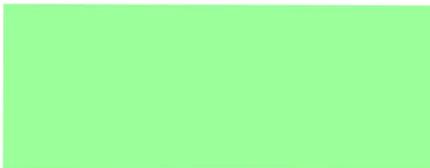


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090

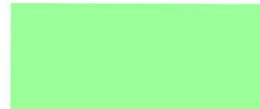


U.S. Citizenship
and Immigration
Services

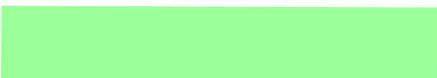


Date: **MAY 30 2013**

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 an affidavit, two brief statements from friends, and three photographs of himself.

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). An alien who is no longer married to the abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 the Dominican Republic who claims to have entered the United States on February 10, 2004, as a nonimmigrant visitor. The petitioner married a U.S. citizen on April 26, 2006, in New York. The petitioner filed the instant Form I-360 on June 7, 2011. The director subsequently issued a request for additional evidence (RFE) of, among other things, his wife's battery or extreme cruelty. 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.

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. On appeal, the petitioner has failed to establish that he was subjected to battery or extreme cruelty by his wife during their

marriage. The petitioner's evidence on appeal does 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 evidence on appeal fails to overcome this ground for denial. In his first affidavit, the petitioner stated that his wife controlled their finances and that he gave her money. He reported that his wife argued with him, hid him from her daughter's father and an inspector, and sent him to sleep on the sofa. The petitioner recalled that his wife did not file taxes with him, and that she verbally insulted and humiliated him. He indicated that his wife's aggressions were not physical but that she abused him in a verbal way. The petitioner's statements lack probative details, and the petitioner does not describe any behavior that 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 petitioner also submitted a psychological evaluation written by [REDACTED] a psychotherapist, who interviewed the petitioner for less than an hour on one occasion and determined that the petitioner was experiencing major depressive disorder. [REDACTED] noted that the petitioner suffers from excessive fear of leaving the United States and concluded that the petitioner would suffer exceptional and extremely unusual hardship upon removal. [REDACTED] reported that the petitioner told her that his wife abused him, but did not add any substantive information or provide any probative details demonstrating that the petitioner's wife's actions constituted battery or extreme cruelty.

On appeal, the petitioner submits a second affidavit, dated November 14, 2012. The petitioner repeats much of what he described in his first affidavit, and adds that his wife insulted him, called him names, had the air conditioning on in the winter, and threatened to "call... immigration." The petitioner also claims that as a result of the stress he experienced because of his wife's actions, he had to see an eye doctor, had high cholesterol, lost his hair, and experienced chest pains. The petitioner, however, provided no evidence of any visits to doctors for any of these ailments, nor did he provide any evidence that any medical conditions he may have suffered from were related to his wife's actions. Although in his first affidavit the petitioner specifically stated that his wife never physically abused him, in his statement on appeal the petitioner now claims that his wife pushed him on several occasions. Where USCIS can articulate a material doubt regarding the petitioner's eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The contradictions between the petitioner's claims of physical abuse in his first and second affidavits greatly detract from the credibility of his claim that his wife subjected him to battery, and the petitioner still fails to describe any behavior that involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty.

The petitioner also submits two brief affidavits from [REDACTED] who states that the petitioner and his wife had problems because he didn't want to buy a car, and [REDACTED] who states that the petitioner had problems with his ex-wife. Neither of these affidavits provide any probative information regarding any battery or extreme cruelty the petitioner's wife allegedly subjected him to. The photographs submitted to not establish that any changes in the petitioner's physical appearance are related to any mistreatment by his wife.

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The petitioner's brief assertions that his wife pushed him are not sufficient evidence of battery as his description lacks probative details and is specifically contradicted by his earlier affidavit. The relevant evidence also does not demonstrate that the behavior of the petitioner's wife constituted extreme cruelty. In his affidavits, the petitioner recounted that he and his wife argued, that she called him names and insulted him, and that his wife threatened to call immigration. The petitioner's friends briefly state that the petitioner and his wife had problems, but they do not discuss any specific incident of battery or extreme cruelty that they witnessed in probative detail. The psychological evaluation does not provide any probative description of abuse against the petitioner. The petitioner's statements and other relevant evidence are insufficient to demonstrate that his wife subjected him to actual or threatened violence, psychological abuse or other forms of 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

On appeal, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage. 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.