

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

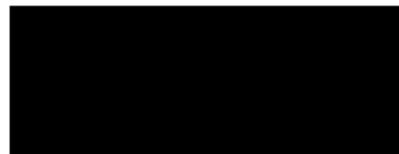


B9

Date: DEC 20 2012

Office: VERMONT SERVICE CENTER

FILE:

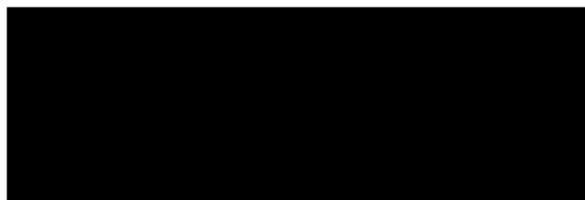


IN RE:



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 AAO inappropriately applied the law 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 in accordance with the instructions on 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 request 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 that any motion must 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 and the petition will remain denied.

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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits additional evidence.

#### *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).

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:

*Evidence for a spousal self-petition –*

(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 is a citizen of Kenya who entered the United States on July 3, 2001, as a nonimmigrant exchange student. The petitioner married C-P-<sup>1</sup>, a U.S. citizen, on March 15, 2004, in North Carolina.

On May 31, 2011, the petitioner filed the instant Form I-360. The director issued a Notice of Intent to Deny (NOID) informing the petitioner that he had not shown that his wife subjected him to battery or extreme cruelty. 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.

On appeal, counsel submits additional evidence including an updated psychological evaluation, counseling documents from Interact, and two worksheets the petitioner filled out.

---

<sup>1</sup> Name withheld to protect individual's identity.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has failed to establish that he was subjected to battery or extreme cruelty by his wife during their marriage. A full review of the record fails to demonstrate the petitioner's eligibility 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 petitioner did not submit an affidavit with the instant Form I-360, but with his prior Form I-360,<sup>2</sup> the petitioner submitted two affidavits in which he stated that his wife suffered from an alcohol addiction. The petitioner explained that he lost his appetite as a result. The petitioner recalled that his wife would go out in public drunk and once she vomited at their friend's house as a result of her inebriation, which greatly embarrassed the petitioner. The petitioner claimed that on one occasion his wife hit him with an empty bottle and broken glass. The petitioner went outside and was embarrassed to be outside where his neighbors could see him. The petitioner also stated that he suffered from severe migraines. The petitioner's statements and the relevant evidence do not indicate that his wife's behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

While the petitioner describes one occasion where his wife used physical violence against him, this is insufficient to meet his burden of proof in this case. Where United States Citizenship and Immigration Services (USCIS) can articulate a material doubt regarding the petitioner's eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Here, while the petitioner describes one incident of violence, in an "Adult Admission Assessment Tool," [REDACTED] stated that the "[c]lient adamantly denies history of trauma and abuse..." and the report makes no mention of any physical abuse. Furthermore, in his second affidavit, dated June 13, 2011, the petitioner states that violent incidents were infrequent but far from isolated, yet he fails to describe any other incident of battery or other physical abuse in probative detail. Given these contradictions, the petitioner's affidavits alone are insufficient to demonstrate that his 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.

The petitioner also submitted an affidavit from [REDACTED] who stated that the petitioner told her that his wife would come home drunk and throw up, push and curse at him, and call him names. She further reported that the petitioner's wife physically abused him. However, [REDACTED] does not discuss any specific incident of battery or extreme cruelty in probative detail, nor does the behavior she describes constitute extreme cruelty. Furthermore, the petitioner himself never reported that his wife pushed him.

---

<sup>2</sup> The petitioner filed a prior Form I-360 (Receipt number EAC 10 024 50191) on November 2, 2009, which the Vermont Service Center denied. On May 25, 2011, the AAO dismissed the petitioner's appeal. The prior Form I-360 was subsequently reopened and remains pending with the Vermont Service Center.

On appeal, the petitioner submits an updated psychological evaluation written by [REDACTED] a licensed psychologist. In her evaluation, the psychologist repeats the petitioner's account of events and noted that the petitioner's symptoms are consistent with his current diagnosis of major depression and Post Traumatic Stress Disorder. The psychologist also says that the petitioner's wife was abusive and subjected him to violence, but she fails to provide any probative description of any particular incidents of abuse or violence. Furthermore, [REDACTED] an Interact counselor, states that the petitioner "sought out a professional counselor, but she did not have experience in [domestic violence]." The letter and counseling notes from Interact, though they make reference to domestic violence in the petitioner's marriage and state that his wife was physically and emotionally abusive, fail to describe any specific incidents of physical or emotional abuse in any probative detail. The two worksheets the petitioner submitted were self-completed, and there is no context provided for how they support the petitioner's contention that he suffered from battery or extreme cruelty perpetrated by his wife, nor do they describe particular incidents of abuse in probative detail. On appeal, the evidence fails to overcome the above-noted deficiencies regarding the petitioner's claimed battery. Accordingly, the petitioner has not established that his 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 not established that his 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.

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 at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.