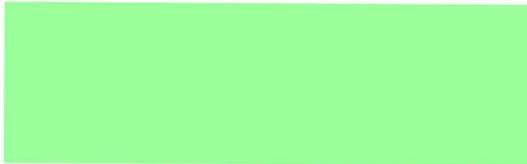


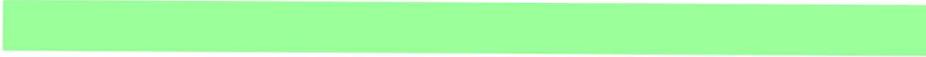
(b)(6)



U.S. Citizenship
and Immigration
Services



Date: JUN 29 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:

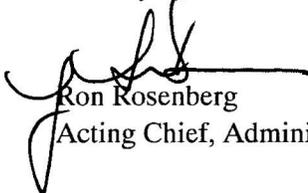
SELF-REPRESENTED

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 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 dismissed.

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 subjected him or his children 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 committed by the citizen . . . spouse, must have been perpetrated against the self-

petitioner or the self-petitioner's child, 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, ofthe self-petitioner . . .

* * *

(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 Bangladesh who entered the United States [REDACTED] 1994 with a C-1 visa. The petitioner married T-K¹, a U.S. citizen, in New York City, New York on [REDACTED] 2003. The petitioner filed the instant Form I-360 on November 22, 2010. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director further determined that the petitioner failed to establish that he had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship. The director denied the petition and the petitioner timely appealed.

¹ Name withheld to protect the individual's identity.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record and the additional evidence submitted on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages. On the Form I-360, the petitioner stated that he was married to T-K-. However, in his affidavit, the petitioner stated that the best way to end the pain was to seek a divorce and that after the divorce, living at home was stressful. This declaration is identical to an affidavit that the petitioner submitted with a previously filed self-petition [REDACTED]. The director correctly concluded that the petitioner and T-K-'s marital status was unclear and that the record therefore did not contain satisfactory evidence to demonstrate that the petitioner had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on that relationship.

On appeal, the petitioner submits an affidavit explaining that he and T-K- have never divorced and that while his English is poor, he never stated that he was divorced. Instead, the petitioner asserts that he only stated that going through a divorce would be stressful. This explanation is insufficient to explain the inconsistencies of the record and the statements clearly made in his affidavits that living at home after the divorce was stressful. Without corroborating evidence that he remains married to T-K-, the record remains unclear, and the petitioner's testimony is insufficient. Accordingly the petitioner has not established that he had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's wife did not subject him to battery or extreme cruelty and the evidence submitted below and on appeal fail to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavits, affidavits from friends [REDACTED] and [REDACTED], and an addendum to the petitioner's psychiatric evaluation on record from [REDACTED]. The addendum from [REDACTED] did not provide any additional information regarding the claimed abuse. She indicated that the petitioner suffered from symptoms associated with Major Depressive Disorder and Panic Disorder Without Agoraphobia. She did not, however, provide any probative details regarding any abuse or extreme cruelty inflicted by T-K- upon the petitioner. While we do not question [REDACTED] professional expertise, her assessment conveys the petitioner's statements during his interviews with her, and provides no further, substantive information regarding the claimed abuse.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R.

§ 204.2(c)(2)(iv). In his affidavit, the petitioner stated that in June of 1998, he went on his honeymoon to Las Vegas alone because T-K- had spent the night with a friend and could not wake up the following morning. He stated that he later found out T-K- was on parole from prison at the time and had lied to everyone about it. He recounted that she was irresponsible with finances and that by the beginning of May 1999, T-K- would disappear for days and ignore his phone calls. He stated that she frequently accused him of being unfaithful and forbade him from having contact with his female friends. He further stated that during T-K-'s incarceration, she promised to be better but that her behavior became worse. The petitioner stated that T-K- called him names, and was sexually, emotionally, and physically violent towards him. However, the petitioner did not describe any specific incidents of abuse in probative detail or otherwise establish that he or his children were subjected to extreme cruelty by T-K-. The petitioner's statement did not demonstrate that his wife ever battered him, or that her 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 affidavits from the [REDACTED] and [REDACTED] likewise failed to discuss any specific incidents of battery or extreme cruelty that they witnessed in probative detail, or provide any substantive description of any abuse of which they were otherwise aware.

On appeal, the petitioner submits another affidavit, a copy of his medical report, and photographs of the medication he takes. The medical report and the pictures of his medication do not provide any probative information about the claimed abuse or otherwise connect the petitioner's health problems to any abuse by his wife. In his affidavit, the petitioner states that T-K- tried to kill him by smothering him with a pillow but does not provide additional information about this claimed attack or any other specific instances of abuse. When viewed in the aggregate, the relevant evidence submitted below and on appeal is insufficient to establish that T-K- battered the petitioner or his children, or that her behavior constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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

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 not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.