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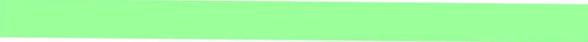


U.S. Citizenship
and Immigration
Services



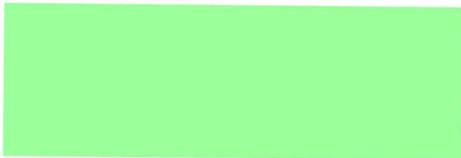
Date: **DEC 31 2014**

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,


for 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 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s wife subjected him to battery or extreme cruelty during their marriage. On appeal, the petitioner submits a brief.

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 are further explained 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 explained 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 Grenada who entered the United States as a nonimmigrant visitor on November 3, 2004. The petitioner married J-H-¹, a U.S. citizen, on January [REDACTED] in [REDACTED] PA. The petitioner filed the instant Form I-360 self-petition on March 4, 2013. The director subsequently issued a Request for Evidence (RFE) and Notice of Intent to Deny (NOID) the petition for failing to establish that he was subjected to battery or extreme cruelty by his wife. The petitioner timely responded to the RFE and the NOID, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We conduct appellate review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The brief submitted on appeal does not overcome the petitioner's ground for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's testimony and the previously submitted evidence did not show that the petitioner was subjected to battery or extreme cruelty by J-H- during their marriage. In support of his petition, the petitioner submitted an affidavit, dated October 25, 2012, stating that a few months after his marriage to his U.S. citizen spouse, he learned that he was HIV-positive, and thereafter, his wife would subject him to verbal abuse almost daily. He stated: that J-H-

¹ Name withheld to protect the individual's privacy.

kept asking him for money, and threatened to tell people that he was HIV positive if he did not give her money; that J-H-'s daughter called him "gay" and cursed at him; that his wife was not cooperative with his immigration process; that he was afraid that she would lie on purpose to the immigration authorities; and that he left her when the verbal abuse became intolerable. In response to the NOID, the petitioner submitted another affidavit repeating his earlier statements. The petitioner did not provide probative details about any specific incidents of abuse in either of his affidavits.

In response to the RFE and NOID, the petitioner also submitted affidavits from family and friends, [REDACTED] the petitioner's brother, stated that the petitioner told him that J-H- was verbally abusive and frequently asked him for money. [REDACTED] the petitioner's sister-in-law, stated that she could tell that the petitioner was unhappy, and that J-H- seemed to hold her citizenship over the petitioner's head to get money from him. [REDACTED] stated that she knew the petitioner and J-H- were having problems because the petitioner became distant and quieter. [REDACTED] stated that she noticed that the petitioner and J-H- were having issues but that she tried not to get involved. The petitioner's family and friends did not describe whether they witnessed any specific incidents of abuse or otherwise establish their knowledge of such abuse.

On appeal, the petitioner contends that J-H- inflicted great humiliation on him by calling him demeaning names, making disparaging comments about immigrants, demanding money that he didn't have, and threatening to disclose his HIV status to others without regard to his feelings. He asserts that his wife's threats constituted extortion or blackmail, particularly in view of his private and sensitive nature. However, the petitioner's affidavits and the affidavits that his family and friends submitted below did not discuss J-H-'s behavior in any probative detail and did 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). Accordingly, the petitioner has not 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

On appeal, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii)(I) of the Act.

In these proceedings, 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.