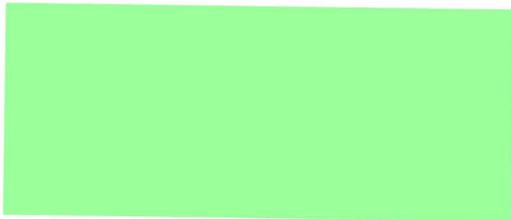


(b)(6)

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

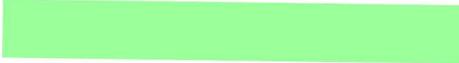


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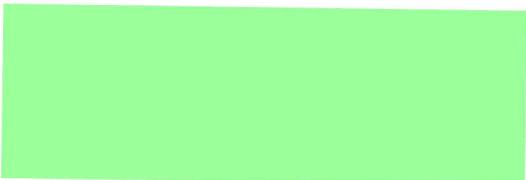


IN RE: Petitioner:



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:



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 Acting 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 was subjected to battery or extreme cruelty by his wife during their marriage.

On appeal, the petitioner, through counsel, submits a brief.

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 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 is a citizen of Israel. The petitioner married A-S¹, a U.S. citizen, on February 4, 2008. On March 17, 2008, A-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The director denied the Form I-130 petition and the corresponding Form I-485, based on the denial of the Form I-130 petition. The petitioner filed a Form I-360 on April 9, 2010. The director denied the petition on December 29, 2010 for failure to establish the requisite battery or extreme cruelty. On February 28, 2012, the AAO dismissed a subsequent appeal, finding that the petitioner had not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage. The petitioner filed the instant Form I-360 on January 28, 2011. The director subsequently issued a Notice of Intent to Deny (NOID) requesting evidence of the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence, which the director found insufficient and she denied the petition. The petitioner 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, the petitioner has not overcome the director's ground for denial.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

De novo review of the evidence submitted below fails to demonstrate that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage. The relevant evidence in the record consists of a psychological evaluation from Dr. [REDACTED]; letters from the petitioner, Dr. [REDACTED] with [REDACTED], Dr. [REDACTED] with [REDACTED] the petitioner's wife, and from his friends, [REDACTED] and [REDACTED], and photographs of the petitioner and his wife together.

The petitioner stated in his letter that he was devastated when his wife left him after telling him that she was pregnant with a child from another man. He recounted that he lost weight, could not sleep, and stopped going to work. The petitioner stated that he eventually obtained help from a psychologist and that his recuperation has been slow. The petitioner's friends stated in their letters that the petitioner was stressed and unhappy about his wife's deception. They stated that they had recommended that he seek professional help. The petitioner's wife declared that she was lonely and had a relationship with her former boyfriend and became pregnant. She stated that she did not want to hurt the petitioner by telling him the truth about the baby, so she kept it a secret.

Dr. [REDACTED] a licensed psychologist, stated that the petitioner experienced emotional turmoil since his wife's confession to having been unfaithful and to deceiving the petitioner into believing that the child she was about to deliver was his. Dr. [REDACTED] described the symptoms that the petitioner reported, and she diagnosed him with adjustment disorder with depressed mood. The petitioner's physician, Dr. [REDACTED] stated that the petitioner was devastated when he learned that his wife's child was not his. He stated that the petitioner indicated that he was socially withdrawn, lacked energy, lost weight, and had sleep disturbances. Dr. [REDACTED] stated that it was his opinion that the petitioner was clinically depressed. In the psychological evaluation, Dr. [REDACTED] stated that the situation in the petitioner's marriage was extremely traumatic to the petitioner. Dr. [REDACTED] stated that the petitioner was socially isolated and that the petitioner had been promised a family by A-S-, and was deceived into supporting his wife and her child by another man. Dr. [REDACTED] diagnosed the petitioner with having major depression and posttraumatic stress disorder (PTSD). Dr. [REDACTED] stated that from his limited understanding of the legal criteria for extreme cruelty, his psychological evaluation supports a claim of extreme cruelty.

Congress's intent in allowing a showing of either battery or extreme cruelty was to protect survivors of domestic violence. *See* H.R. Rep. No. 103-395, at 37-38. Congress required a showing of extreme cruelty to ensure that protection was afforded against the extreme concept of domestic violence, rather than mere unkindness. *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003). The record demonstrates that the petitioner's wife was unfaithful and made him believe that he was the father of her child. However, the petitioner has not described any threatening or controlling behavior from his wife, and A-S-'s nonviolent, deceptive act of having the petitioner believe that he was the father of her child is not comparable to the "extreme concept of domestic violence" as noted in *Hernandez*. Though the record establishes that the petitioner has clinical depression and PTSD and was deceived about his wife's pregnancy, her nonviolent behavior is not comparable to psychological or sexual abuse, or to the type of abuse that is defined as extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi). When the relevant evidence is viewed together, it does not demonstrate that A-S-

subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

In the appeal brief counsel asserts that the petitioner's wife's behavior, as described by the petitioner (her infidelity and deception about her pregnancy), constitutes extreme cruelty. Counsel contends that the psychological evaluation stated that the petitioner was devastated by his wife's conduct. Counsel asserts that the petitioner has depression and posttraumatic stress disorder, and the psychological evaluation indicated that a "devastating trauma" caused his mental disorders. Counsel declares that under a "reasonable person" standard the petitioner's wife's behavior amounts to psychological abuse. In making a decision on a self-petition the determination of what evidence is credible and the weight to be given that evidence lies within the sole discretion of U.S. Citizenship and Immigration Services (USCIS). Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). As discussed above, the preponderance of all the relevant evidence in this case fails to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage.

Counsel contends that 8 C.F.R. § 103.3(a)(1)(i) requires that the director state the specific reasons for the denial of a petition. Counsel states that the director's decision does not articulate why the behavior of the petitioner's wife does not constitute extreme cruelty. In the NOID, the director stated that nonviolent behavior must be extreme for a showing of extreme cruelty, and that infidelity does not constitute the type of behavior that is extreme. The director's denial letter stated that, although the petitioner was emotionally harmed by his wife's infidelity and deceit about her pregnancy, the regulations at 8 C.F.R. § 204.4(c)(1)(vi) require a showing of cruelty that is extreme and that the evidence failed to establish that the petitioner was subjected to extreme cruelty or battered by his wife during their marriage. The record shows that the director articulated the reason for the denial of the self-petition, and we find no error in her determination that the petitioner failed to demonstrate that his wife subjected him to battery or extreme cruelty during their marriage.

Conclusion

The petitioner has not overcome the director's ground for denial on appeal. He has not demonstrated that his wife 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.

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.

ORDER: The appeal is dismissed.