



**U.S. Citizenship
and Immigration
Services**

(b)(6)

[REDACTED]

Date: **MAY 28 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:

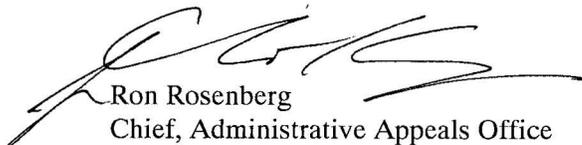
SELF-REPRESENTED

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. 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 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, the petitioner submits affidavits and copies of previously submitted evidence.

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:

(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 Ecuador who claims to have entered the United States in 1996 without admission, inspection or parole. The petitioner married his ex-wife, a U.S. citizen, on September 26, 1997, in New York. The petitioner divorced his ex-wife on May 5, 2010. The petitioner filed the instant Form I-360 on January 3, 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, the petitioner submits a copy of a previously submitted psychiatric evaluation, and affidavits from friends stating that the petitioner's ex-wife treated him badly.

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 the evidence submitted on appeal fails to overcome this ground for denial. In his affidavit, the petitioner stated that his ex-wife yelled at him because he did not donate his kidney to her, and that her parents had only "hard words and bad faces" for him. The petitioner indicated that one day when he returned from work he found his clothes on the street and his ex-wife had changed the locks. The behavior the petitioner describes does not meet the requirements for extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted five statements from friends who indicated that after the petitioner's wife received a sum of money as a result of a lawsuit, she began to act differently and treat the petitioner badly, but who did not provide any probative descriptions of any particular incident of battery or extreme cruelty.

The petitioner submitted a psychiatric evaluation written by [REDACTED] M.D. The psychiatrist indicated that the petitioner reported his ex-wife changed after she had kidney surgery and won a malpractice suit. The petitioner told Dr. [REDACTED] that his ex-wife humiliated him in front of her parents, called him names, refused sex, and kicked him out of the house. Dr. [REDACTED] diagnosed the petitioner with major depressive disorder. Dr. [REDACTED]'s report does not offer any probative descriptions of any particular incidents or acts equivalent to extreme cruelty as 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.

On appeal, the petitioner states that his wife humiliated him in front of her family, refused to have sex with him, called him names, and kicked him out of the house. 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. The behavior of the petitioner's ex-wife, as described by the petitioner and his friends, did not involve acts such as rape, molestation, incest, or forced prostitution, and was not part of an overall pattern of violence. See 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.

Qualifying Relationship

Beyond the director's decision,¹ the petitioner has failed to demonstrate that he had a qualifying relationship with a U.S. citizen and that he is eligible for immediate relative classification based on

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

such a qualifying relationship. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) 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 also has not demonstrated the requisite qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification. 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.