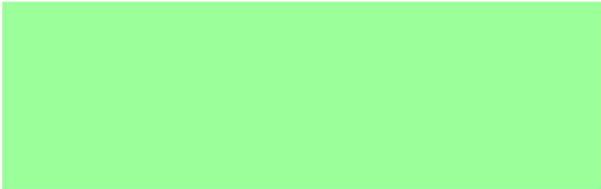




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **NOV 25 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I 290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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 for failure to establish that the petitioner was subjected to battery or extreme cruelty during his marriage.

Counsel timely filed an appeal with 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 for immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states the following:

(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:

(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 Trinidad and Tobago who entered the United States as a visitor on December 22, 2002. The petitioner married T-B-, a U.S. citizen, on May 26, 2005.¹ The petitioner and his wife have a son who was born on March 17, 2009, and the petitioner also has a stepchild who was born on December 25, 2004, from his wife's prior relationship. The petitioner filed the instant Form I-360 on January 12, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage and his wife's battery or extreme cruelty. The petitioner submitted additional evidence which the director determined was insufficient to establish his wife's battery or extreme cruelty, and the director denied the petition. The petitioner timely appealed.

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 as supplemented on appeal fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reason.

Battery or Extreme Cruelty

De novo review of the relevant evidence submitted below and on appeal fails to demonstrate the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The relevant

¹ Name withheld to protect the individual's identity.

evidence in the record consists of family court records; affidavits from the petitioner; affidavits from the petitioner's friend and his mother; and information about domestic violence from domestic violence hotlines, the federal government, a law school advocacy project, and the website

The petitioner briefly stated in the January 10, 2012 affidavit that his wife was often away from their house for days or weeks at a time, and when she was pregnant he did not often see her, but when he did they argued about whether he was the father. He stated that a paternity test showed that the child was his. The petitioner declared that T-B- claimed he was not a good father and refused to take care of their son as well as her child from a prior relationship. The petitioner briefly recounted that T-B- yelled at him in public, called him names after he told her not to use illegal drugs at their house, threw his cell phone in the toilet during a marital dispute, and left him and their son and warned him to leave her alone. The petitioner also stated in his December 29, 2012 affidavit that he has "not alleged that [T-B-] is [a] violent, abusive monster or that I was ever visibly injured by her." He declared that his claim of abuse "is that she behaved with "extreme cruelty" and that she neglected both children." He stated that his wife's infidelity was the primary cause of their marital disputes.

The petitioner briefly stated in his custody petition dated October 18, 2011, that his wife did not take care of their son, brought her boyfriend to their house, used illegal drugs in their child's presence, sold their belongings, stole money from him, and left their house and abandoned their child for more than three weeks. In his custody petition dated April 4, 2013, the petitioner briefly alleged that since October 17, 2011 his son has been living with him and that his wife does not want to be with or financially support their son. The record contains no evidence that either the October 18, 2011 or the November 4, 2013 custody petition was granted. The petitioner briefly claimed in his family offense petition that in October 2011 the landlord intervened on his behalf when T-B- responded hostilely after he told her and her friends to leave his house. He also briefly claimed that two weeks prior to this incident T-B- was physically aggressive to him and often cursed him. The petitioner was granted an ex-parte temporary protection order for less than one month, and ordered to appear in court on November 15, 2011, but no evidence is in the record regarding the outcome of that hearing.

The petitioner's affidavits and claims in his family court petitions do not demonstrate that his wife ever battered him or either of his children, or that her behavior was part of an overall pattern of violence or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted affidavits from his mother [REDACTED] and friend Mr. [REDACTED]. The petitioner's mother briefly recounted in her affidavit that T-B- and her son lived with her and that T-B- had an extramarital affair, and argued with her son about her boyfriend and pregnancy, and after giving birth, left the baby with her son and returned three months later. Mr. [REDACTED] briefly stated in his affidavit that the petitioner and T-B- had disputes about T-B-'s extramarital affair, and "the real victims of all of this nonsense" were T-B-'s children. The brief assertions of the petitioner's mother and friend support the petitioner's claims that his wife had an extramarital affair and neglected her children, but the short statements are not probative in establishing that T-B- ever battered the petitioner or either of his children, or subjected her husband or either of his children to conduct that amounted to extreme cruelty.

On appeal, counsel asserts that domestic violence in an intimate relationship can be defined as a pattern of behavior such as physical abuse, isolation, psychological and emotional abuse, or threats and intimidation that an abuser uses to exercise control over his or her partner. Counsel contends that the pattern of abuse in the instant case consisted of T-B-'s extramarital affair while pregnant with the petitioner's child, telling the petitioner he was not the father of their child, yelling at him and calling him derogatory names, throwing away his cell phone, threatening and hitting him with her fists, and making him feel inadequate as a parent. While the affidavits from the petitioner and his mother and friend and the family court documents reflect that T-B- was aggressive and unfaithful to the petitioner and neglected their children, the preponderance of the relevant evidence does not demonstrate that her behavior included battery, was a part of an overall pattern of violence, or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

Counsel contends that the director discounted the evidentiary value of the affidavits and court records, and erred in concluding that the petitioner experienced normal marital conflicts. The determination of what evidence is credible and the weight to be given that evidence lies within the sole discretion of U.S. Citizenship and Immigration Services. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). We find no error in the director's determination that the relevant evidence of family court documents and affidavits from the petitioner, his mother and friend reflected the deterioration of the petitioner's marriage, and were insufficient to demonstrate that T-B-'s actions constituted battery or extreme cruelty.

The preponderance of the relevant evidence does not demonstrate that the petitioner's wife subjected him or either of his children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has not overcome the director's ground for denial on appeal. He has not demonstrated that she subjected him or either of his children 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *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.