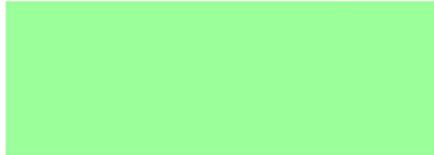


(b)(6)

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

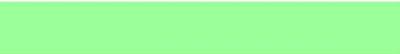


U.S. Citizenship
and Immigration
Services



Date: **AUG 28 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:

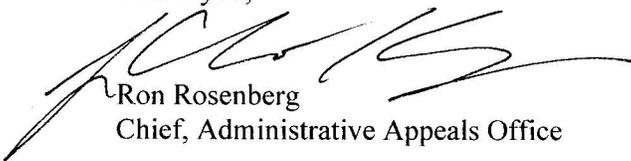
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal and affirmed its decision upon granting the petitioner's previous motion to reopen. The matter is now before the AAO on a second motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

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 a United States citizen.

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 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. . . . A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. . . .

The evidentiary guidelines at 8 C.F.R. § 204.2(c)(2) state, 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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Facts and Procedural History

The petitioner is a citizen of Senegal who claims to have first entered the United States as a nonimmigrant visitor on May 8, 2005. On September 29, 2009, the petitioner married a U.S. citizen in New York. The petitioner filed the instant Form I-360 on June 28, 2010. The director denied the petition for failure to establish that the petitioner's wife subjected him to battery or extreme cruelty, and the AAO dismissed the petitioner's subsequent appeal on May 7, 2012. In its February 4, 2013 decision, the AAO affirmed its dismissal of the appeal upon granting the petitioner's motion to reopen and additionally found that the petitioner failed to establish his good moral character. The petitioner timely submitted a second motion to reopen and motion to reconsider.

On motion, the petitioner fails to state the reasons for reconsideration and does not establish that the AAO's February 4, 2013 decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy or that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The petitioner's submission fails to meet the requirements for a motion to reconsider, and consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

However, the petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). On motion, the petitioner submits an addendum to his psychiatric evaluation, a notarized personal letter, and a New York State criminal history record search report for the petitioner. Accordingly, the motion to reopen is granted.

Battery or Extreme Cruelty

In its February 4, 2013 decision, incorporated here by reference, the AAO fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the new evidence submitted on this motion. In his brief, notarized letter on motion, the petitioner repeats his statements from below regarding his wife yelling at him, throwing things, once locking the door, refusing his intimacy and her extramarital affair. He does not add any probative details about any specific incidents of abuse. In her addendum to the petitioner's psychiatric evaluation, [REDACTED] a psychotherapist, reiterates that the petitioner's "mental illness is solely related to the trauma of extreme cruelty perpetrated by his wife." She further explains that her previous two evaluation letters are consistent with each other. While we do not question [REDACTED] professional expertise, her addendum provides no further, substantive information regarding the claimed abuse. The relevant evidence in this case fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

In its February 4, 2013 decision, the AAO determined that beyond the prior decisions of the director

and the AAO, the record also failed to demonstrate that the petitioner is a person of good moral character. On this motion, the petitioner provides a New York State criminal background check showing that the New York Division of Administrative Services Criminal History Record Search (CHRS) Program does not have any information about any convictions for the petitioner. Accordingly, the petitioner has demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On motion, the petitioner has established that he is a person of good moral character but 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Upon reopening, the appeal will remain dismissed and the petition will remain denied.

ORDER: The motion is granted. The appeal remains dismissed and the petition remains denied.