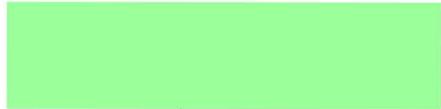


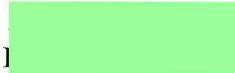


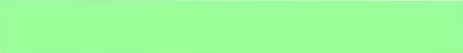
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUN 05 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:

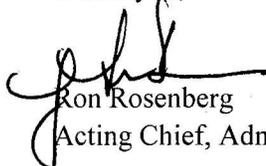
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting 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 and affirmed its decision upon granting the petitioner’s previous motions to reopen. The matter is now before the AAO on a fourth motion to reopen and a motion to reconsider. 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 a United States citizen.

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 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Brazil who claimed he entered the United States as a nonimmigrant visitor on March 27, 2004. He married K-M¹, a United States citizen, on May 11, 2007 in Tucson, Arizona. He filed the instant Form I-360 on June 16, 2008. Upon review of the record, including the petitioner's response to the Request for Evidence (RFE), the director denied the petition after determining that the petitioner had failed to establish that he had been subjected to battery and/or extreme cruelty by his U.S. citizen spouse. The petitioner, through former counsel, timely appealed and the AAO dismissed the appeal on August 3, 2010. In its July 12, 2011, March 5, 2012, and August 15, 2012 decisions, the AAO affirmed its dismissal of the appeal upon granting the petitioner's motions to reopen. The petitioner timely submitted a fourth motion to reopen and a motion to reconsider.

The petitioner asserts that the AAO's prior decisions imposed a standard of proof higher than the applicable standard of a preponderance of the evidence. The petitioner does not, however, cite to binding case law or precedent decisions to establish that the AAO's prior decisions were based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). The petitioner's brief also fails to establish that the AAO's prior decisions were incorrect based on the evidence of record at the time.

¹ Name withheld to protect the individual's identity.

See id. (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

The petitioner's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner asserts that K-M- subjected him to battery and extreme cruelty during their marriage. On this motion to reopen, the petitioner provides a brief and additional photographs. The matter is reopened to consider the petitioner's brief and photographs.

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 establish the petitioner's eligibility. The petitioner's claims and the new evidence submitted on motion do not overcome the director's grounds for denial. The appeal will remain dismissed for the following reasons.

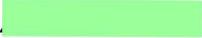
Battery or Extreme Cruelty

The AAO previously set out the deficiencies and inconsistencies of the statements submitted by the petitioner as well as the affidavits of the individuals who submitted statements on his behalf and will not be discussed here. In his brief submitted on motion, the petitioner repeats his earlier statements explaining why he initially stated that his spouse did not physically abuse him because he did not understand the definitions of "physical abuse" and "battery." The petitioner also submits photographs of his arm including his face for identification purposes to supplement the photographs that he submitted with his third motion to reopen. He states that the new photographs, in conjunction with the affidavits from eyewitnesses "clearly corroborate" his testimony. The petitioner asserts that the AAO erroneously attempted to offer a medical opinion as to the origins of the scars that goes beyond the scope of the AAO's expertise. However, the petitioner does not add probative details surrounding the incidents that he claims resulted in the scars and further mischaracterizes the AAO's previous determination that a review of the record failed to establish that the scars resulted from wounds inflicted on him by K-M- as claimed. The new photographs and the petitioner's assertions continue to be insufficient to establish that K-M-'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). The photographs are clearly of the petitioner but they fail to establish a connection between the faint scars and the claimed abuse. The petitioner's brief further fails to provide probative information about what occurred. The petitioner's brief and additional photographs submitted on motion do not overcome the deficiencies of the record below and 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

Upon review of the petitioner's statement and the photographs submitted on this fourth motion to reopen, the record remains deficient in establishing that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse. The record on motion does not include sufficient evidence to overcome the AAO's prior decisions. In these proceedings, the petitioner bears the

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burden of proof to establish 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 not been met.

ORDER: The motion is granted. The AAO's August 3, 2010, July 12, 2011, March 5, 2012, and August 15, 2012 decisions are affirmed and the petition remains denied.