



**U.S. Citizenship
and Immigration
Services**

(b)(6)

Date: **SEP 03 2013**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:

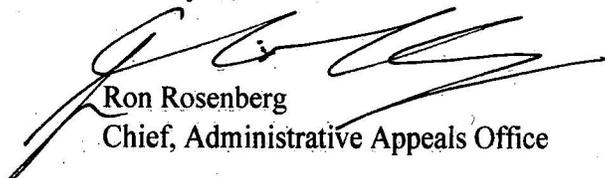
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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, (“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 remain 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 U.S. citizen wife subjected him to battery or extreme cruelty during their marriage and that he entered into their marriage in good faith. On December 17, 2012 the AAO dismissed the appeal. On motion, the petitioner submits 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner is a citizen of Trinidad and Tobago who entered the United States as a visitor on June 15, 2001. The petitioner married A-A-¹, a U.S. citizen, on May 20, 2008 in Fairfax City, Virginia. The petitioner filed the instant Form I-360 on March 31, 2011. The director denied the petition for failure to establish the requisite battery or extreme cruelty and entry into marriage with A-A- in good faith. The petitioner timely appealed and the AAO dismissed the appeal on December 17, 2012. The petitioner submitted a timely motion to reopen and reconsider.

The petitioner does not cite to binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application 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's statement 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). On motion, the petitioner submits letters from [REDACTED] and [REDACTED]. Accordingly, the motion to reopen is granted.

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. The additional evidence submitted on motion does not overcome the director's grounds for denial. The appeal will remain dismissed for the following reasons.

Battery or Extreme Cruelty

In its December 17, 2012 decision on appeal, the AAO discussed the deficiencies of the record with regards to the petitioner's claims of battery or extreme cruelty and this decision is incorporated here. Accordingly, we will only address the new evidence submitted on this motion. On motion, the petitioner submits letters from friends [REDACTED] and [REDACTED]. In her letter, [REDACTED] states that A-A- was very mean to the petitioner. She states that A-A- was verbally abusive and controlling. [REDACTED] repeats his statements from below and adds that he heard A-A- threaten to kick the petitioner out of their house and have him deported. He states she called the petitioner names and was very demeaning towards the him. [REDACTED] further states that sometimes he would not hear from the petitioner for a long period of time and knew that it was because of A-A-'s controlling ways. Neither [REDACTED] nor [REDACTED] provide further, probative details regarding specific incidents of abuse and their statements fail to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act

¹ Name withheld to protect the individual's identity.

Good-Faith Entry into Marriage

In its December 17, 2012 decision, the AAO determined that the petitioner had not established that he entered into marriage with A-A- in good faith because he failed to provide probative evidence regarding their courtship, engagement, wedding, joint residence or any of their shared experiences. The AAO's prior decision is incorporated here and we will only address the new letters submitted on this motion. [REDACTED] states that she thought the petitioner's marriage to A-A- would last a lifetime but that it did not. [REDACTED] states that he had high hopes that the petitioner and A-A- would make a life together as a couple but that the marriage did not work out because of A-A-'s cruel treatment of the petitioner. Neither [REDACTED] nor [REDACTED] describe any occasions where they observed the petitioner with A-A- or otherwise provide any relevant and substantive information to establish their personal knowledge of the petitioner's relationship with A-A-. Therefore the additional letters submitted on motion fail to establish by a preponderance of the evidence that the petitioner entered into marriage with A-A- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not established that he was subjected to battery or extreme cruelty by A-A- during their marriage or that he married her in good faith. The appeal will remain dismissed and the petition will remain denied.

ORDER: The motion to reopen is granted. The December 17, 2012 decision of the Administrative Appeals Office is affirmed and the petition remains denied.