

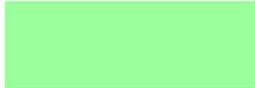


U.S. Citizenship
and Immigration
Services

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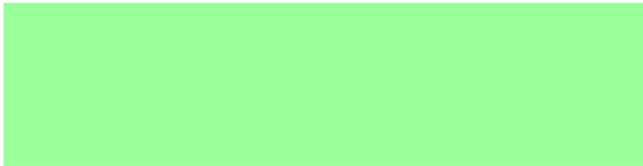
Date: **SEP 03 2013**

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:

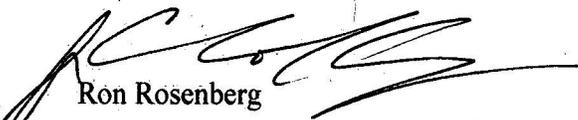


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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 under 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner’s United States citizen spouse subjected him to battery or extreme cruelty 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 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)(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:

(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.

Facts and Procedural History

The petitioner, a citizen of Sweden, entered the United States on July 30, 2008 as a nonimmigrant student. He married K-W¹, a United States citizen, on May 24, 2010 in Ft. Lauderdale, Florida. He The petitioner filed the instant Form I-360 on May 23, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through former counsel, 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). Upon a full review of the record as supplemented, the petitioner has not overcome the director's ground 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 wife did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's notarized letter and affidavit, letters from

¹ Name withheld to protect the individual's identity.

friends, and a treatment summary from Licensed Psychologist [REDACTED]. In his treatment summary, [REDACTED] stated that the petitioner attended weekly sessions with him for a total of eight visits beginning in August of 2012. He stated that the petitioner initially sought treatment for depression and anxiety due to "life stressors" but that it became apparent that the petitioner's symptoms dated back to his marriage in 2010. [REDACTED] opined that the petitioner's depression and anxiety were attributable to his "marital discord." [REDACTED] did not specify what constituted the marital discord and while we do not question his professional expertise, [REDACTED] treatment summary provided no further, substantive information demonstrating that the actions of K-W- constituted battery or extreme cruelty.

Nonetheless, 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). In his initial notarized letter, the petitioner stated that shortly after he married K-W-, she began coming home late at night and ultimately confessed to being unfaithful when the petitioner confronted her about it. He stated that he saw no reason to stay in a broken marriage and moved out in November of 2010. The petitioner recounted the breakdown of his marriage due to his wife's infidelity and abandonment, but he did not indicate that she ever abused him. In his affidavit submitted in response to the RFE, the petitioner stated that during the past two years, he "suffered from depression and anxiety as a result of the events" that led to his separation from his wife. He again stated that shortly after the marriage, K-W- began staying out late at night and added that when she was home, she displayed aggressive behavior towards him and lacked a desire for intimacy with him. He stated that she began drinking excessively, frequently insulted him, and randomly broke items in the house when she was upset. He recounted that on one occasion when they were in the car on the way to meet her friends, she became angry, returned back to their apartment and made him get out of the car before driving off alone. The petitioner also reported that on one occasion when he was separating from his wife, he received a short telephone call from a man who threatened to harm him if he did not leave his wife. The petitioner's statements did not demonstrate that his wife ever battered him, or that her behavior involved actual or 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 their letters submitted below, the petitioner's friends, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] all confirmed that the petitioner was depressed and distressed by his wife's abusive behavior and infidelity. None of the petitioner's friends specifically explained or described the claimed abusive behavior.

On appeal, the petitioner's current counsel asserts that the new evidence now being submitted establishes that the petitioner was sexually abused and that this clearly rises to the level of battery and extreme cruelty. On appeal, the petitioner submits another personal affidavit, a second statement from his friend [REDACTED] and a psychological evaluation from Licensed Psychologist [REDACTED]. In his new affidavit, the petitioner states that on multiple occasions, K-W- would verbally taunt and humiliate him until he agreed to engage in sexual activity with her. He also states that on one occasion, his wife tried to throw a plate at him and then punched him on his mouth. The petitioner explains that he did not previously disclose this information because he was embarrassed. The petitioner does not, however, describe any incident of K-W-'s sexual or physical violence in

probative detail and he does not further discuss any other behavior that would constitute extreme cruelty. In his second declaration, [REDACTED] discusses one incident when K-W- called the petitioner and asked to speak with him to confirm that the petitioner was not with another woman. He also recounts one occasion when he and the petitioner were watching a soccer game at the petitioner's home and the petitioner asked him to leave because K-W- was irritated. [REDACTED] explained that he and the petitioner became distant due to K-W-'s "odd and obsessive behavior," but his statements fail to describe any actions that constitute battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

The psychological evaluation from [REDACTED] confirms that the petitioner's mental health was compromised by the breakdown of his marriage, but does not establish that K-W- subjected the petitioner to battery or extreme cruelty. [REDACTED] states that a polygraph examination did not indicate any deception in the petitioner's response to three questions regarding his wife's abuse. [REDACTED] reports that psychological testing and a telephonic interview with the petitioner also showed that the petitioner suffered from depression and anxiety, which the petitioner attributed to his wife's abuse. [REDACTED] himself, however, opines that the petitioner's depression and anxiety were likely attributable to the "significant problems in his marriage over an extended period of time." We do not question [REDACTED] professional expertise, but apart from summarizing the petitioner's account of K-W-'s behavior, his evaluation does not include any probative description of actions that would constitute battery or extreme cruelty. When viewed in the aggregate, the preponderance of the relevant evidence submitted below and on appeal does not establish that K-W- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has not overcome the director's ground for denial. He has not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.