



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **AUG 30 2013**

Office: VERMONT SERVICE CENTER

IN RE: Self-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)

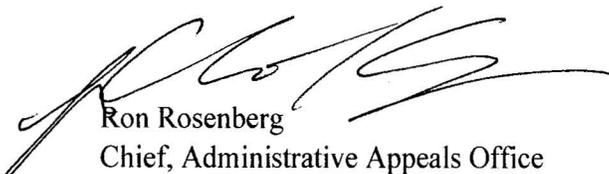
ON BEHALF OF PETITIONER:

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, (“the director”) denied the immigrant visa petition. The AAO dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

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.

On October 30, 2012, the director denied the petition on the basis of his determination that the petitioner failed to establish that his former wife subjected him to battery or extreme cruelty during their marriage and that he entered into the marriage in good faith. In its June 3, 2013 decision, the AAO dismissed the appeal, finding that the petitioner married his wife in good faith, but failed to establish the requisite battery or extreme cruelty. The AAO also found that the petitioner failed to establish that he had a qualifying relationship with a U.S. citizen. On motion, counsel submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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, 8 U.S.C. § 1154(a)(1)(J) 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:

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.

Facts and Procedural History

The petitioner is a citizen of Zambia who entered the United States on June 27, 2002, on a temporary religious worker visa. On June 15, 2007, he married a U.S. citizen in New York. The petitioner and his wife divorced on January 28, 2011. The petitioner then filed the instant Form I-360 on July 18, 2011, which is now before the AAO on a motion to reopen and reconsider its prior decision dismissing the appeal. The motion is granted.

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 demonstrate the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

In its June 3, 2013 decision, the AAO determined that the relevant evidence failed to establish that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, the AAO found that the incidents discussed by the petitioner and his friends and relatives, including name calling and drug use by the petitioner's former spouse, did not constitute extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The AAO also found that the petitioner's descriptions of physical abuse were brief and lacked probative details. The AAO stated that although the petitioner's friend, [REDACTED] claimed to have witnessed the petitioner's former wife punching him, the petitioner himself did not describe this particular incident in his personal statements. The AAO noted that none of the other supporting letters from the petitioner's relatives and friends discussed any incident of battery. The AAO stated that the additional relevant evidence, including a psychological evaluation and letter from a homeless shelter, failed to provide any probative information on the alleged abuse. The AAO found that the evidence submitted on appeal, including a brief, one-paragraph joint statement from the petitioner's psychiatrist and psychologist and prescription labels for an antidepressant, failed to provide information on the alleged battery or extreme cruelty in the petitioner's marriage.

On motion, counsel asserts that the petitioner stated in his affidavit that he was subjected to acts of battery, including hitting, spitting, kicking. Counsel states that although the petitioner may not have described the particular incident of battery mentioned in [REDACTED] letter, he indicated that "he was subjected to this kind of abuse often and it was just a regular occurrence to him." Counsel contends that since the petitioner indicated that he faced physical and verbal abuse "all the time" he described an overall pattern and practice of abuse. Counsel states that the petitioner's affidavits alone should be sufficient under the "any credible evidence" standard. Counsel further asserts that the incidents described by the petitioner, including name calling, threats and being locked out of his home, constitute extreme cruelty. Counsel states that the petitioner continues to seek treatment for depression that resulted from abuse in his marriage.

De novo review of the record does not establish that the petitioner was subjected to battery or extreme cruelty during his marriage. The statute mandates that U.S. Citizenship and Immigration Services "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *see also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof. We find no error in our previous determination that the relevant evidence submitted below and on appeal failed to provide credible, probative details of the alleged abuse. Counsel acknowledges that much of the petitioner's statement is in general terms without identifying specific instances of abuse. Although, as counsel asserts, the petitioner stated that he suffered from physical and verbal abuse "all the time," the petitioner's brief descriptions of the alleged abuse do not provide a probative, credible account sufficient to meet his burden of proof. On motion, counsel submits another joint statement from the petitioner's psychologist, [REDACTED] and psychiatrist, [REDACTED] who reiterate the petitioner's treatment plan, but do not provide any information on the

alleged abuse. Counsel has not submitted a more detailed statement from the petitioner or any other probative evidence of the alleged battery or extreme cruelty. Accordingly, the petitioner has not established that his 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

We also find no error in our determination that the petitioner failed to demonstrate a qualifying relationship with his former wife. The record shows that the petitioner and his former wife were divorced on January 28, 2011 before this petition was filed on July 18, 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 established that he had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Conclusion

On motion, the petitioner has not established that he had a qualifying relationship with a U.S. citizen and 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 and the appeal remains dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The motion is granted. The AAO's decision, dated June 3, 2013, is affirmed.