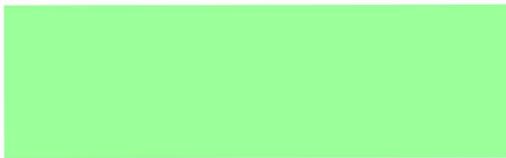




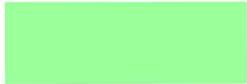
U.S. Citizenship
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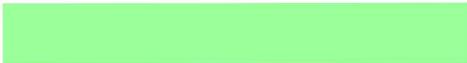


Date: **OCT 01 2013**

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:

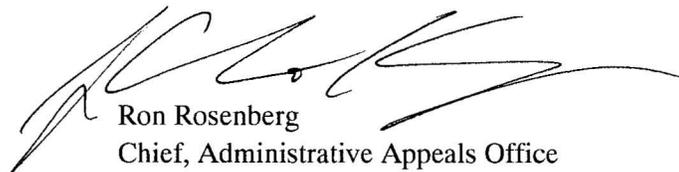


INSTRUCTIONS:

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 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 for failure to establish that the petitioner was subjected to battery or extreme cruelty during his marriage to a U.S. citizen.

On appeal, counsel submits a brief and 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 . . . 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 is a citizen of Algeria who entered the United States on June 1, 2000, as a business visitor. The petitioner married C-R-¹, a U.S. citizen, on July 2, 2009 in Texas. Their marriage was terminated in a divorce on February 16, 2011.

The petitioner filed the instant Form I-360 on November 12, 2010. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel 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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's former wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his first statement, the petitioner recounted that nine months after his marriage to C-R- she

¹ Name withheld to protect the individual's identity.

started ignoring him and criticizing him. The petitioner also recounted that C-R- made purchases without consulting him and she was unemployed. The petitioner stated that they separated after he learned that she had an extramarital affair. He claimed that he fell into a depression upon learning about C-R-'s extramarital affair and that she lied to him about her ability to have children. In response to the RFE, the petitioner stated that C-R- never physically attacked him, but she abused him by lying about her ability to have a child, called him names, spent his money, and had an extramarital affair. The petitioner's statements do not indicate that his former 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 petitioner submitted a statement from C-R- in which she admitted to having an extramarital affair. He also submitted statements from his sister, [REDACTED] and friends, [REDACTED] who attest to their knowledge of C-R-'s behavior. [REDACTED] stated in her two letters that she knows about C-R-'s extramarital affair. [REDACTED] stated that he witnessed C-R- call the petitioner names during an argument. [REDACTED] stated that the petitioner told him about C-R-'s extramarital affair. [REDACTED] stated that the petitioner is depressed because of his divorce. These statements do not indicate that the petitioner's former wife battered him, or subjected him to extreme cruelty as that term is defined in the regulation.

The petitioner initially submitted a psychological evaluation from [REDACTED] dated November 8, 2010. Ms. [REDACTED] diagnosed the petitioner with depression and Post Traumatic Stress Disorder (PTSD). Ms. [REDACTED] stated that during the petitioner's evaluation, he recounted that C-R- took money from their joint account, went out alone, became secretive, came home late, refused intimacy, had an extramarital affair, and lied to him about her ability to have children. Although we do not question Ms. [REDACTED]'s expertise, the incidents described in her evaluation do not constitute extreme cruelty as that term is defined in the regulation. The petitioner also initially submitted a letter from [REDACTED] M.D., who stated that on October 5, 2010 he prescribed the petitioner Prozac and Valium to treat his anxiety, depression and insomnia. Mr. [REDACTED]'s letter provides no information on the alleged abuse.

In response to the RFE, the petitioner submitted a second psychological evaluation from Ms. [REDACTED] dated December 19, 2011. Ms. [REDACTED] stated that the petitioner recounted during his second evaluation that C-R- was jealous, questioned his whereabouts, wanted to be with him alone, was hypersensitive, attempted to be sexually intimate at inappropriate locations, and she used force by grabbing his arm and shoving him when arguing. The descriptions of the alleged non-physical abuse do not constitute extreme cruelty as defined in the regulation. The petitioner's statement that C-R- never physically abused him contradicts the one-sentence description of claimed battery in Ms. [REDACTED]'s evaluation.

The petitioner also submitted in response to the RFE a letter from [REDACTED] M.D. dated January 19, 2012. Dr. [REDACTED] diagnosed the petitioner with depression and PTSD, and stated that he was being treated with antidepressant and anti-anxiety medications and psychotherapy. The petitioner provided a copy of Dr. [REDACTED]'s December 5, 2011 psychiatric evaluation, but the report is in handwriting that is illegible. He also submitted two additional letters from Dr. [REDACTED] who stated that in September 2010 he prescribed Prozac and Valium to treat the petitioner's anxiety, depression and insomnia and on November 22, 2011 he prescribed Prozac to treat the petitioner's depression. Although these letters demonstrate that the petitioner's mental health suffered during the breakdown of his marriage, they do

not discuss any link between the petitioner's conditions and actions of C-R- that would constitute battery or extreme cruelty.

On appeal, the petitioner submits an undated psychological evaluation from [REDACTED] which stated that the petitioner met with him on July 31, 2012 and four occasions in August 2012. Mr. [REDACTED] stated that during the evaluation, the petitioner recounted C-R-'s extramarital affair. He diagnosed the petitioner with Major Depressive Disorder, which he opined as linked to his wife's extramarital affair and her lie about her ability to have children. The petitioner also submitted another letter from Dr. [REDACTED] dated September 11, 2012, which stated that he has Major Depression, Severe and PTSD, and was treated with antidepressant and anti-anxiety medications. He provides copies of his prescriptions for these medications. These documents are further evidence of the petitioner's depression, anxiety and PTSD, but they do not show that the petitioner's spouse subjected the petitioner to battery or extreme cruelty.

On appeal, the petitioner submits letters from [REDACTED] Mr. [REDACTED] stated that he had an extramarital affair with C-R- while she was married to the petitioner. He stated that he witnessed C-R- shouting at the petitioner and calling him names. [REDACTED] stated that she is C-R-'s sister, and knows that C-R- called the petitioner's names, physically assaulted him, and threatened him with violence. Neither of these statements demonstrates that the petitioner was subjected to extreme cruelty. Although Ms. [REDACTED] stated that she has knowledge of physical abuse in the relationship, her statements lack probative detail. There is no discussion of the claimed incidents of physical abuse in the petitioner's own statement or in any of his psychological evaluations. Ms. [REDACTED]'s allegations of battery also contradict the petitioner's statement that C-R- never physically abused him.

On appeal, counsel asserts that the psychiatric reports state that the petitioner has suffered severe depression as a result of the marital abuse. Counsel contends that C-R- lied to the petitioner, had an extramarital affair, and took money from their joint bank account. Counsel fails to articulate, however, how the relevant evidence demonstrates that these specific behaviors of the petitioner's wife constituted extreme cruelty. The petitioner has not established that he was battered or subjected to other behavior that is comparable to the types of acts described in the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

On appeal, counsel further asserts that the director's decision "diminishes the existence of abuse by females in a stereotypical way." However, we find no evidence of gender bias in the director's decision. Although the relevant evidence shows that the petitioner suffered from depression, anxiety and PTSD, it does not demonstrate that C-R- battered the petitioner or that her behavior constituted extreme cruelty as defined in the regulation. Accordingly, the petitioner has not established that his former 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 the requisite battery or extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

(b)(6)

NON-PRECEDENT DECISION

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In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.