



U.S. Citizenship
and Immigration
Services

[Redacted]

B9

Date: **DEC 20 2012**

Office: VERMONT SERVICE CENTER

File: [Redacted]

IN RE: Petitioner: [Redacted]

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:

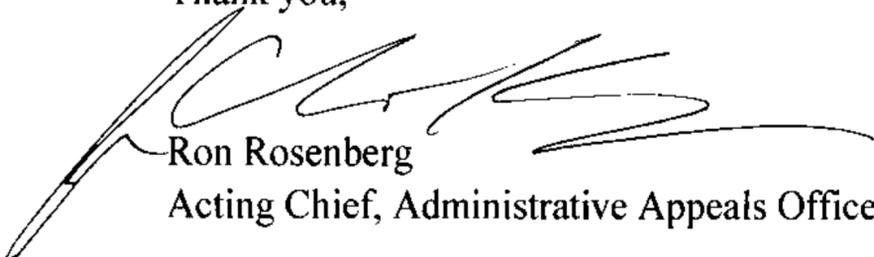
[Redacted]

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, (“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 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s former wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel reasserts the petitioner’s eligibility and 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).

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 Egypt who entered the United States on July 31, 1987, as a nonimmigrant visitor. The petitioner married H-W-¹, a U.S. citizen, on November 29, 1998 in Simsbury, Connecticut. According to the petitioner, their marriage dissolved in a divorce in March 2011. The petitioner filed the instant Form I-360 on September 23, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty during the petitioner's marriage to H-W-. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's ground for denial and 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 former wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his first affidavit, the petitioner stated that his former wife mismanaged their

¹ Name withheld to protect the individual's identity.

finances and insulted his profession. He also recounted that his former wife was emotionally unstable and attempted suicide. The petitioner recalled that his former wife attempted to isolate their son from family members, threatened him with deportation and called him demeaning names. He stated that he was shocked when his former wife obtained legal aid and had a sheriff order him to leave their home. The petitioner recounted that after their marital separation his former wife was admitted to a treatment center for drug addiction and had an extramarital affair with a minor. He stated that his wife has since attempted to prevent him from having a relationship with their son. In his second affidavit, the petitioner reiterated these claims with additional details. The director correctly determined that the petitioner's statements do 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).

In their statements, the petitioner's friends, [REDACTED] briefly asserted that they witnessed petitioner's former wife call him names. The petitioner's friend, [REDACTED] asserted that he witnessed the petitioner's former wife call him names and he learned from the petitioner that she also threatened him with deportation. The director properly reviewed these statements and found that they fail to demonstrate that the petitioner's former wife battered him or subjected him to extreme cruelty.

In denying the petition, the director noted that court records reflect that the petitioner violated court orders to stay away from his former wife. The director found these records to contradict the petitioner's claim that he had been battered or subjected to extreme cruelty by his former wife. The director further noted that martial tensions and incompatibilities do not by themselves constitute extreme cruelty. On appeal, counsel asserts that the criminal charges against the petitioner are evidence of abusive behavior by his former spouse because they were subsequently dismissed. Counsel further asserts that the petitioner endured fears of arrests and deportation, social isolation, public humiliation, economic control and emotional torment during his marriage. Counsel contends that the director erred in finding that the petitioner and his former wife merely had martial tensions and incompatibilities.

While the director's use of the term "martial tension and incompatibilities" was unnecessary, we find no error in his determination that the behavior of the petitioner's former spouse did not constitute battery or extreme cruelty. The petitioner's statement and letters from his friends reflect that the petitioner's wife engaged in name calling and threats of deportation. They do not reflect, however, that her threats were part of a pattern of coercive control or otherwise constituted psychological abuse. On appeal, counsel submits letters from the petitioner's friends, [REDACTED] and [REDACTED]. These individuals also attest to witnessing the petitioner's former wife call him names and threaten deportation. However, several of the statements contained in the letters are written nearly verbatim, which detracts from their credibility as evidence of the individual's personal knowledge of the alleged incidents.

Contrary to counsel's assertions, the court's dismissal of the criminal family violence related charges against the petitioner is not indicative of abusive conduct by his spouse. Court records show that the charges against the petitioner were dismissed only after he completed the court-ordered Family Violence Education Program. In addition, civil protective orders restraining the petitioner from having contact with his former spouse were issued on April 30, 2008 and March 2, 2010. The

disposition of the criminal charges against the petitioner and the protective orders against him contradict the petitioner's claim of being a victim of marital abuse. Accordingly, the petitioner has not established that his 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.

Conclusion

On appeal, the petitioner has failed to overcome the director's determination that he did not establish the requisite battery or extreme cruelty. 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 and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.