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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

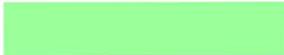


U.S. Citizenship
and Immigration
Services



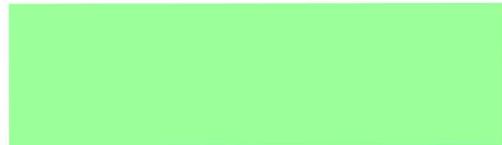
Date: **OCT 21 2014**

Office: VERMONT SERVICE CENTER File: 

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner 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.

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 . . . 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Armenia who arrived in the United States on April 16, 2002 without possessing or presenting a valid entry document. On June 11, 2002, the petitioner was placed in removal proceedings and he applied for asylum as relief from removal. His asylum application was denied on October 23, 2002 and he was ordered removed to Armenia. The Board of Immigration Appeals (BIA) dismissed a subsequent appeal on February 27, 2003.¹

The petitioner married R-A-, a U.S. citizen, in California on February 27, 2012.² The petitioner filed the instant Form I-360 on July 15, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

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. The appeal will be dismissed for the following reason.

Battery or Extreme Cruelty

¹ On September 2, 2014, the Ninth Circuit Court of Appeals denied a petition for review filed by the petitioner.

² Name withheld to protect the individual's identity.

The evidence submitted below and on appeal does not establish that the petitioner's wife subjected him to battery or extreme cruelty. In his initial statement, the petitioner recounted that his wife accused him of being unable to financially support her and she insulted him. He stated that during one argument she called him names, used obscene language and then spent the night at her friend's house. The petitioner recounted that his wife spent time with her friends and was disrespectful to his parents. He stated that they had arguments and she humiliated him and called him names. The petitioner recounted that before their separation his wife told him that she was pregnant from an extramarital affair and then she abandoned him. In response to the RFE, the petitioner reiterated that his wife called him names, she was disrespectful to his parents, and she had an extramarital affair. He also stated that his wife made offensive comments, disregarded his family values and threatened to withdraw her Form I-130 petition. The petitioner's statements do not indicate that his wife ever battered him or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted a psychological evaluation, dated July 9, 2013, from [REDACTED] a clinical psychologist. Dr. [REDACTED] diagnosed the petitioner with anxiety and depression. He stated that the petitioner's wife made offensive comments and called him names, she threw "little" objects at him, and she had an extramarital affair. However, the petitioner in his statements does not mention that his wife threw objects at him and the one-sentence description of these incident(s) fails to provide any additional probative information. The remaining incidents discussed by Dr. [REDACTED] including the petitioner's wife's name calling and extramarital affair, do not constitute battery or extreme cruelty as defined in the regulation.

The petitioner submitted letters from his friends, [REDACTED] Ms. [REDACTED] stated that she invited the couple over to her home for dinner and witnessed that the petitioner's wife called the petitioner names. Mr. [REDACTED] stated that he witnessed the petitioner's wife become upset and she called the petitioner names when they had a disagreement over their evening plans. [REDACTED] stated that when they made an unscheduled visit to the couple's residence, the petitioner's wife became upset and called the petitioner names and pushed him. The petitioner, however, does not describe any instances of physical violence during his marriage. The other behaviors described by the petitioner's friends, including name calling and the disagreements between the couple, do not constitute battery or extreme cruelty as defined in the regulation.

The petitioner submitted evidence that he was involved in car accidents on November 30, 2010, August 7, 2011, January 23, 2012, September 16, 2012, February 7, 2013 and that he was the pedestrian victim of a car accident on October 3, 2007. In his first statement, the petitioner recounted that he was a limousine driver and he had seven accidents because he was stressed and tired during his marriage. However, the petitioner stated on his Form I-360 that he began residing with his wife in July 2012. The majority of the accidents occurred prior to this date. Regardless, the petitioner has failed to establish any type of causal relationship between the accidents and his relationship with his wife.

On appeal, the petitioner asserts that the Ninth Circuit Court of Appeals in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003) evaluated domestic violence in the context of professional and clinical understandings of violence within intimate relationships. The petitioner contends that Dr. [REDACTED] determined that he is "a person of abnormal sensitivity" and therefore actions that may seem just

offensive to an ordinary person were extremely cruel to the petitioner. The petitioner further asserts that he was subjected to verbal abuse, social isolation, possessiveness and he suffered a diminished quality of life. A full review of the evidence shows no error in the director's decision. The petitioner in his statements indicated that his wife engaged in name calling, was disrespectful towards his parents, argued with him over finances, had extramarital affair and abandoned him. These behaviors do constitute threatened violence, psychological or sexual abuse, or other acts that are a part of an overall pattern of violence. See 8 C.F.R. § 204.2(c)(1)(vi). While we recognize that Dr. [REDACTED] found the petitioner to be of heightened sensitivity, the petitioner has failed to demonstrate how his wife's behaviors constituted tactics of control intertwined with the threat of harm in order to maintain her dominance through fear. See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

In addition, the petitioner has failed to establish that the facts constituting extreme cruelty in *Hernandez* are analogous to the actions of the petitioner's wife as described in the record. The plaintiff in *Hernandez* was subject to years of her abusive spouse's cycle of violence including brutal beatings and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, periods of contrition and emotional manipulation to convince the petitioner to return to him after she had sought refuge with a relative in the United States. *Hernandez v. Ashcroft*, 345 F.3d at 829-32, 840-41. The *Hernandez* court determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Id.* at 840. In this case, the record does not demonstrate that the petitioner's wife's verbal insults and demands were similarly part of any overall pattern of violence or otherwise constituted extreme cruelty under the regulation. Accordingly, the petitioner has not established that his 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.

Conclusion

On appeal, the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.