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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



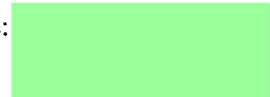
U.S. Citizenship
and Immigration
Services



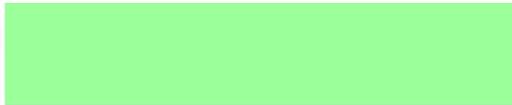
Date: **MAY 28 2014**

Office: VERMONT SERVICE CENTER

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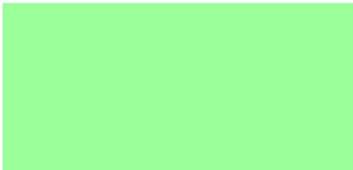


IN RE: Self-Petitioner:



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:

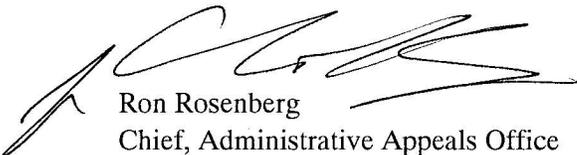


INSTRUCTIONS:

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 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 on the basis of her determination that the petitioner failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel reasserts the petitioner's eligibility, but counsel submits no brief nor additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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, 8 U.S.C. § 1154(a)(1)(J) 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 . . . 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 the Dominican Republic who entered the United States on May 25, 2005, as a nonimmigrant visitor. On August 31, 2005, he married his second wife, a U.S. citizen, in New York. The petitioner filed the instant Form I-360 on June 10, 2011. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's 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 asserts that the petitioner's wife's behavior, when viewed cumulatively, constitutes battery and extreme cruelty.

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 demonstrate the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

The petitioner did not submit a personal statement or affidavit. The petitioner submitted a mental health evaluation written by [REDACTED] a licensed clinical social worker, who interviewed

the petitioner on one occasion and determined that the petitioner was experiencing symptoms consistent with a diagnosis of “Depression NOS.” Mr. [REDACTED] reported that the petitioner’s wife manipulated him into paying for her cosmetic surgeries, and when the petitioner refused to provide her with more money for more surgeries, she made demeaning and derogatory remarks about him. Mr. [REDACTED] noted that the petitioner recounted witnessing his father’s severe domestic violence against his mother and brother when he was a child. Mr. [REDACTED] conveyed that the petitioner’s wife harassed him for money, was verbally aggressive, and slapped and punched him on four occasions. After the petitioner gave his wife more money for a procedure in 2009, she went to a resort in Florida and never returned. The petitioner himself did not describe any physical abuse or extreme cruelty he suffered from his wife. Mr. [REDACTED]’s report does not offer any probative descriptions of any particular incidents of battery or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) as extreme cruelty. There is no indication that the petitioner’s wife’s non-physical behavior was accompanied by coercive actions, threats of harm, or was otherwise part of an overall pattern of violence, and Mr. [REDACTED]’s brief references to battery are insufficient to establish physical violence.

The petitioner also submitted a letter from [REDACTED] M.D., who noted that the petitioner was “referred by the social worker for group therapy to help him cope with past domestic violence,” and that he should be treated by a psychiatrist. Dr. [REDACTED] did not specify if the past domestic violence was what the petitioner experienced as a child or during his second marriage.

The director found the relevant evidence submitted below insufficient to support the petitioner’s claims of abuse. On appeal, counsel reasserts the petitioner’s eligibility and contends that “substance abuse and abandonment” cumulatively constitute extreme cruelty and that the director erred in dismissing the “psychological evaluation by a psychologist.” Here, the director considered all the relevant evidence submitted by the petitioner below, including the mental health evaluation from the social worker. The relevant evidence is insufficient to meet the petitioner’s burden of proof that his second wife subjected him to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The acts described in the mental health evaluation do not involve acts such as rape, molestation, incest, or forced prostitution, nor has the petitioner shown that the acts were part of an overall pattern of violence. *See* 8 C.F.R. § 204.2(c)(1)(vi). The social worker’s brief statements that the petitioner’s wife slapped and punched him lack substantive, detailed information sufficient to demonstrate that his wife battered him. The other acts the social worker describes are not comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) as extreme cruelty. Accordingly, the petitioner has not established by a preponderance of the evidence that his second 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. On his Form I-360, the petitioner stated that he was divorced. In his June 7, 2011 letter on the Form I-290B, Notice of Appeal, counsel also refers to the petitioner's second wife as his "former spouse." The petitioner submitted no evidence to demonstrate that his second marriage ended within two years before he filed this self-petition. In addition, as the petitioner 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 his second wife and was eligible for immediate relative classification based on their relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

The petitioner failed to establish that his second 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. 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.