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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 1 5 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:

SELF-REPRESENTED

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting 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 and the petition will be approved.

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 United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that his wife subjected him to battery or extreme cruelty.

On appeal, the petitioner reasserts his eligibility and submits additional evidence.

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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act 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 explained further 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 standard and 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:

> (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.
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> (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 was born in Mexico on May , and asserts that he first entered the United States without inspection in July of 1993. The petitioner married M-O-, a U.S. citizen, on June California.[1] The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 16, 2013. The director issued a request for evidence (RFE) that M-O- had subjected the petitioner to battery or extreme cruelty. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility on this ground. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, sufficiently establishes the petitioner's eligibility.

[1] Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

In his initial statement, the petitioner asserted that when he and his wife moved to for his employment, his wife lost custody of her son to her ex-husband. As a result, the petitioner stated that M-O- "mistreats me in a verbal way" because she blamed him for losing custody of her son. The petitioner indicated that his wife did not do any chores around the house or help take care of their children, that she kept all of his money, and that she repeatedly went through his cell phone records to see who he had been talking to, accusing him of infidelity. He said that his extended family wanted him to leave M-O-, but that he was afraid that she would commit suicide and he did not want his children to grow up without a mother. As a result, the petitioner indicated that his family did not want to spend time with him and M-O-. The petitioner also provided a letter from his brother, who asserted that when he went with the petitioner and M-O- to a family party, M-O- became jealous when she saw the petitioner talking to his aunt and verbally abused the aunt. The petitioner's brother did not suggest that M-O- behaved similarly toward the petitioner, but confirmed that he did not want to go out with the petitioner and M-O- because of M-O-'s behavior. Mr. characterized the petitioner as "emotionally damaged" as a result of M-O-'s behavior. The petitioner and his brother did not provide any probative details about specific incidents that would establish M-O- battered or was extremely cruel to the petitioner.

In response to the RFE, the petitioner provided a second statement in which he described a dinner at his aunt's house and explained that his wife said his aunt's soup tasted horrible, complained that it had no vegetables, and cursed the petitioner for trying to make her eat the soup. He said that his wife was a chronic gambler, bought scratch-off tickets instead of medicine that the petitioner needed for his headache, and continuously complained that the petitioner would not give her money to go to the casino.

The petitioner submitted a second affidavit from his brother, Mr. who described three additional interactions with the petitioner and M-O-. On December 1, 2013, M-O- was at a family gathering to celebrate the birthday of the son of the petitioner and M-O-. According to Mr. M-O- left the gathering to buy sodas and when she returned, screamed at the family in anger when they jokingly said that they had eaten the meal without her. On December 25, 2013, M-O- allegedly called the petitioner an abusive name when he told her he did not have enough money to buy her some meat to eat instead of the mole that her mother-in-law had prepared. Finally, Mr. stated that he had seen M-O- yell at the petitioner and call him a name when he did not hear her request for him to pass the Tapatio sauce for her to put on her tostadas.

The petitioner provided a psychological evaluation from a licensed clinical psychologist who diagnosed the petitioner with major depressive disorder and panic disorder, and recounted the interactions between the petitioner and M-O- that the petitioner outlined in his affidavits. However, the psychologist did not provide any additional probative details about their interactions to establish that M-O- battered or subjected the petitioner to extreme cruelty within the meaning of the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the petitioner submits additional statements in a separate brief and in an affidavit. He describes an incident where his wife insulted and screamed at him in front of his family because he suggested that she was drunk and asked her to stop drinking. The petitioner asserts that his wife has mocked the size of his genitals and sexual performance, and often tells him he is fat in front of people. The petitioner indicates that his wife was angry at his boss when the petitioner was unable to leave his job to accompany her to a family trip to Arizona. The petitioner asserts that his wife tried to start a fight with a employee who she believed had failed to provide her with a bathroom key because of racial discrimination, and that she pushed the petitioner down when he tried to calm her. He also indicates that M-O- became angry and jealous when she saw an old female friend greet him in and repeatedly says abusive things to him during public social occasions when he did not do what she wanted. The petitioner also provides an updated psychological evaluation from his psychologist, who confirms that the petitioner recounted the above episodes to him and asserts that the petitioner is suffering physical symptoms as a result of the abuse and may be at risk for suicide.

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 statements of the petitioner and his psychologist on appeal contain credible, relevant, and probative details. The petitioner has established by a preponderance of the evidence that M-O- subjected him to battery or extreme cruelty, as that term is defined 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.

Conclusion

On appeal, the petitioner has overcome the director's ground for denial and she is consequently eligible 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 her 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 (AAO 2010). Here, the petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.