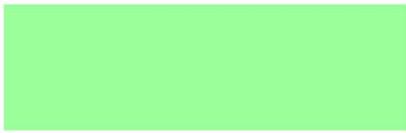


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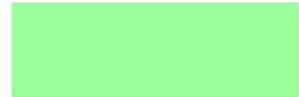


U.S. Citizenship
and Immigration
Services

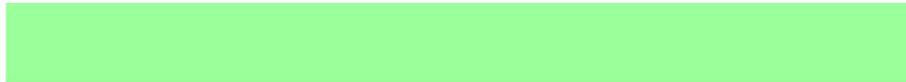


Date: JUL 11 2014

Office: VERMONT SERVICE CENTER File:



IN RE: 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:

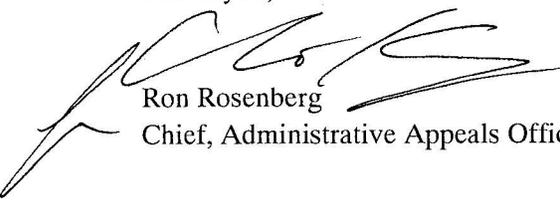
SELF-REPRESENTED

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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and affirmed its decision upon granting a motion to reopen. The matter is now before the AAO on a second motion to reopen. The motion will be granted. The prior decisions of the AAO will be withdrawn and the appeal will be sustained.

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 and the AAO dismissed the appeal for failure to establish that the petitioner was battered or subjected to extreme cruelty by his U.S. citizen wife during their marriage.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) 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 explained further 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 explained further 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 Jamaica who married his wife, a U.S. citizen, on January 27, 2004. The petitioner filed the instant Form I-360 on July 28, 2011. The director denied the petition for failure to establish that the petitioner was battered or subjected to extreme cruelty. The AAO dismissed a subsequent appeal and affirmed its decision upon granting the petitioner's first motion to reopen. The AAO stated in its decisions that the petitioner failed to describe in probative detail an incident where he went to the hospital for a bite on his finger, and did not discuss any other specific incident of abuse or extreme cruelty. The petitioner timely filed a second motion to reopen with additional evidence.

On motion, the petitioner asserts that his wife physically injured him on two occasions. To support his assertion he submits letters from his friend and sister; police records; previously submitted medical records; and photographs. The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The motion to reopen is therefore granted, and the AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Battery or Extreme Cruelty

The relevant evidence submitted on motion demonstrates that the petitioner's wife subjected him to battery during their marriage. In his December 30, 2013 letter submitted on motion, the petitioner provides probative information regarding incidents in which his wife physically assaulted him. The petitioner states that in June 2011, his wife bit his arm during an argument and her daughter called

the police. The petitioner recounts that his wife convinced the police that she bit him to defend herself. The police report, dated June 11, 2011, states that the petitioner's wife said that she bit the petitioner on the arm because he grabbed her, and that the petitioner's stepdaughter heard her mother scream "get off me." However, the report notes that both officers observed no physical marks on the petitioner's wife and she did not wish to sign a complaint or obtain a restraining order against the petitioner.

On motion, the petitioner also describes an incident in December 2012 when he confronted his wife about having an affair with his acquaintance. He states that his wife initially denied the accusation, but then grabbed his thumb with her teeth and starting biting him and that he had to beg her to stop. The petitioner recounts the incident in detail and explains that he was in so much pain he lost bodily control. The petitioner explains that although his stepdaughter saw the incident, she did not call the police and that while his medical records show he was treated at the emergency room for the wound his wife inflicted, no one at the hospital reported the injury to the police.

Other relevant evidence submitted on motion supports the petitioner's claims regarding his wife's physical assaults. In her December 30, 2013 affidavit, the petitioner's sister states that she knew that her sister-in-law had bitten her brother on the finger and that he was taken to the hospital by a friend. She also explains that she knew of two separate incidents in which the petitioner was bitten by his wife, but he did not inform the police of the incidents because his wife would lose her day care business. [REDACTED] the petitioner's friend, states that the petitioner told her of his wife's verbal abuse and physical aggression. She states that on two separate occasions she accompanied the petitioner to the hospital for medical care for injuries inflicted by his wife, but the petitioner would not file charges against his wife because of her day care business. Ms. [REDACTED] recounts that the second time, she could not believe the teeth marks and bleeding she saw and begged the petitioner to call the police, but he did not want to get his wife in trouble. Ms. [REDACTED] states that she and her boyfriend had to convince the petitioner to go to the emergency room because the bite was bleeding heavily and the doctor remarked how glad she was that the petitioner had not delayed seeking treatment. Ms. [REDACTED] explains that the doctor never asked who bit the petitioner or how it happened and she did not disclose the circumstances to respect the petitioner's wishes. The medical report from [REDACTED] shows that on December 30, 2012, the petitioner was treated for a human bite and given medication.

In this case, the statements by the petitioner, his sister and friend are detailed and credible and offer probative information regarding the battery his wife inflicted upon him. The petitioner's medical records are consistent with and further support his claims. The preponderance of the relevant evidence establishes that the petitioner was battered by his wife during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act and the petitioner has overcome the sole ground for denial of his petition. Consequently, the petitioner is now eligible for immigrant classification under section 204(a)(1)(A)(iii) 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). The

petitioner has met his burden. The prior decisions of the AAO will be withdrawn, the appeal will be sustained, and the petition will be approved.

ORDER: The May 17, 2013 and December 4, 2013 decisions of the Administrative Appeals Office are withdrawn. The appeal is sustained and the petition is approved.