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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:

DEC 04 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:

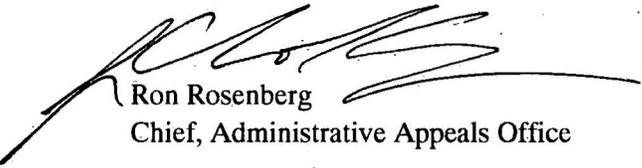
SELF-REPRESENTED

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 Vermont Service Center, (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. 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 his U.S. citizen spouse.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his wife, a U.S. citizen, subjected him to battery or extreme cruelty during their marriage.

On motion, the petitioner submits a personal letter and additional evidence.

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Jamaica, married his wife, a citizen of the United States, on January 27, 2004. The petitioner filed the instant Form I-360 on July 28, 2011. After considering the petitioner's response to a Request for Evidence (RFE), the director denied the petition for failure to establish the requisite battery or extreme cruelty. The petitioner timely appealed and the AAO dismissed the appeal on May 17, 2013. The petitioner timely filed a motion to reopen with additional evidence.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner asserts that his wife physically and verbally abuses him. On motion, the petitioner's assertion is supported by a personal letter, a police report dated June 11, 2011, and a medical report dated December 30, 2012. Accordingly, the motion to reopen is granted.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, as supplemented on motion, fails to establish the petitioner's eligibility. The appeal will remain dismissed for the following reasons.

Battery or Extreme Cruelty

In its May 17, 2013 decision on appeal, the AAO determined that the petitioner failed to establish the requisite battery or extreme cruelty. The AAO discussed the deficiencies of the record with regards to the petitioner's claims of battery or extreme cruelty and this decision is incorporated here. Accordingly, we will only address the new evidence submitted on this motion.

On motion, the petitioner submits a personal letter stating that his wife continues to physically abuse him and bit his finger during an argument in December of 2012. The petitioner states that they argued because he recently discovered that his wife was having an affair. He states that he went to the hospital the next day for treatment and submits a medical report as evidence. The petitioner does not further describe this incident in probative detail or discuss any other specific incidents of abuse or extreme cruelty. The medical report shows that the petitioner complained of a human bite on his thumb, was treated, and was prescribed ibuprofen and augmentin. Although the report is dated when the petitioner claims he was abused by his wife, they do not mention any domestic violence or otherwise indicate that his wife inflicted the injury. In its previous decision, the AAO also determined that the Domestic Violence Victim Notification Form submitted by the petitioner did not include a description of the underlying event and noted that the petitioner failed to submit a police report related to the incident. On motion, the petitioner submits a copy of a police report, dated June 11, 2011, which lists the petitioner as the suspect and his wife as the victim. The case report indicates that the petitioner and his wife argued and that his wife's daughter called the police after she heard his wife scream at the petitioner to get off of her. The police report does not add any probative details to establish that his wife subjected the petitioner to battery or extreme cruelty, as that term is defined 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.

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). The petitioner has not established that he was subjected to battery or extreme cruelty by his wife during their marriage. The appeal will remain dismissed and the petition will remain denied.

ORDER: The motion to reopen is granted. The May 17, 2013 decision of the Administrative Appeals Office is affirmed and the petition remains denied.