



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JUL 24 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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)

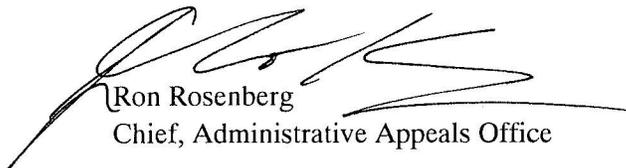
ON BEHALF OF PETITIONER:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The 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 under 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 subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief, a power and control wheel diagram, and resubmits the petitioner’s declaration and a mental health evaluation.

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 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)(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:

(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, a citizen of the Philippines, entered the United States on September 6, 2001 as a B-2 visitor, and later maintained status as an H-1B specialty occupations non-immigrant from January 14, 2003 to October 1, 2006. On September 22, 2007 in Tennessee, he married A-C-¹, a United States lawful permanent resident. A-C- became a naturalized U.S. citizen on September 28, 2009. The petitioner filed the instant Form I-360 on November 14, 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 appealed.

We review 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 on appeal, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's spouse did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The petitioner submitted a personal declaration and a mental health evaluation below, and letters from two friends in response to the RFE. The petitioner stated that after getting married, he wanted to reside with his spouse in [REDACTED] California but she said he must keep his "under-the-table"

¹ Name withheld to protect the individual's identity.

job in [REDACTED] Washington because they needed the money. He wanted instead for her to file an alien relative petition on his behalf so that he could obtain employment authorization and work legally in California. The petitioner explained that they alternated visits every three months, and on their one-year anniversary, A-C- visited him. He stated that he found a series of text messages with romantic content on her phone, called the sender who identified himself as A-C-'s boyfriend of nearly five years, and when confronted, A-C- admitted to the relationship but said she only wanted to be with the petitioner. He relocated shortly thereafter to [REDACTED] where they resided together, but soon began having arguments during which A-C- would sometimes curse, yell, and throw things.

When the petitioner was unable to secure employment after five months, A-C- sent him back to [REDACTED] to find work. He explained that when he later surprised her with a visit, he found that she had hidden their photographs because his picture angered her, but he later learned she was hiding them from her boyfriend. The petitioner described arguments during subsequent visits, difficulties maintaining a long distance relationship, and how he and A-C- often bickered even when living apart. The petitioner recalled that A-C- sometimes accused him of having an affair, and yet he still sent her a portion of his earnings, paid her cable and telephone bills, and gave her a car. He stated that when A-C- first naturalized, they discussed her filing an immigrant petition for him but she never followed through. On another visit to see A-C-, the petitioner found a photograph of her with a man with whom he believes she was having an affair. The petitioner's statements do not demonstrate that his spouse battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In his mental health evaluation, [REDACTED], a licensed marriage and family therapist, diagnosed the petitioner with major depressive disorder, indicating that his depression started when he discovered that A-C- had been unfaithful and worsened later in the relationship. While we do not question Mr. [REDACTED] professional opinion, his assessment conveys the petitioner's statements during a single two-hour interview with him and provides no further, probative information regarding the claimed abuse.

In their brief letters, two of the petitioner's friends, [REDACTED] and [REDACTED] provided general descriptions of behaviors they observed by A-C-. Mr. [REDACTED] recalled that he saw some tension between the petitioner and his spouse and that A-C- belittled him, ordered him around, and failed to show him respect. Mr. [REDACTED] recalled that A-C- embarrassed the petitioner by using foul words and on one occasion became angry when their band was not permitted to play as many songs as they had planned. Both letters provide no probative details concerning these incidents and neither Mr. [REDACTED] nor Mr. [REDACTED] indicate that A-C- subjected the petitioner to battery, threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation.

On appeal, counsel submits a copy of the Power and Control Wheel diagram ("PCW"), developed by the Domestic Abuse Intervention Project in [REDACTED] Minnesota. As noted on the diagram, the PCW is a helpful tool in domestic violence counseling, but it does not show that the petitioner's spouse subjected him to battery or extreme cruelty. Counsel asserts that the petitioner was subjected to emotional abuse, isolation and economic abuse by his spouse consistent with the diagram. Citing the PCW's discussion of male privilege as an example of how abusers will exert power and control over their partners, counsel suggests that A-C- treated the petitioner like a servant, made all the big decisions and acted

like the “master of the castle.” More specifically, counsel contends that this pattern is demonstrated through the petitioner cleaning the house and preparing dinner while A-C- was at work, after which he was “made to rub her feet.” In the petitioner’s declaration, however, he indicated that he voluntarily performed these tasks out of love for his spouse, knowing that she came home tired after work. Counsel refers also to the PCW’s discussion of isolation, asserting that this behavior is demonstrated by A-C- calling the petitioner and accusing him of having an affair. Isolation according to the PCW, however includes controlling what one’s partner does, who s/he sees and talks to, what s/he reads, and where s/he goes; limiting her/his outside involvement; and using jealousy to justify actions. The record shows that the petitioner lived and worked independently in [REDACTED] maintained friendships, and played in a band during his marriage to A-C-. The evidence does not demonstrate that the petitioner was isolated or that his spouse abusively controlled him such that her actions constituted battery or extreme cruelty as defined in the regulation.

The preponderance of the evidence does not establish that the petitioner’s spouse subjected him to battery or extreme cruelty during their marriage. The evidence does not demonstrate that the petitioner’s spouse 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 shown that his spouse 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 demonstrated that his spouse subjected him to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on this single ground.

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 and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.