

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **OCT 21 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)

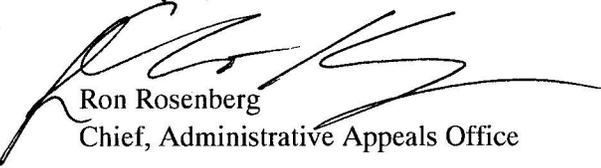
ON BEHALF OF PETITIONER:
[REDACTED]

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 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.

The petitioner seeks immigrant classification pursuant to 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 his former U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his ex-wife during their marriage. On appeal, 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). 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 for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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)(I) of the Act are further explained in 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States on September 15, 2000, as a nonimmigrant student under an assumed name. The petitioner married T-B-¹, a U.S. citizen, on April 18, [REDACTED] Virginia. The marriage ended in divorce on December 11, 2012. The petitioner filed the instant Form I-360 self-petition on September 13, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, T-B-'s battery or extreme cruelty. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

We conduct appellate review on a *de novo* basis. 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. Counsel's claims submitted on appeal do not overcome the director's ground for denial and the appeal will be dismissed.

Battery or Extreme Cruelty

The petitioner did not initially submit any evidence to show that he had been subjected to battery or extreme cruelty by T-B- during their marriage. In response to the RFE, the petitioner submitted a letter

¹ Name withheld to protect the individual's identity.

from licensed social worker [REDACTED] Mr. [REDACTED] opined that T-B- subjected the petitioner to psychological, sexual, economic and spiritual abuse. Mr. [REDACTED] stated that T-B- socially isolated the petitioner, denied him physical intimacy, controlled their finances, mismanaged their money, and failed to disclose to the petitioner that she had previously declared bankruptcy. According to Mr. [REDACTED] T-B- had previously been convicted of child abuse against her son from a prior marriage, and her anger and rage sometimes frightened the petitioner. In addition, Mr. [REDACTED] stated that the petitioner felt that his ex-wife blamed him for their first child's sudden death, a traumatic event that often results in a couple's subsequent divorce.

The record contains no personal statement from the petitioner describing any of T-B-'s behavior in his own words. A death certificate shows that the former couple's first child died from meningitis when he was six months old, but the record does not establish any connection between this tragic event and any battery or extreme cruelty inflicted upon the petitioner by T-B- during their marriage. The record also lacks evidence that the other actions of T-B-, as briefly described by Mr. [REDACTED] constituted battery or extreme cruelty as that term is defined under the regulation at 8 C.F.R. 204.2(c)(1)(vi).

On appeal, counsel contends that Mr. [REDACTED] letter alone should have been satisfactory evidence that T-B- subjected the petitioner to "extreme hardship." Counsel cites the incorrect standard. The petitioner must establish that his ex-wife subjected him to battery or extreme cruelty, not extreme hardship, during their marriage. Section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I); 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence does not establish that the petitioner's ex-wife ever battered him, or that her behavior included actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner failed to establish the requisite battery or extreme cruelty and consequently failed to demonstrate any connection between his divorce and any such battery or extreme cruelty. Therefore, beyond the director's decision, the petitioner has also 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)(I)(aa)(CC)(ccc) and (cc) of the Act.²

Conclusion

On appeal, the petitioner has failed to establish that his former spouse subjected him to battery or extreme cruelty during their marriage, that he had a qualifying relationship with his former spouse and was eligible for immediate relative classification based on their former marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

² 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).

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NON-PRECEDENT DECISION

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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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.