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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **AUG 07 2015**

[Redacted]

IN RE: 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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the petition. 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the petitioner had a qualifying relationship with his spouse, was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, and had been battered or subjected to extreme cruelty by his spouse. On appeal, the petitioner submits statements and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 clause (ii) or (iii) of subparagraph (B) 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 regulation at 8 C.F.R. § 204.2(c)(1) provides, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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:

(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

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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, a native and citizen of Jordan, last entered the United States on September 4, 2007 as a B-2 nonimmigrant visitor. He married R-M-¹ a U.S. citizen, on [REDACTED] in [REDACTED] Texas. The petitioner filed the instant Form I-360 on July 27, 2012. The director issued Requests for Evidence (RFE) of, among other things, the petitioner's qualifying relationship with R-M- and battery or extreme cruelty. The petitioner responded to the RFEs with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

¹ Name withheld to protect the individual's identity.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not demonstrate that the director's decision to deny the petition was in error. Therefore, we will dismiss the appeal.

Qualifying Relationship and Corresponding Eligibility for Preference Immigrant Classification

The preponderance of the evidence does not demonstrate that the petitioner has a qualifying relationship with his U.S. citizen spouse and, accordingly, that he is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act.

Prior to marrying R-M-, the petitioner was married in Jordan. In support of the Form I-360 petition, he submitted three different documents and accompanying certified English translations, all of which were labeled "Final Divorce Decree." The first document was a Final Divorce Decree by Sharie'a Judge from the H.K. of Jordan, Ministry of Interior, Amman Sharie'a Court (Amman Court decree). The date at the top of the document is [REDACTED]. The body of the document states that the petitioner divorced his wife on [REDACTED] and that the judge certified "that this is a final divorce." The second document the petitioner submitted was a Final Divorce Decree from the H.K. Jordan "Spreme Judge Department," Shmeisani Sharie Court (Shmeisani Court decree). This document also bore the date of [REDACTED] but stated that the petitioner and his wife had "a revocable divorce." We also note that in relation to proceedings before the Board of Immigration Appeals regarding a Form I-130, Petition for Alien Relative, that R-M- filed on the petitioner's behalf, the petitioner submitted a substantially different English translation of the Shmeisani Court decree. Finally, the petitioner submitted a Final Divorce Decree from the H.K. of Jordan, Ministry of Interior, Civil Status & Passport Department, indicating that the date of divorce was [REDACTED] (Civil Status & Passport Department decree).

The director found that the petitioner had not explained the discrepancies between the three different Final Divorce Decrees he submitted or established that any of the documents was genuine. On appeal, the petitioner re-submits a copy of the Civil Status & Passport Department decree. He also provides an affidavit in which he states that, although he "started [his] first divorce" in [REDACTED] it was later revoked. However, he asserts that his divorce was absolutely final on [REDACTED] which is the date reflected in the Civil Status & Passport Department decree. The petitioner also addresses the other dates on this decree, claiming that [REDACTED] was the date the divorce was registered with the Ministry, and that [REDACTED] was the date the copy of the decree was issued to the petitioner's brother, who requested it under a Power of Attorney.

Despite the petitioner's explanation on appeal, the evidence does not demonstrate that the petitioner was divorced from his first wife when he married R-M-. The petitioner's claim that his divorce became final on [REDACTED] conflicts with the Amman Court decree, which stated that the petitioner received a final divorce on [REDACTED]. The petitioner also has not explained why the Amman Court decree, which stated he had a final divorce, and the Shmeisani Court decree, which stated he had a revocable divorce, were both dated [REDACTED]. In addition, the petitioner has not credibly explained the circumstances by which he and his first wife, who he claimed to divorce on [REDACTED] had a child on [REDACTED].

The petitioner has not submitted sufficient reliable documentation of his divorce from his first wife. Therefore, the petitioner has not established that he has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Battery or Extreme Cruelty

The preponderance of the evidence also does not establish that the petitioner was battered or subjected to extreme cruelty by his U.S. citizen spouse. In an affidavit submitted on appeal, the petitioner alleges that R-M- gave birth to his daughter and then “ran away with her after 4 days of her birth.” He explains that R-M- told him she was going to visit a friend in [REDACTED] but never returned. Additionally, the petitioner claims that R-M- was arrested four times and the petitioner bailed her out.

