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



U.S. Citizenship
and Immigration
Services

Date: **OCT 10 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:

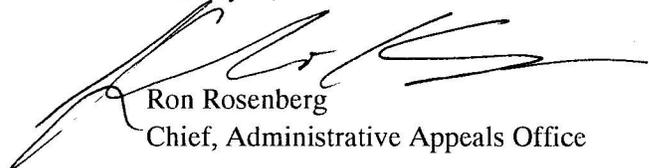
[REDACTED]

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 based on the petitioner's failure to establish that he was battered or subjected to extreme cruelty by his spouse.

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

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 Malaysia, entered the United States on April 1, 1998 as a nonimmigrant visitor. The petitioner married H-N¹, a U.S. citizen, on March [REDACTED] New York. H-N filed an immigrant visa petition for the petitioner, which the former Immigration and Naturalization Service denied as abandoned on April 5, 2002. The petitioner filed the instant Form I-360 self-petition on August 23, 2011. The director issued a Request For Evidence (RFE) of battery or extreme cruelty, among other issues. The petitioner responded with additional evidence, which the director found did not establish eligibility for the benefit sought and denied the petition. The petitioner, through counsel, subsequently appealed the director's decision, submitting a Form 1-290B (Notice of Appeal), and a brief.

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 we find that the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reason.

Battery or Extreme Cruelty

The director correctly determined that the petitioner did not establish that his wife battered him or subjected him to extreme cruelty. With his initial Form I-360 submission, the petitioner provided a

¹ Name withheld to protect the individual's identity.

personal affidavit dated March 17, 2011. In the affidavit, the petitioner indicated that during the early part of his marriage, he was aware that his wife occasionally frequented a casino for entertainment. The petitioner stated that in July 2000, the couple moved to a new residence, and H-N- ceased to work at the restaurant where the petitioner was employed. In the winter, H-N- and the petitioner began to explore the possibility of opening their own business, either a restaurant or a nail salon. The petitioner recounted that they agreed to open a restaurant, and he gave H-N- \$20,000 with which to start the business. The petitioner stated he was surprised when H-N- shortly asked him for more money, and ultimately told him that she had spent the original money unsuccessfully trying to open a nail salon.

The petitioner recounted that H-N- started coming home late at night, and they frequently argued about finances. The petitioner indicated that after H-N- took all of the money from their safe, and much of their savings from the bank, he learned that she had a gambling problem. The petitioner stated that the couple's disagreements over finances continued and described arguments during which H-N- lost her temper, screamed, and threw things. The petitioner discussed H-N-'s continual requests for money, which she gambled away. She told the petitioner that if he did not give her more money with which to gamble, she would cease to petition for his permanent residence in the United States. The petitioner stated that he continued to give H-N- money to end the arguments. H-N- ultimately failed to appear for the couple's immigration interview. One day in 2002, the petitioner returned from work to find that H-N- had moved out. The petitioner indicated that he has not seen H-N- since she moved out, but that she still contacts him on occasion when she has financial emergencies. The petitioner stated that he gave H-N- money several times after she left him because he still loves her. The petitioner stated that he has been living in fear and threatened for a long time, is depressed, and distressed.

The petitioner provided several affidavits from members of the family with which the petitioner and H-N- resided during their marriage. In an affidavit dated March 17, 2011, [REDACTED] attested that the petitioner was depressed after his wife left him, and told her that his wife threatened to stop sponsoring the petitioner's green card and often demanded money for gambling. [REDACTED] also each attested to the petitioner's depression after his wife left him. In a psychological evaluation, dated December 13, 2010, psychologist [REDACTED] stated that the petitioner continued to appear depressed due to his wife's abandonment of the marriage. Dr. [REDACTED] indicated that the petitioner related that his wife called him names, screamed at him, threw things away, and threatened to stop petitioning for the petitioner's green card. Dr. [REDACTED] evaluation appears to be based on a single meeting with the petitioner in 2010, over eight years after the petitioner and H-N- separated.

In response to the RFE, the petitioner submitted a second affidavit, dated February 1, 2013. In the affidavit, the petitioner again attested to his wife's excessive gambling and her threats to stop petitioning for his permanent residency if he did not give her money. He also stated that his wife threw household objects, such as remote controls and water bottles, when he refused to give her money. The petitioner provided an additional affidavit from [REDACTED], in which she stated that she once observed a bruise on the petitioner's face on an unspecified date, but that the petitioner did not tell her what had happened. The petitioner himself does not discuss any specific incident of battery causing bruising on his face.

In her decision, the director acknowledged the harmful effects of H-N-'s behavior, but determined that the relevant evidence did not establish that H-N- battered the petitioner or subjected him to extreme cruelty. On appeal, counsel asserts that H-N- physically abused the petitioner and that her gambling addiction and other behavior amounted to extreme cruelty.

The petitioner must demonstrate that his spouse 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). The preponderance of the relevant evidence, reviewed above, does not so demonstrate. The petitioner indicated that he gave his wife money for her gambling addiction amidst threats that she would cease to petition for his green card, but that he stopped giving her money when his savings were depleted. The petitioner's administrative record reflects that H-N-'s petition for the petitioner's permanent residency was indeed abandoned in early 2002 when the petitioner and H-N- failed to attend their immigration interview. However, the petitioner indicated that he continued to give H-N- money for several years after she left the relationship because he loved her and hoped they could reconcile, but that he stopped giving her money in 2006 when he realized that she would not return to him. In addition, the petitioner briefly stated that H-N- threw things during arguments, but did not substantively describe any particular incident of battery. Individuals with whom the petitioner and H-N- resided during their marriage attested to the petitioner's depression after his wife's abandonment, but did not discuss any incidents of battery or extreme cruelty.

The preponderance of the relevant evidence does not establish that the petitioner's 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 established that he was battered or subjected to extreme cruelty by his spouse, and he is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for this reason.

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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.