

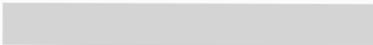


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **APR 03 2015** 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 Acting 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 a U.S. citizen spouse.

The director denied the petition, as the petitioner failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief, new evidence and previously submitted 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 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 explained 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 Cameroon who entered the United States as a nonimmigrant visitor on February 11, 2010. The petitioner married B-M-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2011, in [REDACTED] Ohio. The petitioner filed the instant Form I-360 self-petition on December 6, 2013. The director subsequently issued a Request for Evidence (RFE) of, in part, the petitioner's wife's battery or extreme cruelty. The petitioner 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 review these proceedings *de novo*. The petitioner's claims and the additional 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*

The director correctly determined that the petitioner did not establish that his wife subjected him to battery or extreme cruelty. The record below consisted of the following relevant evidence: two statements of the petitioner; letters from [REDACTED] and [REDACTED]; two police reports; and a letter from the petitioner's co-worker. The police report indicated that the petitioner called the police on

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<sup>1</sup> Name withheld to protect the individual's identity.

September 28, 2013, and reported that his wife had been harassing him for six months. The report further indicated that the harassment was not physical and that B-M- made the petitioner's daily life miserable. The report did not give sufficient detail about any specific instances of abuse or of any pattern of mental cruelty toward the petitioner. The petitioner submitted a copy of a second police report taken in response to his employer's complaint of telephone harassment from B-M- that did not add any probative details regarding the claimed abuse.

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). The petitioner recounted in his first statement that he and B-M- got along very well until he obtained his work permit in October 2011 and started working at a job making \$8.00 per hour, after which time she started harassing him for not making enough money. He stated that she was angry with him because he had expenses for his children in Cameroon and other financial obligations, and that she verbally abused him and threatened him with deportation on a daily basis. He indicated that B-M- went to Cameroon in late 2012 where she reunited with the father of her son, and that afterward, she no longer wanted to sponsor the petitioner for an immigrant visa. The petitioner indicated that B-M- started cheating on him, made him move to the basement, refused marital relations, and forced him out of the house on September 19, 2013. In his second statement, he indicated that she called his employer in December and told them that the petitioner did not have work permission.

the petitioner's maternal niece and B-M-'s paternal cousin, stated that she introduced the petitioner to B-M- and that they started having trouble when B-M- returned from Cameroon. a friend of 30 years, stated that B-M- shouted at the petitioner, threatened him, and wanted him to move to Canada so that she could bring her son's father to the United States. Ms. also indicated that B-M- sent the petitioner's work permit back to the authorities so that he could not work. the petitioner's co-worker, stated that B-M- called the office in December 2013 to inform them that the petitioner did not have work permission. Ms. Ms. and Ms. did not further describe the mentioned incidents or provide substantive information about other specific instances of abuse that could be categorized as battery or extreme cruelty.

On appeal, the petitioner submits: a third personal statement; letters from friends and ; medical records; photographs; and previously submitted evidence. In his statement, the petitioner states that B-M- continually insulted, disrespected and lied to him. On one occasion, the petitioner states that B-M- pulled his shirt and locked him in the bedroom before her son intervened. On another occasion, the petitioner states that B-M- locked him out of the house for not taking her son to soccer practice and then threw water on him. The petitioner does not further describe these incidents or provide probative details about other specific incidents of abuse. The petitioner also states that he felt threatened by B-M-'s younger brother in Cameroon and added that culturally, it was very insulting for the petitioner to do 80% of the housework as well as wash the dishes for B-M- and her son. We acknowledge that the petitioner's cultural background may affect his response to his wife's negative behavior. However, the petitioner does not provide sufficient information regarding the claimed abuse and the evidence does not establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage.

In addition to his personal statement submitted on appeal, the petitioner submits letters from friends and family. [REDACTED], a friend and business associate, states that one night he returned with the petitioner to his home, and B-M- had locked the petitioner out because she was angry that the petitioner was too late to take her son to soccer practice. [REDACTED] states that he has known the petitioner for 30 years, and that the petitioner told him that B-M- left him hungry before he started working, and that B-M- called the petitioner's work once with a baseless claim. [REDACTED], a friend, said that B-M- told her that she had called the petitioner's employer to report that the petitioner was working illegally. [REDACTED] the petitioner's cousin, states that the petitioner cooked and cleaned for B-M- and her son at the same time that B-M- called people to complain about the petitioner. The testimony of these witnesses, though consistent with the petitioner's claims, do not provide sufficient probative details to demonstrate that B-M-'s treatment of the petitioner constituted battery or extreme mental cruelty as those terms are defined by the regulations.

On appeal, the petitioner also submits medical records indicating that he experienced chest pain in March 2014. Upon review of medical tests, the attending physician indicates that the EKG was normal and that the blood work did not show significant abnormalities. The physician states that the petitioner reported anxiety and stress, and recommended follow up with a cardiologist. The report does not state that the petitioner's health problems are a result of the claimed abuse by B-M-. Likewise, the photographs of the petitioner at the hospital show that he received medical treatment but they do not establish that B-M-'s behavior caused his health problems. Upon review of all of the evidence, the record does not establish that B-M- ever battered or threatened the petitioner 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) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Moral Character*

Beyond the decision of the director, the petitioner has also not established his good moral character.<sup>2</sup> The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in December 2010 and ending in December 2013). The record contains a criminal record search from Ohio covering the requisite three-year period. Nevertheless, USCIS records indicate that a Maryland District Court, [REDACTED] issued a temporary restraining order against the petitioner on April 14, 2011, alleging the commission of a crime (case number [REDACTED]). The record does not contain a resolution of this matter. As such, the petitioner's good moral character has not been established. For this additional reason, the petition may not be approved

<sup>2</sup> 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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*Conclusion*

On appeal, the petitioner has failed to establish his wife's battery or extreme cruelty, and beyond the decision of the director, that he is a person of good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii)(I) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.