

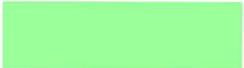
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



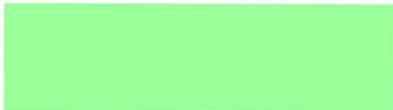
Date: **SEP 27 2013**

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:

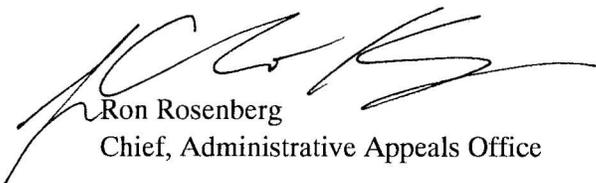


INSTRUCTIONS:

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion will be granted and 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 the requisite battery or extreme cruelty. The AAO dismissed a subsequent appeal. On motion, 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 Bangladesh who claims that he entered the United States as a nonimmigrant visitor on November 5, 2000. On August 26, 2002, he married his first wife, A-I-, a U.S. citizen, in Florida.¹ Although the petitioner did not provide a copy of his divorce decree, the record contains a March 18, 2013 letter from counsel, which provides that the petitioner has since divorced his first wife and remarried. Counsel submitted a copy of the marriage certificate reflecting that the petitioner married his second wife, M-S-, on April 12, 2012 in Fort Myers, Florida.²

The petitioner filed the instant Form I-360 on January 20, 2009, which is now before the AAO on a motion to reopen and reconsider its prior decision dismissing the appeal. The motion will be 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 demonstrate the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

In its December 21, 2011 decision, the AAO determined that the relevant evidence failed to establish that A-I- subjected the petitioner to battery or extreme cruelty during their marriage. The evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, the AAO explained that the statements from the petitioner, his friends, his counselor and an Imam failed to describe particular incidents of physical abuse in probative detail sufficient to establish that A-I- battered him. The AAO also explained that their statements did not demonstrate that A-I- subjected the petitioner to extreme cruelty. The AAO acknowledged that the record showed that the petitioner became depressed when his wife had an extramarital affair and abandoned him, but it did not establish that A-I- subjected the petitioner to psychological abuse, threatened violence or other actions that were part of an overall pattern of violence such that they would constitute extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On motion, counsel asserts that the evidence demonstrates that A-I- subjected the petitioner to mental and physical abuse. Counsel discusses the petitioner's mental health treatment for depression, which she attributes to the "severity of the abuse," but counsel does not articulate how any of the specific behaviors and actions of A-I- constituted battery or extreme cruelty.

On motion, counsel submits an affidavit from the petitioner in which he asserts that he suffered mental abuse. He states that A-I- called him names, threatened him and engaged in "mental control." The petitioner explains that he previously did not recall the physical abuse because he was humiliated. He states that the abuse was on a daily basis, but fails to discuss any specific incidents of physical or non-physical abuse.

De novo review of the record does not show any error in the AAO's previous decision and the additional evidence submitted on motion does not overcome the basis for denial. The petitioner has not submitted probative evidence to establish that A-I- subjected him to any behavior that is comparable to the types of acts described in the regulation 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. Nor has he provided probative, detailed evidence of the alleged physical abuse during his marriage to A-I-. Although the relevant evidence shows that the petitioner suffered from depression during the breakdown of his marriage to A-I-, it does not demonstrate that A-I- battered the petitioner or that A-I-'s behavior constituted extreme cruelty as defined in the regulation. Accordingly, the petitioner has not established that A-I- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

De novo review of the record also shows that the petitioner has failed to demonstrate the existence of a qualifying relationship with his first wife, A-I-, as well as his eligibility for immigrant classification as an immediate relative on the basis of such a relationship, as required by section 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act. The record contains a marriage certificate reflecting that the petitioner married his second wife, M-S-, on April 12, 2012 in Fort Myers, Florida, while this petition remained pending. Remarriage during the pendency of the Form I-360 precludes its approval. 8 C.F.R. § 204.2(c)(1)(ii). The petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these additional grounds.

Conclusion

On motion, the petitioner has failed to establish a qualifying relationship with a U.S. citizen, his eligibility for immediate relative classification based upon that relationship, and the requisite battery or extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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. The appeal will remain dismissed.

ORDER: The motion is granted. The AAO's decision, dated December 21, 2011, is affirmed, and the appeal is dismissed.