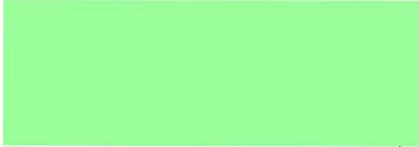


U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



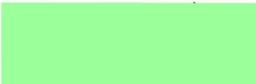
**U.S. Citizenship
and Immigration
Services**

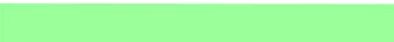
(b)(6)



Date: **APR 19 2013**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Self-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:

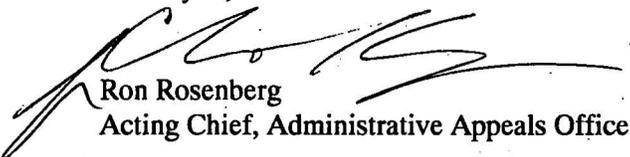
SELF-REPRESENTED

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 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, the petitioner submits an affidavit, a brief statement from a friend, and his child's birth certificate.

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.

Facts and Procedural History

The petitioner is a citizen of Guyana who entered the United States on April 28, 2001, as a nonimmigrant visitor. The petitioner married a U.S. citizen on July 26, 2007, in New York.¹ The petitioner filed the instant Form I-360 on March 11, 2011. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's wife's battery or extreme cruelty.

The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty.

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. On appeal, the petitioner has failed to establish that he was subjected to battery or extreme cruelty by his wife during their marriage.

¹ Although the petitioner's marriage certificate and Form I-360 list his wedding date as July 26, 2007, in his January 12, 2012 affidavit, he asserts that he married his wife on August 27, 2004. Additionally, the petitioner submitted another marriage certificate that lists his wedding date as November 10, 2009.

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 petitioner's evidence on appeal fails to overcome this ground for denial. In his first affidavit, the petitioner stated that his wife became controlling and threatened to "call immigration." He reported that his wife would call him names and throw things at him, but his brief descriptions lacked probative, detailed information sufficient to demonstrate that his wife subjected him to battery or extreme cruelty.

The petitioner also submitted affidavits from two friends, [REDACTED] and [REDACTED]. [REDACTED] indicated that the petitioner's wife treated him badly, didn't cook for him, and cursed at him. [REDACTED] noted that the petitioner had problems with his wife and that the petitioner told him that his wife had threatened to report him to immigration authorities. The affidavits of the petitioner and his friends submitted below 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).

The petitioner also submitted a psychological evaluation written by [REDACTED], a psychotherapist, who interviewed the petitioner for less than an hour on one occasion and determined that the petitioner was experiencing major depressive disorder and panic disorder. [REDACTED] reported that the petitioner told her that his wife hits, kicks, and scratches him and repeated much of what the petitioner stated in his first affidavit, but did not add sufficient substantive information or provide any probative details demonstrating that his wife's actions constituted battery or extreme cruelty. Furthermore, in his affidavit, the petitioner himself did not claim that his wife ever hit, kick or scratched him. The medical documentation submitted regarding the petitioner's irregular heartbeat does not show any connection between his condition and his wife's actions. The two photographs of the petitioner's injured right wrist are not accompanied by any explanation of the circumstances surrounding or the cause of the injury.

On appeal, the petitioner submits a second affidavit, dated September 18, 2012. The petitioner repeats much of what he described in his first affidavit, and adds that his wife once threw a telephone at him and broke his telephone. He also recalls that his wife hangs up on his mother when she calls and on another occasion kicked him out of the house. The petitioner's additional assertions are insufficient to demonstrate that his wife subjected him to battery or threatened violence, psychological abuse or other forms of extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also submits a three-sentence affidavit from his friend, [REDACTED] who states that for a few weeks in December of 2009 he gave the petitioner food when the petitioner visited him. [REDACTED] does not mention the petitioner's wife or any abuse she inflicted upon the petitioner.

(b)(6)

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The preponderance of the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner's 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

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.

ORDER: The appeal is dismissed.