

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



Bq

Date: **OCT 17 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:

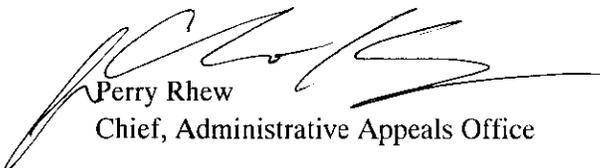


INSTRUCTIONS:

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 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 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 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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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 United States citizen spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage.

On appeal, the petitioner, through counsel, submits a brief.

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 or the self-petitioner's child, 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.

Pertinent Facts and Procedural History

The petitioner is a Palestinian national and citizen of Jordan who entered the United States as an F-1 student on July 11, 1978. The petitioner remarried B-M-¹, a U.S. citizen, in Cook County, Illinois on November 19, 1997.² The petitioner filed the instant Form I-360 on August 2, 2006. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of evidence of, *inter alia*, the requisite battery or extreme cruelty by B-M- against him or their child. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner 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 fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

² The petitioner and B-M- were first married on May 19, 1986 in Chicago, Illinois and divorced on October 13, 1988.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him or their child to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The petitioner initially submitted a personal affidavit as evidence of the alleged abuse inflicted upon him by B-M-. In response to the NOID, the petitioner submitted receipts for money transfers from the petitioner to B-M-, a letter from [REDACTED], medical reports from Loyola Hospital, and an affidavit from former girlfriend [REDACTED]

In his affidavit, the petitioner stated that he fell in love with B-M- and they got married against her family's wishes. He stated that her family attempted to break them apart and the situation slightly improved after the birth of B-M- and the petitioner's son. The petitioner stated that when his son was about a year old, his relationship with B-M- deteriorated and she returned to her home state of Mississippi while he stayed in Chicago, Illinois. The petitioner and B-M- were divorced on October 13, 1988. The petitioner stated that he did not have contact with B-M- or his son for many years but searched for them from 1989 to 1993. He recounted that in 1993, he discovered that B-M- had remarried and that her second husband, D-B-,³ had adopted their son. The petitioner stated that B-M- and D-B- were separated at the time he reconnected with B-M- but that both her and D-B- used the petitioner's son as a way to extort money from him. The petitioner then stated that he remarried B-M- in 1997 and they spent three to four years unsuccessfully trying to regain the petitioner's custody of their son. He stated that after they remarried, he suffered from "constant harassment, verbal abuse, and mental abuse" by B-M-. He stated that as a result of the abuse, he was unable to "eat, sleep or live a normal healthy life" for many years. The petitioner did not cite to specific examples or incidents of abuse or provide any probative details about B-M-'s treatment of him or their son. The petitioner's statements do not demonstrate that his wife ever battered him or their son, 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 director correctly determined that the remaining relevant evidence in the record did not establish that the petitioner or his son was subjected to extreme cruelty by B-M-. The money transfer receipts alone do not 1) establish that B-M- and D-B- were blackmailing the petitioner, or 2) establish that B-M- subjected the petitioner to abuse during their marriage. The record does not contain other evidence of the purpose for these payments and many of the receipts are dated when the petitioner and B-M- were not married. Additionally, the medical reports do not mention the petitioner's wife or any domestic violence as a causative factor in his physical or mental health conditions. The letter from [REDACTED] [REDACTED] briefly states that the petitioner's health problems appear to be as a result of the petitioner's "problem with his wife." While we do not question [REDACTED] medical expertise, his brief assessment does not state how he came to this conclusion and provides no further, substantive information demonstrating that the actions of B-M- constituted extreme cruelty.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather,

³ Name withheld to protect the individual's identity.

“evidence of abuse may include... other forms of credible relevant evidence.” 8 C.F.R. § 204.2(c)(2)(iv). In response to the NOID, the petitioner submitted an affidavit from [REDACTED]. This affidavit is largely a summary of what the petitioner previously stated. [REDACTED] added that the petitioner was used by B-M- and their son for money. She stated that the petitioner’s problems with B-M- and their son have caused the petitioner to have “many emotional breakdowns.” However, [REDACTED] does not appear to have witnessed any of the claimed extreme cruelty as she does not describe any incidents of abuse in probative detail. The director was correct in finding her affidavit insufficient to demonstrate the petitioner’s battery or extreme cruelty at the hands of B-M-.

On appeal, counsel claims that the director “chooses to overlook the numerous amounts of evidence showing abuse” but fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner’s wife constituted battery or extreme cruelty. Counsel incorrectly asserts that the evidence in the record is sufficient to show that the petitioner was a victim of blackmail and consequently abused by B-M- during their marriage. The money transfer receipts show that the petitioner continued to send money to B-M- and her former husband to support his son, as the petitioner recounted in his affidavit. However, the receipts alone, especially those dated prior to the petitioner’s remarriage to B-M-, do not demonstrate that B-M- subjected the petitioner to blackmail or extortion amounting to extreme cruelty during their marriage and the petitioner’s affidavit does not contain sufficient, probative information to establish this claimed abuse. When viewed in the aggregate, the remaining, relevant evidence in the record is insufficient to establish that B-M- battered the petitioner or their son or that her behavior constituted 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 or their son to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has failed to establish that B-M- subjected him or their son 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, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.