

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)(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 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 with the field office or service center that originally decided your case by filing a 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, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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 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 record reflects that the petitioner, a citizen of Turkey, married M-B¹, a U.S. citizen on November 24, 2003. Their marriage terminated in a divorce on April 23, 2007. The petitioner filed the instant Form I-360 on June 11, 2007. The director initially denied the petition on September 28, 2009 because the record did not establish that the petitioner was subjected to battery or extreme cruelty during his marriage. In its May 14, 2010 decision on appeal, the AAO agreed with the director's determination that the petitioner had not established that he was subjected to battery or extreme cruelty by his former spouse. The AAO further determined that since the petitioner is divorced from his spouse, he had not established a qualifying relationship with a U.S. citizen and his eligibility for immigrant classification based upon that relationship. An alien who has divorced the abusive spouse remains eligible for immigrant classification under these provisions only 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). The AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006).

Upon remand, the director issued a NOID on November 22, 2010 which informed the petitioner that he had not submitted sufficient evidence to establish that he was subjected to battery or extreme cruelty during his marriage. In response, the petitioner submitted personal statements, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition on August 20, 2012 for failure to establish the requisite battery or extreme cruelty, a qualifying relationship with a U.S. citizen and his eligibility for immigrant classification based upon

¹ Name withheld to protect the individual's identity.

that relationship. In his Notice of Certification, the director informed the petitioner that he could submit a brief to the AAO within 30 days after service of the certified decision. To date, the AAO has received nothing further from the petitioner.

Upon review, we concur with the director's determination. The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. The director correctly found that the additional statements from the petitioner submitted in response to the NOID did not indicate that his former 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 has submitted no brief or additional evidence on certification. Accordingly, the August 20, 2012 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that his former wife subjected him to battery or extreme cruelty during their marriage, that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based upon that relationship. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must remain denied.

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). The petitioner has not sustained that burden.

ORDER: The August 20, 2012 decision of the Vermont Service Center is affirmed. The petition remains denied.