



U.S. Citizenship
and Immigration
Services

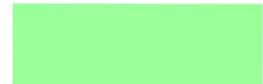
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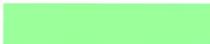
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Office: VERMONT SERVICE CENTER File:



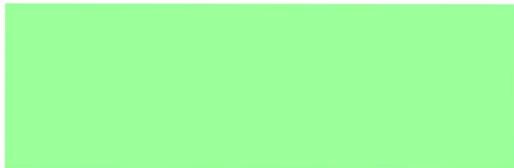
IN RE:

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,

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Acting Vermont Service Center 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 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.

The director denied the petition for failure to establish that the petitioner's spouse battered or subjected him to extreme cruelty.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

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 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 explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 was born in Cameroon and last entered the United States on September 20, 2003, as a B-2 nonimmigrant visitor. He married his U.S. citizen spouse, J-C-,¹ on [REDACTED] 2003, in [REDACTED] Texas. He filed the instant self-petition on January 21, 2013. On August 2, 2013, the director issued a request for evidence (RFE) that, among other things, J-C- subjected the petitioner to battery or extreme cruelty. The petitioner responded, but the director found the response insufficient to establish the petitioner's eligibility and denied the petition on this ground. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reason.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

In his first affidavit, the petitioner said that he initially used his savings to support his new family while he attempted to secure his U.S. medical license, but that his relationship with his wife began to deteriorate after approximately nine months of marriage. He explained that his wife was frustrated with his lack of employment. The petitioner further indicated that after a year, “the absolute happiness that reigned in the house did vanish as did my savings.” The petitioner indicated that he had to beg his wife for money, that she let teenagers loiter around their apartment so that she could buy marijuana from them, threatened to have him deported when he asked her not to use his clippers to cut another man’s hair, questioned his virility by asking whether he needed Viagra to help his sexual performance, became pregnant with another man’s child, and lost a USCIS RFE relating to the petitioner’s adjustment application which resulted in denial of his application. The petitioner indicated that he moved to [REDACTED] in [REDACTED] of 2006 and “decided to talk to [J-C-] no more” after she gave birth to another man’s child. The petitioner indicated that he visited his wife in [REDACTED] for Christmas of 2006, but does not indicate that he ever saw the petitioner after that visit.

The petitioner also initially provided an affidavit from his brother, [REDACTED], who stated that he “came to understand that [the petitioner] has been in a verbally and emotionally abusive marriage with his wife...through personal observation and information he relayed to me.” Mr. [REDACTED] also indicated that he “observed [J-C-’s] repeated belittling and disparaging comments made about [the petitioner’s] accent, immigration status and lack of employment.” However, Mr. [REDACTED] did not describe any particular incidents that he observed.

In response to the RFE, the petitioner submitted a psychological evaluation from a licensed professional counselor who diagnosed the petitioner with post-traumatic stress syndrome and concluded that J-C- subjected the petitioner to inter partner violence through emotional abuse, based on the information that the petitioner relayed to him. The counselor primarily recounted the information discussed by the petitioner in his initial affidavit. Although the counselor provided some additional details about the petitioner’s relationship with J-C- and the claimed abuse, some details do not correspond with assertions in the petitioner’s affidavit. For example, the counselor indicated that after Mr. [REDACTED] moved to [REDACTED], he visited his wife for Thanksgiving of 2006 and several times after that. Mr. [REDACTED] advised his counselor that when Mr. [REDACTED] father passed away, he felt angry at his wife because she founder he unsympathetic to his father’s passing and instead asked the petitioner for a plasma screen television. The petitioner’s counsel cited to this latter issue as an example of J-C-’s “lack of support.” However, Mr. [REDACTED] stated in his own affidavit that he visited his wife at Christmas of 2006, not Thanksgiving. He did not claim to have visited her on any other occasions after that, nor did he discuss any interaction with J-C- when his father passed away in May 2007. Apart from the additional information in the evaluation, which does not comport with Mr. [REDACTED] original claims, the counselor’s evaluation does not contain probative details to establish that J-C- subjected the petitioner to battery or extreme cruelty.

On appeal, the petitioner resubmits his initial affidavit, the affidavit from [REDACTED], and his counselor’s evaluation, but does not provide further details or describe any other specific incidents of

battery or extreme cruelty. The petitioner includes a new affidavit from his sister, [REDACTED], who asserts that she visited the petitioner and J-C- in Texas and that J-C-'s reaction "was that of intended alienation," and that J-C- "was always cold, unwelcoming and angry." Ms. [REDACTED] stated that she was visiting the petitioner in Texas on May 8, 2007, when their father passed away and that J-C- exhibited a "lack of emotion and no consideration as her biggest concern was money to buy a new TV and other things she need to get from the store." The timing of this claimed visit is not consistent with the information in the petitioner's affidavit. As discussed, the petitioner initially claimed that he visited his wife for Christmas of 2006 in [REDACTED] but does not discuss any other visits with her. Further, he told his counselor that he was sad when his wife did not support him after his father passed away, but does not indicate that he was visiting his wife and sister in Texas when he found out that his father passed away. The petitioner also provides an affidavit from a friend, [REDACTED], who relays the general information contained in the petitioner's initial affidavit. Although he indicates that the petitioner described the claimed emotional abuse to him, Mr. [REDACTED] does not claim to have witnessed any episodes of abuse or extreme cruelty and does not provide additional probative details that establish J-C- subjected the petitioner to battery or extreme cruelty.

On appeal, the petitioner submits a brief in which he cites to several state family law cases and suggests that the alleged abuse to which J-C- subjected him would have been found to be a part of a pattern of coercive control and actions that contribute to establishing extreme cruelty, or would have served as a basis for issuance of state domestic violence protection orders. However, the petitioner has not established that any of the cited decisions are binding on the agency in the administration of the Act. Moreover, although not required, the petitioner has not shown that he sought or obtained a protection order from J-C-.

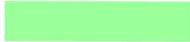
Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). Statements from the petitioner's counselor and sister contain information that contradicts the petitioner's own affidavit. Moreover, the statements of the petitioner, his brother, and Mr. [REDACTED] did not discuss J-C-'s behavior in probative detail and do not show that she ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). When viewed in the aggregate, the relevant evidence is insufficient to establish that J-C- subjected the petitioner to battery or extreme cruelty, as that term is defined 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.

Conclusion

On appeal, the petitioner has not demonstrated that J-C- subjected him to battery or extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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*

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Page 6

NON-PRECEDENT DECISION

of *Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.