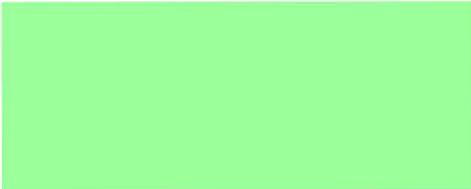


(b)(6)

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

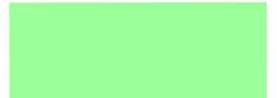


U.S. Citizenship
and Immigration
Services

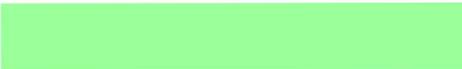


Date: SEP 25 2014

Office: VERMONT SERVICE CENTER File:

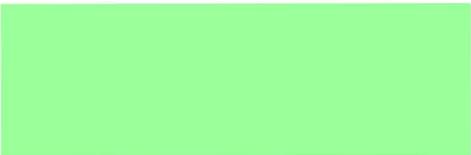


IN RE: Self-Petitioner:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 sustained.

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 on the basis of her determination that the petitioner failed to establish that he was subjected to battery or extreme cruelty by his wife.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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 Nigeria who entered the United States on June 7, 2001, as a nonimmigrant visitor. On August [REDACTED] the petitioner married a U.S. citizen in [REDACTED] New York. The petitioner filed the instant Form I-360 self-petition on May 1, 2012. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the requisite abuse inflicted upon him by his wife during their marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility and denied the petition accordingly.

The petitioner filed a timely appeal. On appeal, the petitioner submits an affidavit and a letter that indicates that he is attending weekly group therapy sessions.

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 establishes the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal demonstrates that the petitioner's wife subjected him to battery and extreme cruelty. In his first affidavit, the petitioner stated that his wife smoked a lot and came home drunk. He also recounted that she had mood swings and would call him names,

stopped talking to him, and began avoiding sex. In his affidavit in response to the second RFE, the petitioner added that he suffered from “battery in pain,” fear, and depression. He indicated that on several occasions, his wife threw slippers, a comb or food at him. On one occasion she threw a plate at him and it hit him in the mouth, causing his dentures to dislocate and his mouth to bleed. He recalled that his wife’s cruelty included physical attacks, verbal abuse, and denial of sex.

The petitioner also submitted affidavits from friends and family that indicated that the petitioner’s wife was abusive towards him. The petitioner’s brother, [REDACTED] submitted three affidavits in which he stated that the petitioner’s wife threw food at him, drank and smoked excessively, and dated other men. He also indicated that the petitioner’s wife abused him physically and verbally, and that on one occasion she beat him so badly that he had blood stains on his clothes from an attack that broke his dentures. [REDACTED] stated that he witnessed the petitioner and his wife arguing and that his wife was very drunk. [REDACTED] the petitioner’s cousin, recalled that he observed the petitioner’s wife cursing and insulting the petitioner, calling him horrible names, and throwing slippers and a comb at him. The director determined that the petitioner and his affiants had described “an unhealthy relationship,” but that the evidence was insufficient to establish that the petitioner’s wife subjected him to battery or extreme cruelty.

On appeal, the petitioner submits a fourth affidavit, further describing the abusive treatment he experienced. In his affidavit on appeal, the petitioner further describes the incident in which his wife threw a plate at his face. He also indicates that on another occasion, his wife threw hot food on him and he was burned so badly that he immediately went to the drugstore to purchase medicine. The petitioner states that his wife physically abused him which often caused him physical pain, and that she also manipulated him. He indicates that he feared that his wife’s abuse might escalate and that he was worried she might at some point grab a kitchen knife or other weapon to attack him. The petitioner indicates that as a result of his wife’s actions, he developed high blood pressure and depression, for which he still receives treatment.

The petitioner also submitted paperwork from the [REDACTED] regarding his mental health. Dr. [REDACTED] diagnosed the petitioner with major depression disorder with psychotic features. Dr. [REDACTED] opined that the petitioner’s depression began when the petitioner’s wife left him, and noted that the petitioner believed his wife was having an affair. On appeal, the petitioner submits a letter from [REDACTED] a psychotherapist at the [REDACTED], which indicates that the petitioner receives weekly group therapy sessions and is meeting with a psychiatrist for medication monitoring. This information supports the petitioner’s claim of being subjected to battery and extreme cruelty by his wife.

Upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director’s denial. The petitioner has submitted affidavits that describe in probative detail the battery he suffered. He has also submitted medical information which indicates that he is suffering from major depression disorder with psychotic features as a result of his wife’s abuse. The record establishes that the petitioner’s wife subjected him to physical harm and a cycle of threatened violence over the course of their marriage. The preponderance of the evidence demonstrates that the petitioner’s wife subjected him to battery and 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 overcome the director's determination and established that his wife subjected him to battery or extreme cruelty during their marriage. Consequently, the petitioner is eligible 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 now been met.

ORDER: The appeal is sustained and the petition is approved.