

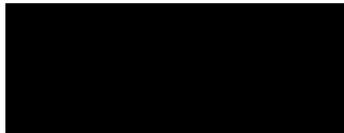
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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Date: **JAN 26 2012**

Office: VERMONT SERVICE CENTER

File:



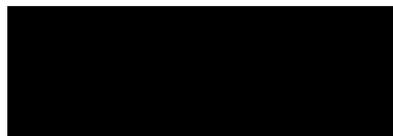
IN RE:

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:

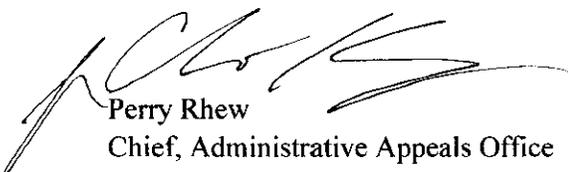


INSTRUCTIONS:

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 a fee of \$630. 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 Rhew
Chief, Administrative Appeals Office

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

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.

On January 27, 2010, the director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his spouse during his marriage. On April 12, 2011, the AAO affirmed the director’s decision and dismissed the appeal. On motion, counsel submits a brief and 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 Georgia who claims he entered the United States on or about May 9, 1999 without inspection. The petitioner married K-O-, a United States citizen, on August 5, 2005 in New York City.¹ The petitioner filed the instant Form I-360 on May 9, 2008. The director subsequently issued a Request for Evidence (RFE) of K-O-'s 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 the AAO dismissed a subsequent appeal. Counsel has now filed a motion to reopen and reconsider with the AAO, which satisfies the requirements and 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 establish the petitioner's eligibility. The decision to dismiss the appeal will be affirmed for the following reasons.

Battery or Extreme Cruelty

In its April 12, 2011 decision, the AAO determined that the record failed to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse. The AAO found that the claims

¹ Name withheld to protect the individual's identity.

made by the petitioner did not establish: that he was the victim of any act or threatened act of physical violence or extreme cruelty; that his spouse's non-physical behavior was accompanied by any coercive actions or threats of harm; or that his spouse's actions were aimed at insuring dominance or control over the petitioner.

On motion, counsel asserts, "the AAO overlooked portions of the [petitioner's] statements and evidence which was submitted previously." Counsel contends that the petitioner's spouse "mentally and psychologically humiliated the [petitioner] on many occasions" and the petitioner "suffered from extreme cruelty for an extended period of time." Counsel submits a police report with an English translation of the petitioner's allegations, a psychological evaluation and a note from the petitioner's physician.

Counsel's claims and the additional evidence submitted on motion fail to demonstrate any error in the AAO's prior determination that the petitioner's spouse did not subject him to battery or extreme cruelty. In his initial affidavit, dated April 27, 2008, the petitioner asserted that two years after his marriage to K-O-, he learned that she was having an extramarital affair. He stated that K-O- became "aggressive and screamed and cursed [him] very often." The petitioner recalled that K-O- tried to encourage him to create a fraudulent charitable organization as a scheme to collect money. He stated that when he refused to participate in the scheme, K-O- became furious, "called [him] very insulting words" and called his family "dirty words." The petitioner recounted that on April 1, 2008, K-O- ordered him to leave their home, threatened him with deportation, called him "a miserable stutter," threatened him with violence and called him "dirty words." He stated that he filed a complaint at a police station. In response to the RFE, the petitioner submitted another affidavit, dated July 15, 2009, where he asserted that K-O- screamed at him and told him that he does not bring her enough money. He stated that on January 4, 2008, she called him a "speechless idiot" and told him to wash her undergarments with his hands. The petitioner noted that he went to his local police station and told the officer that he wanted to file for divorce. He recalled that on April 1, 2008, K-O- was rude, cursed at him, ordered him to leave their home and refused to allow him to say goodbye to her daughter.

Although the petitioner claims in general terms that his wife threatened him with violence, he failed to describe these threats with any probative detail. His statements do not demonstrate that his 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 addition, the factual account of events in the petitioner's two affidavits are inconsistent – in the first affidavit, the petitioner claimed that he filed a complaint with his local police station on April 1, 2008 after he separated from his spouse while in the second affidavit he stated that he went to his local police station on January 4, 2008 and then returned home. This inconsistency detracts from the overall credibility of the petitioner's claims.

The petitioner submitted a New York State Domestic Incident Report, which reflects that the petitioner visited a police station on January 4, 2008 to report a "verbal dispute." The petitioner informed the officer that "[h]e constantly argues with his wife. She yells and screams at him. He states he wants to file for divorce." The report does not indicate that the petitioner's 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).

On appeal, the petitioner submitted affidavits from his friends, [REDACTED] and [REDACTED]. The petitioner's friends stated that K-O- was rude, humiliated him and had an extramarital relationship. They do not, however, claim to have personally witnessed the alleged abuse, or discuss any specific incident of alleged abuse in probative detail.

On motion, the petitioner submitted an English translation of his statement of allegations from the New York State Domestic Incident Report. The petitioner stated that K-O- was swearing and shouting at him and calling him abusive words. He mentioned K-O-'s extramarital affair and stated that K-O- and the man she was with were highly intoxicated, shouting at him and calling him abusive words. This report speaks in general terms of the alleged verbal abusive and does not contain sufficient probative information to establish that K-O-'s actions constituted extreme cruelty.

On motion, the petitioner submitted a psychological evaluation from [REDACTED]. The psychological evaluation, dated May 2, 2011, was conducted three years after the petitioner's separation from K-O-. [REDACTED] diagnosed the petitioner with Posttraumatic Stress Disorder and Major Depressive Disorder, recurrent, moderate. [REDACTED] determined that the petitioner suffered "abuse during marriage," but he only described the alleged verbal and psychological abuse in two-sentence statements. [REDACTED] also stated that the petitioner reported that K-O- threw him against walls, scratched his face and arms, and wounded his head with a glass. However, the petitioner himself does not mention any of these incidents in his affidavits or in the declaration he submitted to the police. The petitioner also submitted a note from [REDACTED], a family practice physician. Counsel asserts that the note is a "medical report" from [REDACTED] and the petitioner's "medical illness was caused [sic] his USC spouse who treated the [petitioner] with extreme cruelty." However, the note from [REDACTED] simply states that the petitioner is his patient. It does not discuss the petitioner's medical condition(s) or link his condition to the alleged abuse.

De novo review of the entire record of proceeding fails to establish that the petitioner was subjected to battery or extreme cruelty by his spouse. The psychological evaluation only contains two-sentence statements discussing the alleged incidents of verbal abuse and the physical abuse reported in the evaluation is not mentioned in the petitioner's affidavits. The note from [REDACTED] simply confirms the petitioner's status as his patient and offers no probative information of the alleged abuse. None of the petitioner's friends discuss in probative detail their personal knowledge of the alleged abuse. The petitioner's affidavits and his declaration in the police report do not indicate that that his wife's behavior involved physical injury, threats of violence, psychological or sexual abuse, or otherwise constituted battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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 motion, the petitioner has failed to establish that he was battered or subjected to extreme cruelty during his 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, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The AAO's decision, dated April 12, 2011, is affirmed. The appeal remains dismissed. The petition remains denied.