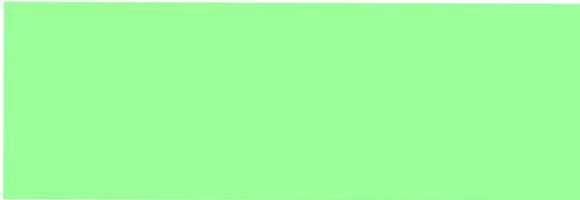


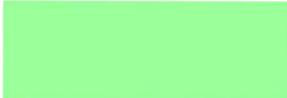
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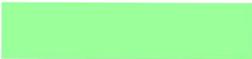
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

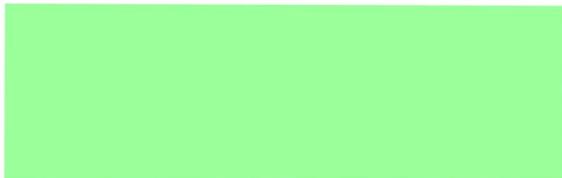


Date: **DEC 05 2014** Office: VERMONT SERVICE CENTER File: 

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 petition will remain denied.

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 because the petitioner failed to establish that he was subjected to battery or extreme cruelty during the marriage.

On appeal, counsel submits a brief and additional evidence.

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.

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:

(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 India who claims he entered the United States without inspection on January 25, 1998. The petitioner married S-P-, a U.S. citizen, on June [REDACTED]. The petitioner filed the instant Form I-360 on March 18, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, 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.

We conduct appellate review on a *de novo* basis. The petitioner's claims and the additional evidence on appeal fail to overcome the ground for denial. The appeal will be dismissed for the following reason.

Battery or Extreme Cruelty

The record does not establish that S-P- subjected the petitioner to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his affidavit submitted below, the petitioner briefly recounted that S-P- threatened him with deportation, made

¹ Name withheld to protect the individual's identity.

financial demands and refused to allow him to see their daughter. The petitioner's statements do not indicate that his wife ever battered him. His brief descriptions of non-physical abuse, including threatened deportation and claims that his wife prevented him from seeing their daughter, fail to contain credible, probative details to establish that he was subjected to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In response to the RFE, the petitioner submitted a psychological evaluation from [REDACTED] Ph.D., dated December 2, 2013. Dr. [REDACTED] diagnosed the petitioner with "major depressive disorder, single episode, mild." Dr. [REDACTED] stated that the petitioner recounted that in August 2009, S-P- called the police and claimed that the petitioner choked her during an argument. The petitioner stated that he denied the behavior, but the police arrested him. The petitioner, however, does not mention this incident in his own affidavit and the brief, two-sentence description of the incident in the psychological evaluation fails to provide substantive information to support the petitioner's claims. The remainder of the psychological evaluation speaks only in general terms (for example, the petitioner indicated that S-P- was "volatile" and treated him "poorly") and fails to discuss specific incidents of battery or extreme cruelty.

On appeal, counsel submits a case report from the [REDACTED] Michigan Police Department. The police report, dated February 23, 2014, provides that the petitioner and S-P- are separated and the petitioner contacted the police department to request a "well being check" on S-P- and their daughter. S-P- responded to the police inquiry and stated that the petitioner could see their daughter with a police escort. The officers informed the petitioner that they could arrange for him to meet S-P- with a police escort. The case report fails to indicate that the petitioner's wife subjected him to battery or extreme cruelty.

On appeal, counsel also submits statements from the petitioner's sister and brother-in-law, [REDACTED] [REDACTED] who reside in India; and the petitioner's friends, [REDACTED] and [REDACTED]. [REDACTED] recounts that S-P- visited India and threatened to have the petitioner deported, stole Ms. [REDACTED] watch and jewelry, and argued with Ms. [REDACTED] children. Ms. [REDACTED] brief description of the threats of deportation fails to provide probative details to establish the credibility of her claims. The remaining incidents mentioned in her letter do not demonstrate that the S-P- subjected the petitioner to battery or extreme cruelty. Mr. [REDACTED] states that S-P- used the petitioner's immigration status against the petitioner and she made false accusations about the petitioner to the police. Mr. [REDACTED] however, only reiterates the petitioner's own claims and fails to provide any additional, probative details of the alleged abuse.

[REDACTED] states that S-P- used the petitioner's immigration status and made false accusations against him. His brief statement also reiterates the petitioner's own claims and fails to provide any probative details to establish his personal knowledge of the alleged abuse. The credibility of Mr. [REDACTED] statement is diminished by the fact that it appears to be a previously typed letter in which he simply hand wrote his name into the body of the letter. It is not clear that Mr. [REDACTED] was the author the letter and expressed his recollection of facts rather than merely signing his name to a document that was prepared by another party. [REDACTED] states that S-P- did not allow the petitioner to see his daughter and threatened to cancel her immigration petition and contact the police. She additionally states that S-P- filed a false police report against the petitioner and received a protection order against

him. The petitioner does not discuss these incidents in his own affidavit. Ms. [REDACTED] fails to indicate the source of her information and describe her personal knowledge of the alleged incidents.

On appeal, counsel asserts that the evidence submitted below and on appeal establishes that S-P- subjected the petitioner to extreme cruelty. A full review of the evidence fails to overcome the director's decision. The petitioner in his affidavit fails to probatively describe any specific incidents of abuse and the police report does not indicate that he was subjected to battery or extreme cruelty. The supporting statements from the petitioner's sister, brother-in-law and friend, [REDACTED] lack probative details of the claimed abuse and simply reiterate the petitioner's own assertions. The statement from [REDACTED] contains details, but does not indicate the source of her information and discuss her personal knowledge of the incidents she described. The psychological evaluation is written in mostly general terms about S-P-'s behavior and discusses an incident that the petitioner does not mention in his own affidavit. Accordingly, the petitioner has not established by a preponderance of the evidence 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

On appeal, the petitioner has not established that his spouse subjected him to 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.