



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 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:

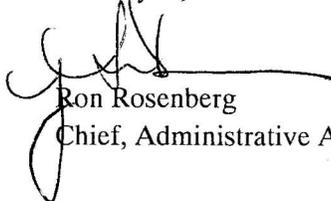
SELF-REPRESENTED

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 Vermont Service Center acting 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 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 was subjected to battery or extreme cruelty by his wife during their marriage. On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

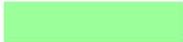
Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, 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 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 . . . 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 Guatemala who claims he entered the United States on [REDACTED] 1994. The petitioner married A-C¹, a U.S. citizen, on [REDACTED] 2004, in [REDACTED] Georgia. The petitioner filed the instant Form I-360 on September 17, 2012. The director subsequently issued a Request for Evidence (RFE) of A-C's battery or extreme cruelty. The petitioner 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 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 petitioner's claims and the evidence submitted on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's letter and a printout of an article posted online by [REDACTED]; titled "[REDACTED]."

¹ Name withheld to protect the individual's identity.

In his letter submitted in response to the RFE, the petitioner stated that initially, they were a happy couple and got along well. He stated that suddenly, his wife stopped attending church with the family, took all the money from his paycheck, and started wearing sexy clothes. He recounted that she began calling him names, told him that she no longer loved him, and was unfaithful. The petitioner then stated that a week later, his wife disappeared with their children. The petitioner stated that he has had no contact with A-C- and that he is depressed about not seeing his children. He further stated that he is fearful that A-C- will have him deported. However, the petitioner did not cite to specific examples or incidents of abuse or provide any probative details about A-C-'s treatment of him. The article submitted by the petitioner discusses general characteristics of abusive women and briefly lists why men stay in abusive and violent relationships. While the article may be a helpful tool in domestic violence counseling, it does not show that the petitioner's spouse subjected him to battery or extreme cruelty.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). On appeal, the petitioner submits a brief and affidavits from friends and family [REDACTED] and [REDACTED].

In his brief, the petitioner states that there is no doubt he was subjected to battery and extreme cruelty by his wife. He states that due to his religious convictions, he has never sought medical assistance. We acknowledge that the petitioner may not have sought counseling or other medical treatment due to his religious beliefs. The preponderance of the evidence does not, however, establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. Despite his claims of A-C-'s abandonment and name calling, the petitioner does not further discuss in probative detail any specific incidents that demonstrated that she ever 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). In his affidavit, [REDACTED] states that the petitioner relayed to him that A-C- began wearing provocative clothes and was unfaithful. Mr. [REDACTED] further states that he observed the petitioner become depressed and that in February of 2012, A-C- left the petitioner taking the children with her. In his affidavit, [REDACTED] states that he is married to the petitioner's sister and describes an incident when A-C- tried to fight with his wife on December 24, 2012. He further states that the petitioner is devastated by the disappearance of his children. [REDACTED] the petitioner's father, states that he witnessed A-C- lose her temper and threaten to deport him and the petitioner around October 2012. None of the affiants substantively described the specific incidents of abuse that were personally witnessed or otherwise establish their knowledge of the claimed abuse.

On appeal the petitioner also cites to the Ninth Circuit Court of Appeals case, *Hernandez v. Ashcroft*, 345 F.3d. 824, 838 (9th Cir. 2003) arguing that the "acts of manipulation and threats of restriction and abuse" that he was subjected to by A-C- are similar to the "scheme which the *Hernandez* Court has held rises to the level of domestic violence."² *Petitioner's Brief* at p. 3. The record does not support the petitioner's claims, however, and his reliance on *Hernandez* is misplaced. In *Hernandez*, the Ninth Circuit Court of Appeals held that extreme cruelty can be assessed under objective standards and is a

² Although the petitioner does not provide a legal cite to the Ninth Circuit case he referenced in his brief, it is presumed that he is referring to *Hernandez v. Ashcroft*, 345 F.3d. 824.

clinical, nondiscretionary determination subject to judicial review. *Hernandez v. Ashcroft*, 345 F.3d at 833-35. As the petitioner's case arose outside of the Ninth Circuit, *Hernandez* is not a binding precedent. Moreover, the majority of circuits have held, including the 11th Circuit which has jurisdiction over the instant case, that contrary to *Hernandez*, extreme cruelty is a discretionary determination not subject to judicial review. *Bedoya-Melendez v. U.S. Att'y Gen.*, 680 F.3d 1321 (11th Cir. 2012); *Rosario v. Holder*, 627 F.3d 58 (2d Cir. 2010); *Johnson v. U.S. Att'y Gen.*, 602 F.3d 508 (3d Cir. 2010); *Stepanovic v. Filip*, 554 F.3d 673 (7th Cir. 2009); *Wilmore v. Gonzalez*, 455 F.3d 524 (5th Cir. 2006); *Perales-Cumpean v. Gonzalez*, 429 F.3d 977 (10th Cir. 2005).

Finally, even if we were to defer to *Hernandez* as persuasive authority in this case, the facts constituting extreme cruelty in *Hernandez* are in no way 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, a stabbing in Mexico, and constant verbal abuse. In addition, the plaintiff in *Hernandez* was subjected to periods of contrition and emotional manipulation to convince her to return to her abusive spouse 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 A-C-'s verbal insults, monetary demands, and abandonment were similarly part of any overall pattern of violence or otherwise constituted extreme cruelty under the regulation and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that he was subjected to battery or extreme cruelty by his wife 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). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.