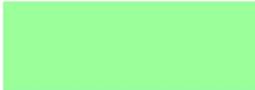


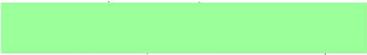


U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JAN 25 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)

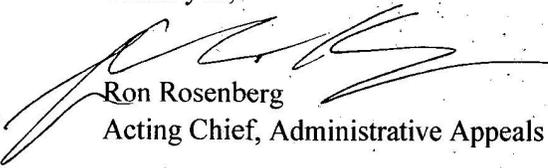
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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.¹

The director denied the petition for failure to establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits 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 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

¹ U.S. Citizenship and Immigration Services (USCIS) records show that although the petitioner's wife was a permanent resident when the Form I-360 was filed, she has since naturalized and is now a U.S. citizen.

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 native and citizen of Guyana. He entered the United States on April 21, 2005 without being inspected, admitted or paroled by an immigration officer. On August 9, 2010, the petitioner married a lawful permanent resident, who has since naturalized, in New York. On September 20, 2010, the petitioner filed the instant Form I-360. The director issued a Request for Evidence (RFE) of, among other things, the petitioner's wife's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence, which the director found insufficient to fully establish the petitioner's eligibility. The director denied the petition for failure to establish that the petitioner's wife subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner filed a timely appeal. On appeal, the petitioner submits an updated affidavit, a letter from a psychologist and affidavits from two friends.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The sole issue on appeal is evidence that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage. The director made a specific finding in his January 19, 2012, decision that all other grounds of eligibility had been satisfied and we find no error in that determination. The petitioner's claims and the evidence submitted on appeal have overcome the director's ground for denial and the appeal will be sustained for the following reasons.

Battery or Extreme Cruelty

The relevant evidence submitted on appeal demonstrates that the petitioner was subjected to battery and extreme cruelty by his wife. In his statement on appeal, the petitioner described several incidents of battery. The petitioner recounted in probative detail how, for example, his wife slapped, kicked and punched him, threw pepper in his eyes, and smeared a soiled diaper in his face. The petitioner also submitted affidavits from two friends who described witnessing incidents of abuse and injuries to the petitioner as a result. The petitioner's statement on appeal also described in probative detail various threats that his wife made against him, including threats of physical violence and deportation. The petitioner also submitted an updated psychiatric evaluation where the psychiatrist found that the petitioner is still suffering from major depressive disorder, recurrent episode, severe, with mood-congruent psychotic features, without intermittent remission, as a result of the abuse he suffered during his marriage.

Upon a full review of all the relevant evidence, the petitioner has overcome the director's determination that he was not subjected to battery or extreme cruelty. The petitioner has submitted two declarations that together substantively describe the physical violence and extreme cruelty he suffered by his wife. He has also submitted affidavits from friends who describe in detail witnessing incidents of battery the petitioner's wife committed against him. The record contains no material discrepancies or inconsistencies in the petitioner's claims of physical abuse and the preponderance of the evidence demonstrates that the petitioner's wife subjected him to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established his eligibility 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has now been met. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.