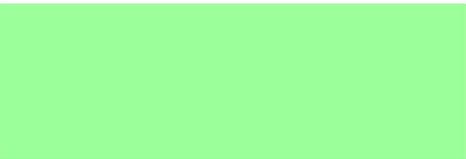




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 30 2013**

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:

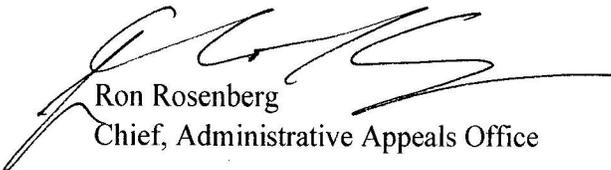


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 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 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 for failure to establish that the petitioner was subjected to battery or extreme cruelty by his U.S. citizen wife during their marriage.

On appeal, the petitioner, through 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 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)(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:

(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 the Philippines who entered the United States on August 22, 1998 as a B-2 visitor. He married M-R-¹, a U.S. citizen, on October 4, 2008 in Chicago, Illinois. The petitioner filed the instant Form I-360 on June 7, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite 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, through counsel, timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's ground for denial. 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 wife did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the following: the petitioner's declaration and letter; affidavits from friends [REDACTED] and [REDACTED]; a psychological evaluation from licensed clinical

¹ Name withheld to protect the individual's identity.

psychologist [REDACTED]; and letters from [REDACTED], a licensed clinical social worker (LCSW), updating [REDACTED] initial psychological evaluation. In his evaluation, [REDACTED] diagnosed the petitioner with Atypical Depression related to abuse in his marriage. In her psychological evaluation update letters dated August 29, 2011 and November 4, 2011, [REDACTED] stated that the petitioner “emotionally eats” to cope with the experiences with his wife. The psychological evaluation and the evaluation update letters do not discuss any battery or describe any behavior of the petitioner’s wife that constitutes extreme cruelty. While [REDACTED] evaluation and [REDACTED] letters show that the petitioner’s marriage negatively impacted his mental health, they do not establish that his wife ever subjected him to battery or extreme cruelty during their marriage.

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, “evidence of abuse may include . . . other forms of credible relevant evidence.” 8 C.F.R. § 204.2(c)(2)(iv). In his declaration, the petitioner stated that M-R- abused him in many ways and that as a result, he became depressed and disappointed. He stated that she insulted him in front of his friends, threatened him with deportation, and was unfaithful. He further stated that she made him feel worthless, physically assaulted him when she was drunk, and stole money from him. He did not give probative details about her treatment of him or describe any specific incidents of abuse. In his letter submitted in response to the RFE, the petitioner stated that most of the physical abuse happened in their apartment when they were alone and when M-R- was intoxicated, except for one occasion when she was drunk at a party and assaulted him when he tried to stop her from drinking. The petitioner did not give further probative details about these incidents nor did he describe any other specific incidents of abuse. [REDACTED] stated that the petitioner told her that he was divorcing M-R- because M-R- was “abusive.” [REDACTED] stated that she noticed the petitioner was depressed and that he confessed to her that M-R- was “abusive” towards him. Neither of the petitioner’s friends specified how M-R-’s behavior was abusive, described any specific incidents of battery or extreme cruelty, or otherwise establish their knowledge of such abuse.

On appeal, counsel asserts that the petitioner submitted “ample evidence to support his contention that he was a victim of extreme cruelty” but she fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner’s wife constituted battery or extreme cruelty. The petitioner submits a second psychological evaluation from [REDACTED], master of education (M.Ed) and licensed professional counselor (LPC). [REDACTED] states that the petitioner suffers from Dysthymic Disorder, “a chronic type of depression” that may have been present prior to the petitioner’s relationship with M-R-. [REDACTED] opines that the petitioner’s relationship with M-R- exacerbated his disorder and caused the turmoil that the petitioner currently feels. [REDACTED] does not mention any battery committed by M-R- and only briefly conveys the petitioner’s statements regarding other behaviors of M-R- that do not constitute extreme cruelty. As with the evaluation and letters submitted below, [REDACTED]’ evaluation indicates that the petitioner’s mental health has been negatively impacted by his marriage, but his assessment fails to demonstrate that M-R- subjected the petitioner to battery or extreme cruelty during the marriage.

[REDACTED] further states that the petitioner was nervous during the psychological evaluation because he had not participated in a process like this before and also that the petitioner divorced M-R- in 2010.

This is inconsistent with the record showing that not only has the petitioner been the subject of a previous psychological evaluation, he had, as of November 4, 2011, attended five outpatient therapy sessions. Additionally, the petitioner stated in his Form I-360 and declaration submitted with his self-petition that he was still married to M-R-. These inconsistencies are not explained. 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

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.