



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-E-B-

DATE: DEC. 22, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a United States citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE LAW

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.

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

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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 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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Trinidad and Tobago, last entered the United States on October 18, 2007, as a nonimmigrant visitor. The Petitioner married Y-B-¹, a U.S. citizen, on [REDACTED] 2011, in New York. A Form I-862, Notice to Appear, was issued on December 14, 2012, placing the Petitioner into removal proceedings, which remain pending.

The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on July 17, 2014, based on his relationship with Y-B-. The Director subsequently issued a request for evidence (RFE) to establish, among other things, the requisite abuse. 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.

¹ Name withheld to protect the individual's identity.

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III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's ground for denial. The appeal will be dismissed for the following reasons.

A. Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal does not demonstrate that the Petitioner's spouse, Y-B-, subjected him to battery or extreme cruelty during their marriage. The Petitioner's written statements generally assert that Y-B- emotionally abused him utilizing various tactics, including having him falsely arrested, embarrassing and isolating him, and threatening him with his lack of immigration status. However, upon review, as explained in further detail below, his statements do not provide a coherent, credible, and detailed account or history of the alleged battery or extreme cruelty.

The Petitioner asserted that Y-B- had him falsely arrested on two occasions. In his statements he recounted the first arrest on [REDACTED] 2012², where he maintained that Y-B- called the police solely because he no longer wanted to remain in the relationship with her. He indicated that Y-B-, who had separately moved to Delaware, returned to see the Petitioner at their shared residence in New York, where he had continued to reside. The Petitioner maintained that Y-B- started an argument, called the police at some point without his knowledge, and then kept him from leaving the residence until the police arrived. He stated that as there was an order of protection in place against him, requiring him to stay away from Y-B- and her home, he was arrested for violating the order. The criminal charging document indicates that he was also charged with harassment and that Y-B- alleged that the Petitioner pushed her to the floor and held her down. The Petitioner stated that the charges were dismissed, as Y-B- did not appear in court. The Petitioner asserted that this incident is evidence of abuse. However, aside from stating that Y-B- started an argument and asserting that she falsely called the police, he does not provide any probative details of the underlying incident to demonstrate the requisite abuse. Further, the Petitioner does not explain why there was an order of protection in place against him. The record indicates that the Petitioner was aware of the protective order, and according to the statement of his friend, [REDACTED] he knew that he was legally prohibited from meeting with Y-B- at their prior shared residence.

The Petitioner also recalled a second incident in [REDACTED] 2012 during which he maintained Y-B- had him arrested on false charges. However, the Petitioner's two statements below provide an inconsistent account of the circumstances leading to his arrest. In his initial statement, dated April 8, 2013, the Petitioner discussed a verbal altercation during which Y-B- got a knife at one point and started swinging it. He recalled that both of them called the police, but only he was arrested for assault, because Y-B- had deliberately inflicted cuts on her own hands so she could "protect" herself,

² The Petitioner mistakenly indicated the year of the incident as 2013, but the record establishes that the incident occurred in 2012.

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as she explained to the Petitioner at the time. The Petitioner stated that the charges were ultimately dismissed because Y-B- did not appear in court. However, according to the Petitioner's initial statement, the altercation began after his spouse called him during the day, threatening to get rid of his belongings. When he arrived home, they had an argument because many of his belongings were already gone and she told him to get out. His second statement, dated November 22, 2014, appears to recount the circumstances of the same arrest, but inconsistently stated that the altercation was triggered because Y-B- thought the Petitioner was going to leave her. The record below and on appeal contains no explanation for this discrepancy, thereby diminishing the evidentiary weight of his claims.