The record does not demonstrate that R-M- “ran away” with the petitioner’s infant daughter without his permission. To support his claim, the petitioner submits a copy of the birth certificate of his daughter. Although this document establishes that the petitioner is his daughter’s father, it does not establish that his daughter was abducted or otherwise involved in an abusive incident perpetrated by R-M-. Additionally, the record contains a Notice of Rescheduled Negotiation Conference (Notice), dated February 15, 2012, regarding child support for the petitioner’s daughter. The Notice indicates that R-M- is the custodial parent and that the petitioner is the non-custodial parent. This document indicates that the petitioner has been notified of formal discussions through which he can communicate with R-M- regarding his daughter’s support and care; it does not support a finding that R-M- took the petitioner’s daughter without authorization. Although the petitioner previously submitted an affidavit from a neighbor, [REDACTED] who stated that the petitioner told her that R-M- and his daughter were “away,” [REDACTED] statement did not establish the circumstances of their departure.

In his affidavits submitted with his petition, the petitioner indicated that R-M- became addicted to drugs and alcohol and began committing crimes. He stated that, when R-M- was under the influence of drugs and alcohol, she was physically and verbally violent toward him. He claimed that R-M- threw things at him, including dishes and other kitchen items, shoes, and clothing, and “thr[e]w punches” at him. He also stated that, on one occasion, R-M- dropped a pot on his foot, disregarding the sensitivity of his feet due to diabetes. According to the petitioner, R-M- became more angry and violent when he tried to calm her down. The petitioner further stated that R-M- once hit him with a wrench, leaving a bruise on his arm, and on another occasion threw her purse in his face and shoved him out of the way when he tried to prevent her from going out in the middle of the night. He also claimed that R-M- spent all of the grocery money on drugs, and physically and verbally attacked him when he would not give her more money. Additionally, he stated that R-M- used drugs and alcohol while pregnant and eventually moved away with their baby daughter, refusing to return because she feared the petitioner would take their daughter away from her.

As further support of his claims, the petitioner submitted with his petition affidavits from several friends, two of whom discussed the behavior of R-M-. [REDACTED] stated that the petitioner informed him that he was having problems with R-M- due to her strange and aggressive

behavior. [REDACTED] reported learning from the petitioner that R-M- was abusing drugs and alcohol, not answering the petitioner's calls, staying out very late, and getting arrested. [REDACTED] indicated that, at the petitioner's request, he called R-M- on four occasions in an effort to help resolve the problem. He claimed that he told R-M- that she was hurting the petitioner by abusing drugs and alcohol, and that R-M- agreed and promised to change. According to [REDACTED] after each of his calls with R-M-, the petitioner later told him that R-M- continued to use drugs and alcohol, was arrested again, got "extremely mad and extremely aggressive" when the petitioner tried to help her, spent the petitioner's money on drugs, and threw household items at the petitioner. Another friend, [REDACTED] made similar claims in his affidavit. [REDACTED] stated that the petitioner asked him to call R-M- to help resolve their marital problems caused by R-M-'s drug and alcohol abuse. He asserted that the petitioner told him that, while under the influence of drugs and alcohol, R-M- was aggressive and angry, particularly when the petitioner attempted to prevent her from going out or using more drugs. According to [REDACTED] R-M- told him that she would change her behavior, but he later learned from the petitioner that the situation continued.

The evidence indicates that R-M- abused drugs and alcohol, spent time away from the home while under the influence, used the petitioner's money to support her habits, became angry when the petitioner attempted to prevent her from using drugs and alcohol, threw household items at him, and was arrested. However, the record does not contain detailed, probative accounts of specific instances of abuse amounting to violent acts, psychological or sexual abuse, or an overall pattern of violence, or which otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). In addition, the information contained in the affidavits provided by the petitioner, regarding abusive behavior by R-M-, all originated with the petitioner and none of the affiants presented any credible, firsthand accounts of abuse. The petitioner has not demonstrated by a preponderance of the evidence that he was the victim of battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The record does not demonstrate by a preponderance of the evidence that the petitioner has a qualifying relationship with R-M-, is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, and was battered or subjected to extreme cruelty by his spouse. Accordingly, he has not established eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

In these proceedings, the petitioner bears the burden of proving by a preponderance of the evidence that he is eligible for the 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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal dismissed.