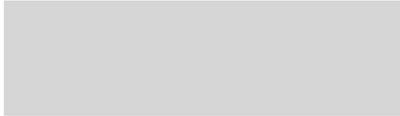




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 11 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [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,

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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 been battered or subjected to extreme cruelty by his spouse. On appeal, the petitioner submits a statement, a self-completed questionnaire regarding extreme cruelty, and copies of previously submitted affidavits and 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 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:

(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.

* * *

(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 Romania, last entered the United States on October 9, 2013 as a B-1 nonimmigrant visitor.¹ He married S-B-² a U.S. citizen, on [REDACTED] in [REDACTED] Nevada. The petitioner filed the instant Form I-360 on May 13, 2014. The director issued two Requests for Evidence (RFE) of, among other things, battery or extreme cruelty by S-B-. The petitioner responded to the RFEs with additional evidence. The director found the evidence insufficient to establish that the petitioner had been battered or subjected to extreme cruelty by S-B-. The director denied the petition and the petitioner filed a timely appeal.

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.

Battery or Extreme Cruelty

The preponderance of the evidence does not demonstrate that the petitioner was battered or subjected to extreme cruelty by his U.S. citizen spouse. In the affidavit he submitted with his Form I-360, the petitioner stated that his marriage with S-B- was "not working" and had started "to look like . . .

¹ At the end of his statement on appeal, the petitioner included a handwritten note that he planned to depart the United States on December 29, 2014 and would await our decision from abroad. He also submitted a Form I-512L, Authorization for Parole of an Alien Into the United States, and an electronic message (email) regarding an airline ticket purchased in his name.

² Name withheld to protect the individual's identity.

enemy territory.” He claimed that he and S-B- could not live together any longer because “the tension it is rising every day,” and that they “have very different opinions.” The affidavit included a post-script which stated, “I, [S-B-], [the petitioner’s] wife, am in a healing period. When [the petitioner] and I met we got married rather quickly because of our circumstances. Unfortunat[e]ly we are both struggling with issues/differences that are culminating in a dangerously unhealthy situation.”

In a subsequent affidavit, dated October 14, 2014, the petitioner asserted that he filed Form I-360 because S-B- suggested he do so. He stated that, although S-B- had planned to submit an immigration petition on his behalf, those plans were disrupted by “[a] tensioned situation, strong feelings, strange reasons, fights, dispute, stress, etc.” The petitioner stated that, soon after their marriage, S-B- began to act differently “because she got a strong feeling and she said something bad will happen.” According to the petitioner, during the next several months, S-B- frequently expressed fear and anxiety, became suspicious of the petitioner, accused him of having affairs, and argued with him. He also stated that S-B- asked him to close his cellular phone and social media accounts, screamed at him, insulted him, “thr[ew] her knees on [his] chest,” and said she wanted to punch him. He claimed that S-B- made him feel afraid, intimidated, humiliated, and socially isolated. The petitioner also contended that S-B-’s behavior resulted in the couple’s inability to maintain stable housing, either because landlords asked them to leave or because S-B- felt anxious about certain living situations. He claimed that he accompanied S-B- during an appointment with a doctor, who advised S-B- to seek psychological care for anxiety, but that S-B- refused to seek mental health treatment.

In his statement filed on appeal, the petitioner asserts that he has been affected physically and emotionally “by a tensioned marriage” and “disintegration” of his life and health. He notes that it was degrading for him to be dependent on S-B- and that she attempted to control him through insults. According to the petitioner, S-B- treated him like a “slave.” The petitioner lists many emotional and physical symptoms he is experiencing as a result of the stress of his marriage to S-B-. He also submits his responses to a questionnaire which he asserts is based on a report regarding extreme cruelty from the [REDACTED]. In the questionnaire, the petitioner indicates that S-B- often became angry, called him names, screamed at and threatened him, invaded his privacy, withheld money, and threatened to report him to immigration.

The petitioner’s descriptions of his relationship with S-B- do not indicate that she subjected him to battery or extreme cruelty as defined in the regulations. The petitioner states that S-B- struggled with anxiety, that it was difficult for her to make decisions and to maintain relationships, that she argued with and insulted him, and that he encouraged her to seek psychological treatment. The petitioner does not provide any probative detail regarding specific incidents of violence or abuse. Although the petitioner’s accounts demonstrate that S-B-’s actions were difficult for him and caused him stress, embarrassment, and frustration, he has not described behavior that involved violent acts or an overall pattern of violence amounting to battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(vi).

Additionally, the petitioner’s statement that it was S-B-’s idea for him to file Form I-360 does not support his claim that S-B- battered him or subjected him to extreme cruelty. Instead, it appears that

the petitioner and S-B- agreed that he would file a Form I-360 self-petition in order to obtain immigrant classification because S-B- did not fulfill her goal of filing a petition on his behalf. The petitioner also indicated in his October 14, 2014 affidavit that S-B-'s brother offered to help him file Form I-360 after efforts to complete an immigration petition with S-B- were unsuccessful because of "her issues." Finally, S-B-'s contribution to the petitioner's first affidavit, in which she stated that she was "in a healing period" and that she and the petitioner were "struggling with issues/differences," indicates that S-B- was struggling with mental health problems but supported the petitioner's efforts to obtain immigrant classification. The purpose of the self-petitioning provision under the Violence Against Women Act "is to prevent the citizen or resident [spouse] from using the petitioning process as a means to control or abuse an alien spouse," not to allow an alien to gain immigrant classification when his spouse will not or cannot file a petition on his behalf for reasons other than abuse. *VAWA 1994 Legislative History*, H.R. Rep. 103-395 (Nov. 20, 1993), available at 1993 WL 484760, p. 41. The evidence of record does not indicate that S-B- refused to file an immigrant petition on the petitioner's behalf as a means of control or abuse.

When considered in its totality, the evidence in the record is insufficient to establish that S-B-'s behavior toward the petitioner involved violent acts or an overall pattern of violence amounting to battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(vi).

Conclusion

The record does not demonstrate by a preponderance of the evidence that the petitioner was subjected to battery or extreme cruelty by U.S. citizen spouse. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proving eligibility 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 is dismissed.