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



U.S. Citizenship
and Immigration
Services

Date: **JUN 26 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,

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 and the petition will remain denied.

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 on the basis of her determination that the petitioner had failed to establish that his ex-wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and a copy of the petitioner and his ex-wife's divorce certificate.

Applicable Law

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

* * *

Facts and Procedural History

The petitioner is a citizen of China who entered the United States on May 17, 2010, as a B2 nonimmigrant visitor. The petitioner married his U.S. citizen ex-wife on September 22, 2011, in New York. The petitioner divorced his ex-wife on December 27, 2013. The petitioner filed the instant Form I-360 on June 24, 2012. The director subsequently issued a request for additional evidence (RFE) of his ex-wife's battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, counsel submits a brief in which he asserts that the petitioner suffered emotional abuse by his former wife.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. On appeal, the petitioner has failed to establish that he was subjected to battery or extreme cruelty by his ex-wife during their marriage.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty and counsel's assertions on appeal fail to overcome this ground for denial. In his affidavit, the petitioner stated that his ex-wife spent his money, stopped doing chores, and called him names in private and in public. The petitioner described how his former wife gambled, threatened to report the petitioner to immigration, and cheated on him. He stated that his former wife once hit him on the shoulder, drank alcohol, and eventually left him and demanded a divorce. The petitioner's description of battery lacks probative details, and the other behavior he describes does not meet the requirements for extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted three statements from friends and family. In her statement, the petitioner's mother, [REDACTED] indicated that the petitioner told her that his ex-wife was verbally abusing him and that she caught the petitioner's ex-wife cheating on her son. In his statement, [REDACTED] stated that the petitioner looked depressed and told him that his ex-wife was verbally abusing him. Neither affiant provided any probative descriptions of any particular incident of battery or extreme cruelty. [REDACTED] did not provide any information relevant to battery or extreme cruelty, and described the petitioner's wife as "a wonderful and adorable wife" who makes the petitioner "the happiest man with her delicious meal (sic) and her charismatic personality."

The petitioner submitted psychological evaluations prepared by [REDACTED] a licensed psychologist. Dr. [REDACTED] indicated that the petitioner's ex-wife verbally insulted him, humiliated him in public, and threatened to get him deported, but made no mention of any incidents of battery. Dr. [REDACTED] diagnosed the petitioner with major depressive disorder. In his update, Dr. [REDACTED] did not offer any new information relevant to battery or extreme cruelty. Dr. [REDACTED] reports do not offer any probative descriptions of any particular incidents or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). There is no indication that the petitioner's former wife's non-physical behavior was accompanied by coercive actions, threats of harm, or was otherwise part of an overall pattern of violence.

The petitioner's statements and the other relevant evidence do not indicate that his former wife's behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). When considered in the aggregate, the relevant evidence also fails to establish that the petitioner's ex-wife subjected him to battery during their marriage. The petitioner recounted that on one occasion his former wife hit his shoulder, but he failed to provide a probative description of this event or show that the incident resulted or threatened to result in physical or mental injury. See 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also did not establish that any other

acts were part of an overall pattern of violence. *Id.*

On appeal, counsel contends that there need not be physical abuse and that emotional abuse can qualify as extreme cruelty. Counsel is correct that physical abuse is not necessary for a Form I-360 petition to be granted, and we do not discount the harm the petitioner's ex-wife caused him, but to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the cruelty be extreme. Counsel asserts that the petitioner has submitted sufficient evidence to show that the harm the petitioner suffered constitutes extreme cruelty. However, the acts described by the petitioner and his mother and friend do not involve acts such as psychological abuse, rape, molestation, incest, or forced prostitution, nor has he shown that the acts were part of an overall pattern of violence. *See* 8 C.F.R. § 204.2(c)(1)(vi). On appeal, counsel submits the petitioner's judgment of divorce that indicates that the marriage was dissolved "by reason of the cruel and inhumane treatment of the [petitioner] by [his ex-wife]," but the standard that New York uses for "cruel and inhumane treatment" is not the same standard needed to meet the extreme cruelty requirement to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act. As the actions described do not constitute extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), the petitioner has not established that his former 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 former 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) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The appeal is dismissed.