

(b)(6)

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

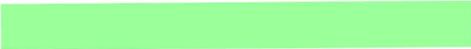


U.S. Citizenship  
and Immigration  
Services

Date: **MAY 14 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)

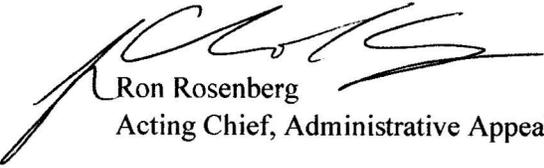
ON BEHALF OF PETITIONER:

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.

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. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The appeal will be sustained.

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 was born in Trinidad and entered the United States as a B-2 visitor on June 3, 2001. He married M-G-<sup>1</sup>, a U.S. citizen, in New York City, New York on January 31, 2007. The petitioner filed the instant Form I-360 on June 14, 2011. The director denied the petition for failure to establish that his wife subjected him to battery or extreme cruelty during their marriage. The AAO dismissed the petitioner's appeal on August 13, 2012. The petitioner timely filed a motion to reopen and reconsider the decision.

The petitioner does not assert that the AAO's prior decision was based on the misapplication 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 also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *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 M-G- subjected him to battery and extreme cruelty during their marriage. On motion, the petitioner's assertion is supported by his additional statement, a supplement to the prior psychological evaluation and additional letters from family and friends. Accordingly, the motion to reopen is granted.

---

<sup>1</sup> 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). A full review of the record establishes the petitioner's eligibility. The petitioner's claims and the additional evidence submitted on motion overcome the director's ground for denial and the appeal will be sustained.

*Battery or Extreme Cruelty*

In its prior decision, the AAO determined that the petitioner had not established the requisite battery or extreme cruelty for three reasons: 1) the petitioner's personal statements did not provide a probative, detailed account of any actions by his wife that constituted battery or extreme cruelty; 2) Ms. [REDACTED]'s psychological evaluation did not identify a connection between his mental health condition and his wife's battery or extreme cruelty; and 3) the letters from the petitioner's family and friends did not provide sufficient details about the circumstances surrounding the behavior they witnessed.

On motion, the petitioner submits another personal statement, a supplement to the psychological evaluation, and letters from [REDACTED]. The petitioner reiterates that after marriage, M-G- was both physically and verbally abusive. He provides probative details about specific instances of abuse and adds that he stayed with M-G- because she expressed remorse after each incident and he wanted their marriage to work. He further describes feeling isolated, humiliated, and confused. The petitioner's statement, in conjunction with the statements submitted below, provide a detailed and credible account of the physical and emotional violence he suffered during his marriage to M-G-.

The letters from the petitioner's family and friends submitted on motion likewise provide additional, probative information about the extreme cruelty inflicted by M-G-. Ms. [REDACTED], a co-worker and friend of the petitioner, states that when M-G- came to their office to collect the petitioner's weekly paycheck, M-G- would speak harshly to the petitioner and physically push him around. Mr. [REDACTED] credibly describes an incident when he had the petitioner and M-G- over for dinner and M-G- was belligerent and verbally abusive towards the petitioner. Mr. [REDACTED] recounts that M-G- accused the petitioner of flirting with Mr. [REDACTED]'s wife and threatened him with a knife that she grabbed from the kitchen. The letters from Mr. and Mrs. [REDACTED] reiterate what they submitted below about the way M-G- treated the petitioner. They state that on one occasion, M-G- deliberately cut the petitioner's fingers with a knife at her daughter's birthday party when they both reached for it to cut the cake. They recount that M-G-'s only response was to berate the petitioner for getting in the way even though he had started to bleed profusely. Mrs. [REDACTED] further describes another incident when she witnessed M-G- smash a plate into the petitioner's mouth and causing injury after he made a joke about her cooking. The supplemental evaluation by Ms. [REDACTED] reasserts that the petitioner suffers from Major Depressive Disorder due to the emotional and physical abuse he was subjected to during his marriage to M-G-.

Upon a full review of all the relevant and credible evidence submitted below and on motion, the petitioner has overcome the basis of the director's denial. The petitioner has submitted statements and letters that describe in probative detail the abuse he suffered at the hands of his wife. 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*

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 been met. Upon reopening, the August 13, 2012 decision of the AAO will be withdrawn and the appeal will be sustained.

**ORDER:** The appeal is sustained and the petition approved.