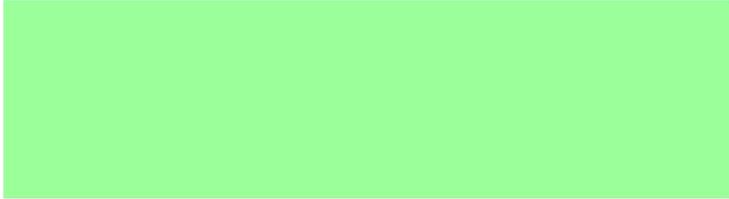




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 22 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:

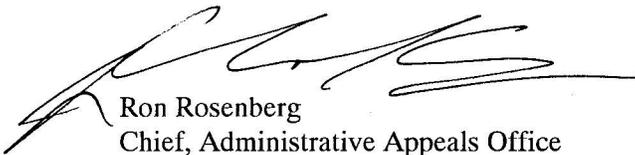


INSTRUCTIONS:

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,


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 and the petition will remain denied.

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 had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief.

Applicable Law

Section 204(a)(1)(A)(iii) 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 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:

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 Korea who entered the United States on March 26, 2009, as a B2 nonimmigrant visitor. The petitioner married his U.S. citizen wife on August 29, 2009, in California. The petitioner filed the instant Form I-360 self-petition on May 26, 2011. The director subsequently issued a request for additional evidence (RFE) of, among other things, his 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 submits a brief asserting that the director applied the wrong evidentiary standard.

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 establish the petitioner's eligibility. On appeal, the petitioner has failed to establish that he was subjected to battery or extreme cruelty by his wife during their marriage.

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 counsel's assertions on appeal fail to overcome this ground for denial. In his affidavit, the petitioner stated that his wife drank alcohol and used drugs, screamed at him, called him names, and hurled things. The petitioner described how he caught his wife cheating on him with another man. He stated that his wife spoke aggressively, used hateful words, and yelled at him.

The petitioner also submitted three statements from friends and family. In his statement, the petitioner's friend, [REDACTED] indicated that the petitioner told him that his wife was addicted to drugs and alcohol, was verbally abusive and that she cheated on the petitioner with another man. In her statement, the petitioner's sister in law, [REDACTED] stated that the petitioner and his wife had marital problems related to his wife's use of drugs. [REDACTED] the petitioner's employer, indicated that the petitioner told him about his wife's violent character and her problems with drinking alcohol and smoking. None of the affiants provided any probative descriptions of any particular incident of battery or extreme cruelty.

The petitioner submitted a treatment verification letter prepared by [REDACTED] a counselor. Ms. [REDACTED] conveyed the petitioner's report that his wife used their money to buy drugs and threatened to report the petitioner to immigration, but made no mention of any incidents of battery. Ms. [REDACTED] indicated that the petitioner was diagnosed with major depressive disorder and anxiety. The petitioner himself never mentioned that his wife threatened to report him to immigration, and Ms. [REDACTED] letter does not offer any probative descriptions of any particular incidents of battery or extreme cruelty.

The petitioner's statements and the other relevant evidence do not indicate that his wife's behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). When considered in the aggregate, the relevant evidence also fails to establish that the petitioner's wife subjected him to battery during their marriage. The petitioner recounted that his wife threw things, but he failed to provide a probative description of these events or show that the incidents resulted or threatened to result in physical or mental injury. *See* 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also did not establish that any other acts were part of an overall pattern of violence. *Id.*

On appeal, counsel discusses the Congressional Intent of the Violence Against Women Act, and contends that the director erred by not applying the "any credible evidence" standard because she believes the petitioner submitted ample details of the abuse in his affidavit. In these proceedings, U.S. Citizenship and Immigration Services (USCIS) must "consider any credible evidence relevant to the petition," However, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). On appeal, counsel does not cite any specific relevant evidence that the director did not address and the record reveals no violation of the statute or the regulations in the proceedings below. We do not discount the harm the petitioner's wife caused him,

but to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the cruelty be extreme. The acts of the petitioner's wife as described by the petitioner, his sister-in-law and friends did not include battery, psychological or sexual abuse, or other behavior that was part of an overall pattern of violence or otherwise constituted extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi).

Conclusion

On appeal, the petitioner has not established 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.