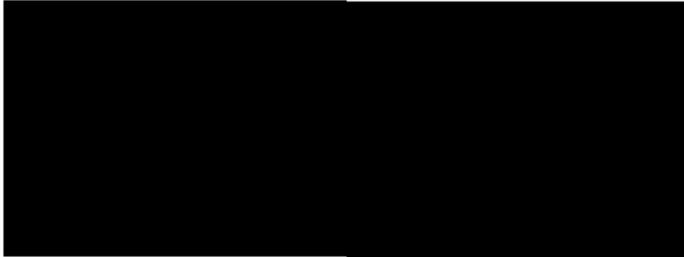




U.S. Citizenship
and Immigration
Services

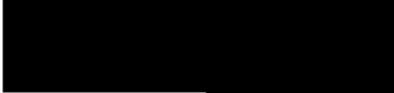


B9

Date: **DEC 26 2012**

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:

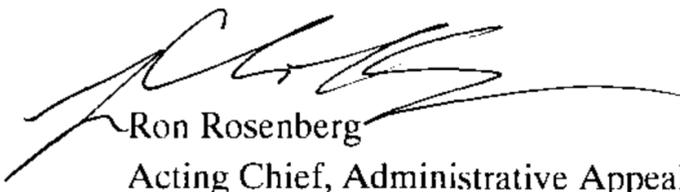


INSTRUCTIONS:

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 Vermont Service Center director (“the director”) denied the immigrant visa petition and affirmed his decision upon granting the petitioner’s motion to reopen. 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 U.S. citizen wife during their marriage.

On appeal, the petitioner, through counsel, submits a brief.

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 . . . 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 Pakistan who first entered the United States on January 16, 2000 as an F-1 student. The petitioner married [REDACTED] a U.S. citizen, in Harris County, Texas on April 29, 2002. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. 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.

On appeal, counsel asserts that the director failed to consider the cumulative impact of [REDACTED] treatment of the petitioner and failed to assess all of the evidence in the aggregate.

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 brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavit, a letter from [REDACTED] Licensed Professional Counselor, a letter from friend [REDACTED] a birth certificate for [REDACTED] daughter [REDACTED] and DNA paternity test results showing that the petitioner is not the biological father of A-F-. In response to the RFE, the petitioner submitted the following: a psychological evaluation report from [REDACTED] a Texas State licensed psychotherapist; a letter from [REDACTED] MD; a second letter from [REDACTED] and letters from family member [REDACTED] and friend [REDACTED]

In his affidavit, the petitioner stated that he met [REDACTED] at a friend's party in January of 2002. He stated that they began to talk regularly, became friends and then started dating. He stated that at the time that he met her, [REDACTED] was about six months pregnant and still getting over the end of her previous relationship. The petitioner stated that he realized he loved her and proposed on Valentine's Day. He stated that they got married in April of 2002 and the baby was born in June of 2002. The petitioner recounted that the first four years passed like any ordinary marriage without major problems. He stated that in August of 2005, [REDACTED] became pregnant again but his happiness was cut short when he discovered that [REDACTED] was also having an affair. He stated that he sought counseling and felt better but then became depressed again after DNA testing proved that their newborn daughter was not his biological child. He stated that they decided to get a divorce so that they both can have better lives. 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 letter from [REDACTED] one of the petitioner's psychotherapists, did not provide additional evidence regarding the claimed abuse. [REDACTED] stated that the petitioner appears to be "dealing with situational depression and anxiety" due to his failed marriage. She did not attribute the petitioner's depression to battery or extreme cruelty by [REDACTED]. In her second letter submitted in response to the RFE, [REDACTED] stated that the petitioner's condition appeared to have gotten worse. She stated that he reported stress over his immigration status, his career, being able to stay in his home, and whether he will be able to trust others in future relationships. Again, [REDACTED] did not provide any information regarding the claimed abuse. The psychological evaluation from [REDACTED] also did not provide additional evidence regarding the claimed abuse. [REDACTED] stated that the petitioner was "emotionally exploited" and "economically abused" by [REDACTED]. She further stated that the petitioner was being treated for high blood pressure as a result of the claimed mental abuse but she did not state a basis for this determination. The evaluation summarized 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] or [REDACTED] professional expertise, their assessments convey the petitioner's statements during their interviews with him, but they provide no further, substantive information regarding the claimed abuse. The petitioner also submitted a short, handwritten letter from [REDACTED] which very briefly stated that the petitioner is

² Name withheld to protect the individual's identity.

taking medication for hypertension. [REDACTED] did not indicate the cause of the petitioner's medical condition or link it to the claimed abuse. [REDACTED] birth certificate and the DNA test results show that [REDACTED] had a child outside of their marriage, but the record does not establish that her infidelity constituted extreme cruelty.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include... other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). The petitioner submitted letters from [REDACTED] and [REDACTED]. [REDACTED] stated that the petitioner was heartbroken over [REDACTED] infidelity. [REDACTED] stated that the petitioner was emotionally and psychologically torn apart after learning the paternity test results. [REDACTED] stated that the petitioner went through stress and seclusion as a result of an "unfortunate disturbance" in the petitioner's marital life. None of the letters described whether specific incidents of abuse were witnessed or otherwise established their knowledge of such abuse.

On appeal, counsel incorrectly asserts that while each piece of evidence on its own may be insufficient to establish extreme cruelty, the record on the whole shows that the petitioner was subjected to extreme cruelty by his wife. The petitioner's testimony and the relevant testimony submitted on his behalf were not probative of violent or cruel behavior by [REDACTED] and not indicative of any abuse towards the petitioner. When viewed in the aggregate, the remaining, 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

On appeal, the petitioner has failed to establish that [REDACTED] subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.