

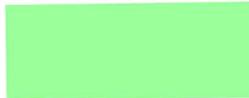
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **MAY 17 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.

If you believe the AAO inappropriately applied the law in reaching our 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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

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 and the petition will remain denied.

The petitioner seeks immigrant classification under 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.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, the petitioner submits a self-affidavit, an affidavit from an acquaintance, and information pertaining to a Freedom of Information Act (FOIA) request.

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.

Facts and Procedural History

The petitioner is a citizen of Jamaica who claims to have last entered the United States on October 28, 1999, without inspection, admission or parole. The petitioner married a U.S. citizen on January 27, 2004, in New Jersey. The petitioner filed the instant Form I-360 on July 28, 2011. The director subsequently issued a request for additional evidence (RFE) of the petitioner's wife's battery or extreme cruelty and his good moral character. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty.

On appeal, the petitioner submits an additional affidavit, a statement from [REDACTED] and a copy of a FOIA request response.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner's claims and the evidence submitted on appeal do not overcome the director's ground for denial. A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the petitioner's assertions on appeal fail to overcome this ground for denial. In his first affidavit, the petitioner stated that his wife put him down, physically hurt him, called him names, and threatened to file a false police report against him and have him deported. The petitioner also reported that his wife controlled their money, locked him out of the house, and filed a FOIA request for his immigration file. The petitioner submitted an affidavit from June White, who stated that the petitioner's wife argued with and talked badly about him.

In response to the RFE, the petitioner submitted another affidavit in which he reiterated that his wife was violent. He indicated that his wife forced him to sleep on the floor. The petitioner recalled that on one occasion, his wife's daughter called the police after his wife bit him and the police gave him a pink paper explaining his rights. He described one occasion where his wife showed information regarding the petitioner's immigration history to a room full of people in order to embarrass him. The petitioner also submitted two affidavits from friends. [REDACTED] indicated that the petitioner's wife talked down to him. [REDACTED] stated that the petitioner's wife took his money, threatened to deport him to Jamaica, called him names, embarrassed him in front of guests, and bit and scratched him. Mr. [REDACTED] however, did not describe any particular incident of abuse in probative detail. The petitioner's statements and his friends' affidavits do not indicate that his wife's behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

When considered in the aggregate, the relevant evidence also fails to establish that the petitioner's wife subjected him to battery during their marriage. The petitioner and Mr. [REDACTED] stated generally that the petitioner's wife scratched, bit, and spit on him, but neither of them provide any probative descriptions of any particular incident of battery. Although the petitioner provided a Domestic Violence Notification sheet, the notification does not include any description of the underlying event, and the petitioner did not provide the police report related to this incident. The petitioner and his friend's brief descriptions of battery lack probative details and it is unclear from Mr. [REDACTED]'s affidavit if he witnessed this or any other incident of battery.

On appeal, the petitioner submits another affidavit in which he repeats much of what he stated in his previous two affidavits. The petitioner adds that his wife physically attacked him and withheld sex from him. The petitioner also submits an affidavit from [REDACTED] who states that he was at the petitioner's and his wife's house when the petitioner's wife showed all of the guests present some of the petitioner's immigration papers. The petitioner submits a letter from U.S. Citizenship and Immigration Services (USCIS) regarding a request his wife made to obtain the petitioner's records through FOIA, and a copy of the compact disc cover his wife received as a result of the request. The additional evidence does not demonstrate that any specific behaviors of the petitioner's wife constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also fails to provide

(b)(6)

Page 5

any detailed and probative description of the claimed battery inflicted on him by his wife. The other acts the petitioner describes are not comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) as extreme cruelty, and there is no indication that the petitioner's wife's non-physical behavior was accompanied by coercive actions, threats of harm, or was otherwise part of an overall pattern of violence. 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

On appeal, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible 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 not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.