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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

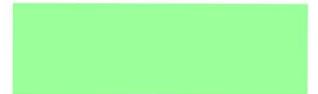


U.S. Citizenship
and Immigration
Services

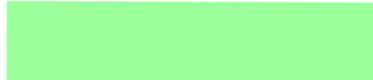


Date: **MAY 22 2014**

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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal remains 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 former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with a U.S. citizen, is eligible for immigrant classification based upon that relationship, and his former wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(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 Haiti who claims that he entered the United States on August 8, 1980 as a visitor. The petitioner married a U.S. citizen on April 13, 1991 in West Palm Beach, Florida. Their marriage was dissolved in a divorce on August 20, 2010. The petitioner filed the instant Form I-360 on May 10, 2011, which is now before the AAO on a motion to reopen and reconsider its prior decision dismissing the appeal. The motion will be granted.

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 demonstrate the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

In its April 19, 2013 decision, the AAO determined that the record failed to demonstrate that the petitioner's former wife subjected him to battery or extreme cruelty. The AAO found that the petitioner's statements did not provide probative details of the alleged abuse and the timeline of events

relayed by the petitioner conflicted with the date of his marital separation in his divorce decree. The AAO also found that the two photographs in record of small scars near the petitioner's collarbone and on his upper right arm, which he stated were inflicted by his former wife's battery, were of little probative value because the petitioner did not give a detailed description of either incident. The AAO further found that the petitioner's psychiatric screening failed to contain probative information of the alleged abuse. The AAO also found that the letters from the petitioner's friends, Pastor [REDACTED] and [REDACTED] did not explain the basis of their knowledge of the alleged abuse, or provide any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner.

On motion, the petitioner indicates that he was living with his wife until he filed for divorce. He contends that he only said they were separated because at the end of 1995 his wife started working and her behavior changed. He recounts that during this time period his wife decided to file separate tax returns, open a separate bank account, and she stopped washing the petitioner's laundry and cooking for him. The petitioner reiterates that his wife hit, burned, and grabbed him. The petitioner resubmits copies of the previously submitted photographs of small scars near his collarbone and upper arm with short descriptions of the underlying incidents. He also submits additional statements from [REDACTED] and [REDACTED]. Mr. [REDACTED] recounts that he witnessed the petitioner's wife grab the petitioner's groin. Ms. [REDACTED] states that she heard about this incident from her husband, [REDACTED].

De novo review of the evidence shows no error in our prior decision as the evidence submitted on motion is inconsistent with the petitioner's claims. In his first statement, the petitioner indicated that his wife's abuse occurred throughout their marriage. However, their divorce decree, dated August 20, 2010, provides, "[t]he parties agree to . . . equally support the[ir] children as has been the practice for the past thirteen years of separation." The divorce decree makes clear that the petitioner and his wife had been separated since 1997, which is contrary to the petitioner's claim on his Form I-360 that they resided together until May 2009 and his statement on motion that they did not separate until he filed for divorce in 2010. The statements from the petitioner's friend, [REDACTED] recount him witnessing the petitioner's wife hit or grab his "private part," but in his own statements the petitioner describes this incident as occurring one evening when he and his wife were talking. The petitioner does not indicate that anyone else was present, including Mr. [REDACTED]. These inconsistencies detract from the credibility of the petitioner's claims. Consequently, the evidence submitted on motion does not demonstrate that the petitioner's former 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.

Qualifying Relationship

The record shows that the petitioner and his former wife were divorced on August 20, 2010 before this petition was filed on May 10, 2011. 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 U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (II)(cc) of the Act.

Conclusion

On motion, the petitioner has failed to establish that he had a qualifying relationship with his former wife, is eligible for immediate relative classification based upon that relationship, and that his former wife 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.

The appeal will remain dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The motion is granted. The AAO's decision to dismiss the appeal, dated April 19, 2013, is affirmed. The petition remains denied.