

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



B9

Date:

DEC 18 2012

Office: VERMONT SERVICE CENTER

File:



IN RE:

Petitioner:



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

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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by his lawful permanent resident spouse.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his former wife subjected him to battery or extreme cruelty during their marriage and that he had a qualifying relationship and was eligible for preference immigrant classification based on such a relationship because he did not show that their divorce was connected to her abuse.

On appeal, counsel reasserts the petitioner’s eligibility in a short statement on the Form I-290B, Notice of Appeal and submits additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –
- (bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;

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 clause (ii) or (iii) of subparagraph (B) 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)(B)(ii) 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Chile who entered the United States on December 4, 1996, as a visitor. The petitioner married [REDACTED], a U.S. lawful permanent resident, on November 14, 2004 in Miami

¹ Name withheld to protect the individual’s identity.

Beach, Florida. The two were divorced on October 7, 2009. The petitioner filed the instant Form I-360 on November 19, 2009. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and affirmed his decision upon granting two subsequent motions to reopen. Counsel timely appealed.

On appeal, counsel asserts that the record demonstrates that the petitioner was the subject of extreme cruelty perpetrated by his former spouse and that there is a clear connection between this extreme cruelty and the termination of the marriage. Counsel submits additional evidence.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. The relevant record contains the petitioner's affidavit, a Therapeutic Art Report, and letters from his sister [REDACTED] and friends [REDACTED], [REDACTED] and [REDACTED]. In his affidavit, the petitioner stated that the first few months of his marriage were happy. He stated that the problems began when he found out that his wife had been unfaithful and as a result had become pregnant. He stated that this created a strain in their marriage and that [REDACTED] looked down on him for not earning enough money to support her and her daughter. He further recounted that she became very insulting and spent much of the last year of their marriage living at her mother's house with her daughter. The petitioner's statements do not demonstrate that his wife ever battered him or that her 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).

The petitioner's sister and friends attested to his troubled marriage, but their statements also failed to demonstrate that the petitioner's former wife subjected him to battery or extreme cruelty. The petitioner's sister, [REDACTED] submitted several letters stating that she knew that the petitioner and [REDACTED] had many arguments about money. [REDACTED] stated that the petitioner was abused psychologically by [REDACTED] and that as a result he developed low self-esteem. [REDACTED] briefly mentioned that the petitioner seemed depressed the last time he saw him. [REDACTED] also submitted several letters on behalf of the petitioner. She stated that a couple of months after the petitioner and [REDACTED] were married, they began having fights. She stated that the situation was aggravated when [REDACTED] had an affair from which a child resulted. [REDACTED] stated that she knows of a specific situation on February 14, 2008 when [REDACTED] became physically aggressive to the petitioner but did not give additional, probative details regarding this incident. In another letter, [REDACTED] stated that as a result of the February 14, 2008 incident, the petitioner stayed at her house for three days. [REDACTED] stated that the petitioner recounted his marital problems to him including [REDACTED] infidelity. None of the affiants described any particular incident in detail. The director correctly

determined that these statements were insufficient establish battery or extreme cruelty inflicted by A-M- upon the petitioner.

The director also correctly determined that the Therapeutic Art Report from [REDACTED] did not provide any additional evidence regarding the claimed abuse. [REDACTED] indicated that [REDACTED] humiliated the petitioner and “ruptured” the marriage with her infidelity and resulting pregnancy. The report summarizes what the petitioner stated during the session but does not provide probative details regarding any abuse or extreme cruelty inflicted by [REDACTED] upon the petitioner. While we do not question [REDACTED] professional expertise as an art therapist, her assessment of the abuse is based on her interview of the petitioner, and it provides no further, substantive information regarding the claimed abuse.

On appeal, the petitioner submits additional letters from [REDACTED], [REDACTED] and [REDACTED]. These letters are largely repetitive of the statements previously submitted below and do not give probative details describing specific incidents of abuse. Accordingly, the petitioner has not established that his former wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a lawful permanent resident and his corresponding eligibility for preference immigrant classification pursuant to subsections 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) and (cc) 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.