



U.S. Citizenship
and Immigration
Services

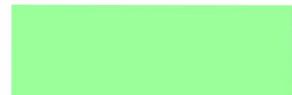
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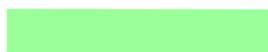
Date: **DEC 05 2014**

Office: VERMONT SERVICE CENTER

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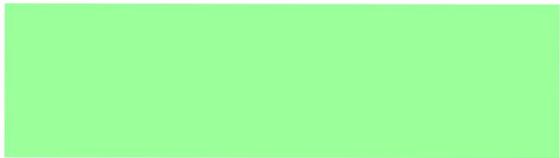


IN RE: Self-Petitioner:



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 Acting 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 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 for failure to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 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)(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:

(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.

Facts and Procedural History

The petitioner is a citizen of China who claims to have entered the United States in May 2002. The petitioner married S-H-¹, a U.S. citizen, on March [REDACTED]. The petitioner filed the instant Form I-360 on April 4, 2013. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence, which the director found insufficient and the director denied the petition.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome the director's ground for denial.

Battery or Extreme Cruelty

In his initial affidavit, the petitioner claimed that after his son was diagnosed with autism and attention deficit hyperactivity disorder (ADHD), his wife did not want to be close to their son and that she once locked their son out of the house for breaking her cosmetics. The petitioner indicated that although he cared about S-H- and bought an expensive watch for her, she gave him no emotional support upon his father's death, degraded him in front of friends, had an affair, did not care about their son, and threatened to report his illegal status. In response to the RFE, the petitioner provided a second affidavit in which he stated that S-H- was unfaithful, called him names, and made him give all his money to her. The petitioner generally claimed that S-H- was physically abusive and injured him when she threw things at him such as her cosmetics and laptop computer, but he did not provide any further probative description of a specific incident. The petitioner also

¹ Name withheld to protect the individual's identity.

claimed that S-H- would shout at their child, throw things at him, and hit his arm and buttocks, but again failed to discuss any alleged incident in detail. The petitioner stated that S-H- moved to her boyfriend's apartment on December 2012 and since then has not returned.

The petitioner provided affidavits from [REDACTED]. [REDACTED] stated that the petitioner is her uncle, and they were former roommates and worked at the same restaurant. She generally claimed that the petitioner and S-H- argued in front of the restaurant workers, and one night at their apartment she overheard S-H- yell at the petitioner and "some stuffs dropped heavily, seems like some stuffs was thrown," but she provided no further probative description. [REDACTED] stated that he and the petitioner are roommates and they both worked at S-H-'s restaurant. [REDACTED] recounted that he often overheard S-H- and the petitioner argue at their apartment and at work in front of the workers. Ms. [REDACTED] and Mr. [REDACTED] both claimed that they heard S-H- yell and curse her child. [REDACTED] generally stated that she used to take care of S-H-'s son, and that S-H- once locked her son out of the house.

The petitioner also submitted a psychiatric evaluation from Dr. [REDACTED]. Dr. [REDACTED] stated that the petitioner reported that S-H- would degrade him in front of friends, and that she would bring their son when she visited her boyfriend. Although Dr. [REDACTED] stated that the petitioner continues to suffer from the effects of adjustment disorder with a depressed mood and anxiety as a result of his marriage to S-H-, he has not discussed any incident of battery or extreme cruelty and the petitioner's general statements as well as those of Ms. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED] do not probatively establish that S-H- battered or subjected him or their child to psychological abuse or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1). Similarly, the affidavits provided from [REDACTED] indicated only that S-H- was pregnant with another man's child.

The petitioner also provided documents from the [REDACTED] consisting of progress notes from [REDACTED]; prescriptions that corroborate the petitioner suffers from depression and anxiety; and receipts for medical services. The progress reports are dated from September 11, 2013 to October 16, 2013 and generally discuss the breakdown in the petitioner's marriage and the stress associated with the petitioner's parental responsibilities. The petitioner also submitted school records regarding his son, and a receipt for a watch.

On appeal, the petitioner submits new documents from the [REDACTED] consisting of receipts for medical services, a document showing that he continues to take medication for depression and anxiety, and progress notes from Ms. [REDACTED]. The weekly progress notes, dated from October 23, 2013 to February 24, 2014, indicate that the petitioner continues to have adjustment disorder with a depressed mood and anxiety depression. They generally discuss the petitioner's feelings about S-H- and their pending divorce, and the petitioner's stress due to his financial situation, job, and parental responsibilities.

On appeal, the petitioner asserts that the definition of the term "extreme cruelty" does not require establishing physical injury, and the new documents on appeal establish that S-H- subjected him to emotional abuse during their marriage. Although Ms. [REDACTED] indicates that the petitioner continues to suffer from the effects of adjustment disorder with a depressed mood and anxiety, she does not

describe any incident of battery or extreme cruelty, as that term is defined by the regulation. Upon a full review of the record, the preponderance of the relevant evidence fails to demonstrate that the petitioner's wife subjected him or their child 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 demonstrated that his wife battered or subjected him or their child to extreme cruelty during their marriage.

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 and the petition will remain denied.

ORDER: The appeal is dismissed.