As noted, the Petitioner's statements below generally described his relationship with Y-B-, both before and after their marriage, asserting that his spouse was jealous, isolated him from his friends, and threatened him about his status. He did not, however, provide substantive information about any particular incident to demonstrate how Y-B- controlled and isolated him. The Petitioner also described an incident that occurred sometime after April 2012, when Y-B- started acting erratically and ran out of the house screaming for help, causing the neighbors to call the police.³ Although the police initially detained the Petitioner, they ultimately recognized that Y-B- was not stable and took her to a hospital. The Petitioner stated that Y-B- later told him she was a crack addict and he learned on an unspecified occasion that she suffered from bipolar disorder. He relayed that he became stressed, depressed, and confused as a result of Y-B-'s addiction. While we recognize the emotional burden on the Petitioner as a result of this incident and Y-B-'s addiction, it is insufficient in demonstrating that Y-B- battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The supporting statements of the Petitioner's friends also do not establish the requisite battery or extreme cruelty. [REDACTED] a friend of the Petitioner and Y-B-'s, recounted an incident on an unspecified date when Y-B- called him and told him that she had argued with and bitten the Petitioner. He indicated that the Petitioner later came over, showed him the bite on his hand, and told him that Y-B- was very quick to hit him. Mr. [REDACTED] statement does not, however, provide any substantive information regarding the incident, and is therefore insufficient to overcome the lack of probative and credible testimony by the Petitioner. In addition, although Mr. [REDACTED] asserted that Y-B- has done many harmful things to the Petitioner, he does not set forth in probative detail any other incident of abuse or harm.

The remaining supporting statements in the record from [REDACTED] and [REDACTED] do not establish the requisite abuse. Ms. [REDACTED] a member of the church that the Petitioner and Y-B- attended, indicated that she visited the couple after hearing they were having marital difficulties, and asserted that she witnessed Y-B-'s physical abuse and mental torture of the Petitioner. However, she did not otherwise provide sufficient substantive details about the incident or Y-B-'s

³ On appeal, the Petitioner submits a police domestic incident report, which indicates that this incident occurred on [REDACTED] 2011.

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conduct. [REDACTED] indicated in her statement that she witnessed Y-B- mistreating the Petitioner while they resided together, but she also did not further describe, or provide any probative details of, any specific incident of claimed abuse. Finally, the Petitioner's friend, [REDACTED] stated that he was present prior to the incident where neighbors called the police after Y-B- ran outside the house hysterically shouting and was eventually hospitalized. Mr. [REDACTED] stated he was present earlier in the day when Y-B- pushed and yelled at the Petitioner, telling him to get out. However, the Petitioner's statements below do not indicate that Y-B- ever physically hit or harmed him in any way during the incident.

On appeal, the Petitioner now also asserts that on one occasion, Y-B- turned up at a "known friend[']s" apartment where he was and was verbally and physically abusive, cursing and pushing him outside, and demanding that he go home with her. Similarly, he describes generally occasions where Y-B- turned up at his employment, put his job at risk with "nuisance calls," made scenes out of jealousy when seeing him with female customers, and on one occasion, slapped him in front of colleagues and a customer. He also stated that Y-B- delighted in destroying his belongings and has physically clawed him, hit him on the body, and bit him. The Petitioner does not explain when these incidents occurred, and he does not provide sufficient probative details regarding each incident or their underlying circumstances to demonstrate the requisite battery or extreme cruelty. The Petitioner also maintains on appeal for the first time that Y-B- was sexually demanding and inconsiderate of his physical wellbeing and need for sufficient rest after work. However, he does not provide substantive information about any particular incident or incidents to demonstrate that Y-B-'s conduct involved battery or extreme cruelty, as that term is defined in the regulation.

In summary, the noted deficiencies in the evidentiary record, including the inconsistencies in the Petitioner's statements, and the lack of probative detail in his statements and the supporting statements of his friends, have not been overcome on appeal. Accordingly, upon *de novo* review of the record in its entirety, the Petitioner has not established by preponderance of the relevant evidence that Y-B- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not overcome the Director's ground for denial as he has not established that his spouse subjected him to battery or extreme cruelty during the marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proof to establish 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-E-B-*, ID# 14793 (AAO Dec. 22, 2015)