

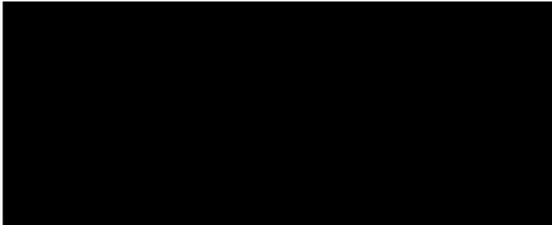
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
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**U.S. Citizenship
and Immigration
Services**

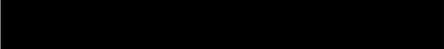


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Date: **JUL 27 2011**

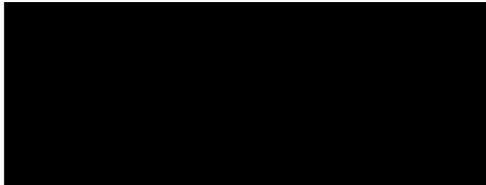
Office: VERMONT SERVICE CENTER

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:

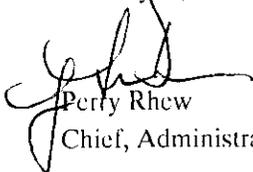


INSTRUCTIONS:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhee

Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

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 a United States citizen.

Applicable Law

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 a United States citizen may still self-petition under this provision of the Act if the alien “was a bona fide spouse of a United States citizen within the past two years and . . . demonstrates a connection between the legal termination of the marriage within the past two 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 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 was born in Palestine and entered the United States as a nonimmigrant student on September 5, 2001. On December 20, 2004, he married a U.S. citizen. The petitioner and his wife divorced on December 29, 2009. The petitioner filed the instant Form I-360 on March 8, 2010. The director denied the petition for failure to establish the requisite battery or extreme cruelty and the AAO dismissed the petitioner's subsequent appeal. In its December 30, 2010 decision on appeal, incorporated here by reference, the AAO upheld the director's decision regarding the lack of battery or extreme cruelty and additionally determined that the petitioner had failed to establish a qualifying relationship with his former wife and his corresponding eligibility for immediate relative classification based on such a relationship.

Counsel asserts that his motion to reconsider "is supported by citations to appropriate cases and statutes." However, counsel's brief cites no binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Counsel's brief also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *See* 8 C.F.R. § 103.5(a)(3) (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

Counsel's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R.

§ 103.5(a)(2). Counsel asserts that the petitioner's former wife subjected him to extreme cruelty during their marriage and that the AAO did not properly assess the psychological evaluations by [REDACTED] submitted below and on appeal. Counsel's assertion is supported by a letter from a psychiatrist, [REDACTED] submitted on motion, which addresses the AAO's assessment of [REDACTED] evaluations. Accordingly, the motion to reopen is granted.

Analysis

In its prior decision, the AAO determined that the petitioner had not established the requisite battery or extreme cruelty for four reasons: 1) the petitioner's single personal statement did not provide a probative, detailed account of any actions by his former wife that constituted battery or extreme cruelty; 2) [REDACTED] evaluations also lacked substantive and probative information regarding behavior of the petitioner's former wife that constituted extreme cruelty; 3) [REDACTED] evaluations were internally inconsistent; and 4) his latter evaluations mentioned behaviors of the petitioner's former wife that the petitioner himself did not discuss.

Counsel asserts on motion that [REDACTED] psychological evaluations were probative evidence that the petitioner's former wife subjected him to extreme cruelty and that [REDACTED] letter supports this conclusion. In his January 20, 2011 "Expert Opinion," [REDACTED] states that "the likelihood of the abusive behaviors" was not diminished by the fact that [REDACTED] mentioned certain behaviors in his latter evaluations that were not mentioned in his earlier evaluation. [REDACTED] explains that it is common for patients to recall additional events and provide further details in subsequent interviews and that it is rare for patients to disclose everything in an initial session. In the petitioner's case, [REDACTED] opines that [REDACTED] subsequent evaluations "supported the initial impressions of abuse."

We do not question the expertise of [REDACTED] or [REDACTED] and we acknowledge, as [REDACTED] states, that it frequently takes successive sessions for all aspects of an individual's experience of domestic violence to be expressed. Nonetheless, [REDACTED] letter and counsel's claims on motion do not overcome the fact that the petitioner himself did not discuss many of the behaviors mentioned by [REDACTED] in his subsequent evaluations (such as physical violence and degrading cultural comments). As noted in the AAO's prior decision, the petitioner submitted only one, brief, nine-paragraph statement in support of his claims. The petitioner stated that his former wife drank alcohol at home even though it was against his religion, she smoked marijuana, she withdrew his immigrant petition (Form I-130) and she had extramarital affairs. In his RFE, the director notified the petitioner of the deficiencies in his statement and requested him to submit additional explanations and descriptions of the alleged abuse. The director's denial decision and the AAO's prior decision also notified the petitioner of the insufficiency of his brief statement. Despite these three opportunities to supplement his testimony, the petitioner did not submit any additional affidavit or personal statement in response to the RFE, on appeal or with the instant motion. Consequently, the discrepancy between the information provided in [REDACTED] evaluations and the petitioner's own statement detracts from the credibility of his claim.

On motion, counsel also asserts that the petitioner's former wife subjected him to extreme cruelty because she engaged in actions which were "part of an overall pattern of violence that [she] employed to dominate Petitioner." Again, counsel's assertion is not supported by any additional testimony from the petitioner himself. The only new evidence submitted on motion, [REDACTED] letter, has little probative value in establishing the requisite battery or extreme cruelty. [REDACTED] states that his opinion is based on a review of [REDACTED] prior evaluations of the petitioner and the AAO's prior decision. [REDACTED] does not indicate that he ever interviewed the petitioner himself. [REDACTED] also does not opine regarding the actual existence of abuse in the petitioner's former marriage. When discussing the existence of a connection between the alleged abuse and the petitioner's divorce, [REDACTED] states, "the behaviors that [the petitioner] endured, *whether one believes they reach the level of extreme cruelty or not*, would lead to divorce . . ." (emphasis added). While [REDACTED] letter supports the conclusion that the petitioner's former wife's behavior led to their divorce, his comments indicate that he did not conclude that her behavior constituted extreme cruelty.

In its prior decision, the AAO did not question the connection between the petitioner's divorce and his former wife's behavior. Rather, the AAO determined that because the petitioner did not establish that his former wife subjected him to battery or extreme cruelty, he also failed to demonstrate the requisite connection between their divorce and any such battery or extreme cruelty, as required to establish a qualifying relationship when the marriage has been legally terminated. 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). As the petitioner did not establish a qualifying relationship with his former wife, he also did not demonstrate his eligibility for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. *See* 8 C.F.R. § 204.2(c)(1)(i)(B). Counsel's claims and the evidence submitted on motion fail to overcome these determinations.

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. Upon reopening, the prior decision of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

ORDER: The appeal remains dismissed and the petition remains denied.