

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **APR 19 2013**

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:

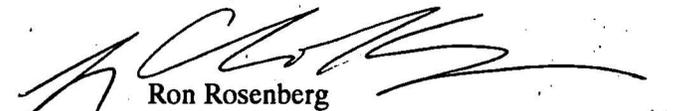
SELF-REPRESENTED

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, (“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 former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with a U.S. citizen, is eligible for immigrant classification based upon that relationship, and his former wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act 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).

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 Haiti who claims that he entered the United States on August 8, 1980 as a visitor. The petitioner married a U.S. citizen on April 13, 1991 in West Palm Beach, Florida. Their marriage was dissolved in a divorce on August 20, 2010. The petitioner filed the instant Form I-360 on May 10, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's former wife's battery or extreme cruelty. 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 additional evidence submitted on appeal does not overcome the director's grounds 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. In his first statement, the petitioner briefly recounted that in 1995 his former wife threatened to report him to the police because of his illegal status. He further recounted that his former wife became pregnant from an extramarital affair, she humiliated him, she made him feel afraid and she isolated him. The petitioner stated that he became "depressed and stressed" and decided to divorce his wife in 2006 after she had a second pregnancy outside the marriage. The director correctly determined that the petitioner's statements were general and did not provide probative details of the alleged abuse. The director also correctly noted that the timeline of events relayed by the petitioner conflicts with information contained in his divorce decree, dated August 20, 2010, which states that the petitioner and his wife had been separated for the previous 13 years (since 1997). This information also conflicts with the petitioner's Form I-360 in which he provided that he resided with his wife until May 2009.

The petitioner submitted a psychiatric screening conducted on him by a registered nurse on November 29, 2011 by the [REDACTED] in Brooklyn, New York. The screening form provides that the petitioner reported that his former wife took advantage of him, wanted to control him, went out with another man and grabbed his groin in 1996. The screening form also states that the petitioner was concerned because he did not have a "green card" and cannot help his family and three children. The psychiatrist who reviewed the screening diagnosed the petitioner with adjustment disorder, but the screening form contains only brief notations. The evaluators noted that the petitioner "appears guarded, will not discuss the nature of his arguments with his ex-wife." While many survivors of domestic violence may be reluctant to reveal a family member's abuse to others, without further, probative information, the petitioner's psychiatric screening alone is of limited evidentiary value.

On appeal, the petitioner asserts that his wife threatened to call the police on him and she made him afraid by "using bad looks and smashing things." He also recounts that his former wife battered him, but the petitioner's additional claims of abuse consist of brief statements, which fail to provide probative, detailed and consistent information regarding the battery or extreme cruelty. The petitioner submits two photographs showing small scars near his collarbone and on his upper right arm, which he states were inflicted by his former wife's battery, but he does not provide a probative description of either incident. The petitioner also submits letters from [REDACTED] and [REDACTED] stated that he witnessed the petitioner's former wife "hit him on his private part" and [REDACTED] stated in her separate two-sentence letter that she is aware of this incident. Neither of these individuals discusses or further explains the basis of their knowledge of the incident. Their brief letters also fail to provide any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner. The preponderance of the relevant evidence does not demonstrate that the petitioner's 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.

Qualifying Relationship

The director also correctly determined that petitioner failed to demonstrate a qualifying relationship with his former wife and that he is eligible for immigrant classification based upon that relationship. The record shows that the petitioner and his former wife were divorced on August 20, 2010 before this petition was filed on May 10, 2011. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (II)(cc) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that he had a qualifying relationship with his former wife, is eligible for immediate relative classification based upon that relationship, and that his former 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, 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.