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

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 1 5 2014 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:

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director, (the director), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal and affirmed its decision upon granting the petitioner's previous motions to reopen. The matter is now before us on a fifth motion to reopen and a motion to reconsider. The motion to reopen will be granted. Our prior decisions will be withdrawn and the appeal will be sustained.

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 a United States citizen.

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.
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> * * *
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> (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 Brazil who claimed he entered the United States as a nonimmigrant visitor on March 27, 2004. He married K-M-[1], a United States citizen, on May 11, 2007 in Tucson, Arizona. He filed the instant Form I-360 on June 16, 2008. Upon review of the record, including the petitioner's response to the Request for Evidence (RFE), the director denied the petition after determining that the petitioner had failed to establish that he had been subjected to battery and/or extreme cruelty by his U.S. citizen spouse. The petitioner, through former counsel, timely appealed and we dismissed the appeal on August 3, 2010. In its July 12, 2011, March 5, 2012, August 15, 2012 and June 5, 2013, decisions we affirmed the dismissal of the appeal upon granting the petitioner's motions to reopen. The petitioner timely submitted a fifth motion to reopen and a motion to reconsider.

The petitioner asserts that our prior decisions imposed a standard of proof higher than the applicable standard of a preponderance of the evidence. The petitioner does not, however, cite to binding case law or precedent decisions to establish that our prior decisions were 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 brief also fails to establish that our prior decisions were incorrect based on the evidence of record at the time. *See id.* (prescribing this

[1] Name withheld to protect the individual's identity.

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). The petitioner asserts that K-M- subjected him to battery and extreme cruelty during their marriage. On this motion to reopen, the petitioner provides a personal statement. The matter is reopened to consider the petitioner's statement.

We review these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record establishes the petitioner's eligibility. The petitioner's claims submitted on motion overcome the director's ground for denial. The appeal will be sustained.

Battery or Extreme Cruelty

In our most recent decision, we determined that the evidence submitted on motion did not overcome the deficiencies of the record and that the petitioner did not establish that K-M-'s 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). We acknowledged the petitioner's explanation regarding why he initially stated that he was not physically abused by his wife but found that the petitioner nonetheless did not establish the requisite abuse because he did not provide probative details surrounding the incidents mentioned on motion. On this motion, the petitioner submits another personal statement providing additional details about K-M-'s treatment of him. The petitioner states that K-M- would become verbally abusive when she drank alcohol and on one occasion at a restaurant with friends, she threw a wine glass at him which shattered his own glass causing cuts on his arm. He describes being attended to by friends and being asked by the manager to leave the restaurant. The petitioner also provides additional, probative details regarding the January of 2008 incident when K-M- threw a rock at his car, shattering the driver's side window and causing injuries to his arm. He recounts that she was very angry with him for not going out with her the night before, called him derogatory names, and screamed that she was aiming for his head. When viewed in the totality, the preponderance of the relevant evidence demonstrates that the petitioner has 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

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has now been met. Upon reopening, our previous decisions will be withdrawn and the appeal will be sustained.

ORDER: The motion is granted. The AAO's August 3, 2010, July 12, 2011, March 5, 2012, August 15, 2012, June 5, 2013, decisions are withdrawn. The appeal is sustained and the petition approved.