

(b)(6)

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



U.S. Citizenship
and Immigration
Services

Date: **JAN 30 2014** Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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 black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The 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 his U.S. citizen spouse.

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. On appeal, the petitioner, through counsel, 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 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 or the self-petitioner's child, 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.

* * *

(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 Jamaica who entered the United States as a nonimmigrant visitor on August 9, 2002. The petitioner married M-J¹, a United States citizen, on [REDACTED] 2006 in New York, New York. The petitioner filed the instant Form I-360 on March 18, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner, through counsel, timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavits, letters from family and friends, and a psychoemotional and marital dynamics assessment by Certified Clinical Psychopathologist [REDACTED]. [REDACTED] stated that he conducted a "psychoemotional, family and marital dynamics assessment" on August 25, 2010 and diagnosed the petitioner with "Adjustment Disorder with Mixed Anxiety and Depressed Mood" and "Dysthymic Disorder (chronic depressed mood)" based on the spousal abuse and abandonment by his wife. The assessment did not discuss any battery or describe any behavior of the petitioner's wife that constituted extreme cruelty. While Mr. [REDACTED] assessment shows that the petitioner's marriage negatively impacted his mental health, it does not establish that his wife ever subjected him to battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

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). In his first affidavit, the petitioner stated that after their marriage, the two were happy but that things began to change when M-J- was fired from her job in March of 2008. He stated that one day in June of 2008, he came home after work and suspected that M-J- was using drugs although she denied it. He stated that her drug use increased and she began cursing at him whenever he would question her about it. He stated on one occasion, a few weeks later, his wife threw a shoe at him which hit him in the eye causing him to go seek medical care. The petitioner did not give further probative details about this incident or any other specific incidents of abuse. He recounted that she no longer wanted to spend time with him and that one day in March of 2010, he came home to find that M-J- had left without a word, and he became depressed. In his second affidavit, the petitioner repeated his earlier statements and did not give further probative details about any specific incidents of abuse that would demonstrate that M-J-'s behavior constituted battery or extreme cruelty as that term is defined in the regulation.

The petitioner's friends, [REDACTED] attested to his troubled marriage, but their statements are all similar and also fail to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. In response to the RFE, the petitioner submitted letters from his three children, [REDACTED] and his aunt, [REDACTED]. The petitioner's family all described spending time with M-J- in 2007 when M-J- travelled to Jamaica to meet the petitioner's family. They stated that the trip was pleasant and that everyone really liked M-J-. They further stated that they learned about the claimed abuse from the petitioner after M-J- left him. None of the petitioner's children nor his aunt recounted whether they witnessed any specific incidents of abuse or otherwise established their knowledge of such abuse.

On appeal, counsel asserts that the director's decision was erroneous and unfounded. She argues that the petitioner's affidavits provided a detailed account of the abuse he endured at the hands of his wife and includes lengthy excerpts of the affidavits in her brief. However, counsel fails to articulate how the affidavits or any of the other relevant evidence demonstrate that any specific

behaviors of the petitioner's wife constituted battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). On appeal, the petitioner submits a third affidavit, an addendum to his psychoemotional assessment, and a medical report from [REDACTED] showing that he received emergency care on January 31, 2008 for an eye injury. In his affidavit, the petitioner repeats his earlier statements and provides explanations for the incorrect information in his previous affidavits. He does not further provide details about any specific incidents of abuse or describe behavior by M-J- that constitutes battery or extreme cruelty. Likewise, the addendum to the psychoemotional assessment discusses the petitioner's depression after his wife's abandonment and the breakdown of his marriage, but it does not provide substantive information about any specific instances of battery or extreme cruelty. The medical report from [REDACTED] shows that the petitioner was treated for swelling and pain in his left eye. The report does not mention any domestic violence or otherwise indicate that M-J- caused the injury. 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

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.