, and that after the petitioner arrived, he was arrested. The jail booking record shows that the petitioner was released on bond on November 16, 2004.

Although the court record confirms that the charge against the petitioner was never prosecuted, the fact that the petitioner was not convicted does not establish his claim that his wife battered or subjected him to extreme cruelty. Contrary to the petitioner’s statements, the police complaint/arrest affidavit does not state that no weapons were found in the petitioner’s possession; does not indicate that the petitioner contested his wife’s allegations or that he reported that his wife had engaged in abusive behavior against him. In his affidavit, the petitioner states that he spoke to the police officers and he does not indicate that he was denied the opportunity to relate his version of the precipitating events. Consequently, the police and court records do not support the petitioner’s claim of battery or extreme cruelty.

The prescriptions, medical documents and psychiatric evaluation also fail to establish the petitioner’s claim. [REDACTED]’s letter confirms that he is treating the petitioner for “major depression disorder related most likely to stress.” [REDACTED] does not further discuss the cause or manifestation of the petitioner’s mental health condition. In his psychiatric evaluation, [REDACTED] diagnoses the petitioner with major depressive disorder and anxiety disorder. [REDACTED] describes the petitioner as “experiencing severe depression associated with underlined anxiety which has been interfering with his ability to function and to work.” Both [REDACTED]’s letter and [REDACTED]’s evaluation are dated nearly three years after the petitioner states that he and his wife separated. Neither [REDACTED] nor [REDACTED] indicates any connection between the petitioner’s mental health condition and his wife’s alleged abuse.

Although he states that his wife disrespected him in front of others, indicates that his sister was present during the November 15, 2004 incident and that his relatives, friends and neighbors knew that his wife’s allegations against him were false, the petitioner submits no supporting affidavits from any of these individuals. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The petitioner’s affidavit alone does not establish his claim and his statements are not sufficiently corroborated by the remaining relevant evidence. Accordingly, the petitioner has failed to demonstrate that his wife battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.