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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

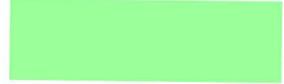


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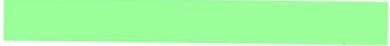
Office: VERMONT SERVICE CENTER

File:



IN RE:

Petitioner:



PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director, (“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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by his United States lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner: (1) has a qualifying relationship as the spouse of a lawful permanent resident; 2) is eligible for immigrant classification based on such a relationship; (3) was subjected to battery or extreme cruelty during his marriage; and (4) is a person of good moral character.

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

Applicable Law

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

An alien who has divorced an abusive United States lawful permanent resident 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 lawful permanent resident spouse.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

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 clause (ii) or (iii) of subparagraph (B) 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.

(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. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(B)(ii) 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.

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of India, married K-R¹, a lawful permanent resident of the United States, on November 2, 1995 in India. The two were divorced on September 17, 2008. The petitioner filed the instant Form I-360 on September 13, 2010. After considering the petitioner's response to a Request for Evidence (RFE), the director denied the petition for failure to establish: a qualifying relationship as the spouse of a lawful permanent resident and corresponding eligibility for immigrant classification based on such a relationship; battery or extreme cruelty during his marriage; and his good moral character. The petitioner timely appealed and the AAO dismissed the appeal on July 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 he was subjected to abuse by K-R- and that he is a person of good moral character. On motion, his assertion is supported by a personal letter, an electronic mail message addressed to the petitioner from United States Consulate in Hyderabad, India regarding a Security

¹ Name withheld to protect the individual's identity.

Investigator position, and a medical report dated April 11, 2013. 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 July 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 abuse 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 K-R- failed to provide basic necessities for him even though he was completely dependent upon her. He states that he suffered from psychological abuse and that K-R- failed to be a "decent wife." He reiterates that she committed perjury during their divorce proceedings, humiliated him in front of others, and caused him such depression and anxiety that he suffered a cardiac arrest on April 11, 2013, over four years after the petitioner and K-R- were divorced. The petitioner also asserts that K-R- continues to cause him harm in the form of lost job opportunities. In support of these assertions, the petitioner submits electronic mail messages addressed to him from the U.S. Consulate in Hyderabad, India and a medical report from [REDACTED] dated April 11, 2013. The electronic mail messages state the date and time that the petitioner was scheduled for an employment interview but do not provide any substantive information regarding the claimed abuse or loss of job opportunities based on K-R-'s treatment of the petitioner. The medical report states that on April 11, 2013, the petitioner received an angiogram after being diagnosed with acute coronary syndrome, a medical condition that the petitioner blames on his trauma and depression caused by the claimed abuse. However, nothing in the medical records suggests a link between his heart condition and any domestic violence. The petitioner does not submit additional evidence linking his medical problems with the claimed abuse.

On motion, the petitioner reasserts that he suffered from extreme cruelty during his marriage and the director failed to consider his dependent immigration status, his financial status and his poor living conditions. However, he does not provide probative details about K-R-'s treatment of him nor does he discuss any specific incidents of abuse or extreme cruelty. The petitioner again asserts that the director failed to acknowledge that K-R- and her friends and relatives engaged in a conspiracy against him, but the record does not show that K-R-'s behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Instead, the record reflects that the petitioner pled guilty to domestic assault with bodily harm of K-R- during their marriage. 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)(B)(ii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

On motion, the petitioner states that K-R- became a U.S. lawful permanent resident during their marriage and was a lawful permanent resident at the time of the claimed abuse. He argues that he therefore established his qualifying relationship with K-R- and corresponding eligibility for immigrant classification. In support of his assertion, he cites to another AAO decision which determined that a self-petitioner failed to establish her qualifying relationship with a lawful permanent resident because her former spouse had obtained U.S. lawful permanent resident status after their divorce was finalized. The petitioner misunderstands the AAO's prior determination that he failed to establish his qualifying relationship and corresponding eligibility for immigrant classification. Because the petitioner filed his self-petition after his divorce was finalized, he must establish a connection between his divorce and the requisite battery or extreme cruelty. On motion, the petitioner again fails to establish his battery or extreme cruelty and consequently, the petitioner has not demonstrated that he had a qualifying relationship with a lawful permanent resident and his corresponding eligibility for immigrant classification, pursuant to subsections 204(a)(1)(B)(ii)(II)(aa),(cc) of the Act.

Good Moral Character

Below, the petitioner submitted the following as evidence of his good moral character: an August 23, 2010 police verification report of no arrest record from the [REDACTED] Police Department in India; a January 19, 2001 certificate of good standing from the Bar Council of the State of [REDACTED] India; a certificate of practice and character from the Metropolitan Criminal Courts Bar Association Hyderabad; and a September 3, 2010 criminal history record of no arrest from the [REDACTED] County Sheriff's Office in [REDACTED] Tennessee. However, the record shows that on May 7, 2007, the petitioner pled guilty to and was convicted in the General Sessions Criminal Court of [REDACTED] County, Tennessee of "domestic assault - bodily harm" in violation of section 39-13-111 of the Tennessee Code.² The petitioner was sentenced to a term of seven months imprisonment, with six months and eleven days of the sentence suspended. He was placed on supervised probation for a period of six months and eleven days under the following terms and conditions: he has no contact with the victim of the offense, K-R-; he performs 20 hours of community service; he pay fines; and he completes designated programs.

In our prior decision on July 17, 2013, the AAO determined that notwithstanding the petitioner's claims of innocence and ineffective assistance of counsel during his criminal trial, he remained convicted of domestic battery. The conviction record reflects that the petitioner pled guilty to having committed the "use or attempted use of physical force" on his spouse, K-R- and that given the facts in the *Affidavit of Complaint*, dated March 30, 2007, the record reflects that the petitioner has been

² At the time of the petitioner's conviction for domestic assault with bodily harm, section 39-13-111 of the Tennessee Code provided, in pertinent part, "A person commits domestic assault who commits an assault as defined in § 39-13-101 against a person who is that person's family or household member." Tenn. Code Ann. § 39-13-111 (West 2007). The underlying offense, assault, was defined, in pertinent part, as: "Intentionally, knowingly or recklessly caus[ing] bodily injury to another." Tenn. Code Ann. § 39-13-101 (West 2007).

convicted of a crime involving more turpitude under section 212(a)(2)(A)(i)(I) of the Act. The AAO's prior decision is incorporated here and accordingly, we will only address the new evidence submitted on this motion.

On motion, the petitioner submits a personal letter in which he repeats his earlier statements that his arrest was part of a conspiracy on the part of his former wife. He states that the timeline of events clearly shows that K-R- had him arrested so he would not be able to respond to the divorce notice. The petitioner also reasserts that he pled guilty without understanding the possible immigration consequences of his guilty plea. The petitioner does not further explain the circumstances surrounding his arrest or provide probative details that would show that his conviction was connected to his former wife's battery and extreme cruelty. The petitioner also fails to submit any evidence that he meets the criteria set out in *Matter of Lozada*, which requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The record still indicates that the petitioner committed an unlawful act which adversely reflects upon his moral character. Based on the foregoing, the petitioner's conviction for domestic assault is a crime involving moral turpitude that bars a finding of his good moral character pursuant to section 101(f)(3) of the Act. The petitioner has therefore failed to establish his good moral character, as required by section 204(a)(1)(B)(ii)(II)(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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, he is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act. The appeal will remain dismissed and the petition will remain denied for the reasons stated above.

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