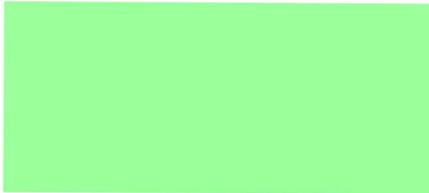
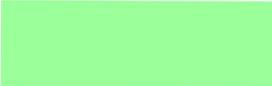


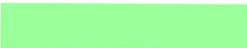
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U.S. Citizenship
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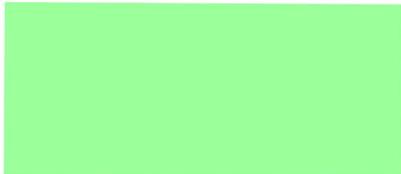


Date: **JAN 15 2015** Office: VERMONT SERVICE CENTER File: 

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:

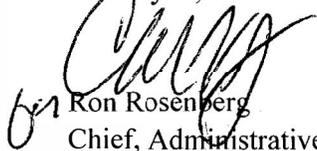


INSTRUCTIONS:

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,


for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“acting 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 his U.S. citizen spouse. The acting director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage. On appeal, the petitioner submits a brief and additional 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 for an abused spouse self-petition are further explained in 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 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 explained in 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 Albania who claims he entered the United States on July 16, 2004, without inspection, admission, or parole. The petitioner married M-K-¹, a U.S. citizen, on August [REDACTED]. The petitioner filed the instant Form I-360 self-petition on November 13, 2013. The acting director subsequently issued a Request for Evidence (RFE) of, among other things, M-K-'s battery or extreme cruelty. Through counsel, the petitioner timely responded with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims 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

In the petitioner's initial affidavit, dated November 7, 2013, he described how happy he and M-K- were after they had their first child in July of [REDACTED]. However, he recounted that in March of [REDACTED], after the birth of their second child, M-K- was diagnosed with postpartum depression and their relationship changed. According to the petitioner, M-K- started yelling at him for every little thing, which she had never done before. He explained that she threatened to take the kids away from him and have him deported. The petitioner stated that two years later, after their third child was born in September of [REDACTED] M-K-'s depression became impossible to tolerate and she verbally and physically abused him. He briefly recounted an incident in which she threw a vase at him that cut his finger. He described

¹ Name withheld to protect the individual's identity.

another incident in she pushed him and claimed that she would also yell at their children just to upset him. In addition, M-K- purportedly would not let the petitioner talk to his mother or siblings on the telephone, would not let him look for a job, and made him stay home to take care of the house and kids without giving him any money. In his second declaration submitted in response to the RFE, the petitioner repeated that after the birth of their second child, M-K- became a very aggressive and violent person. He reasserted that the petitioner would not allow him to obtain employment and that he was forced to act as a stay at home father. The petitioner also alleged “forced labor” because his “wife [was] forcing [him] to work illegally” because he did not have a work permit. He claimed that M-K- made him give her all the money he earned, and that because he paid most of the bills including rent, he had no money left over for himself. The petitioner’s affidavits are internally inconsistent. The petitioner also stated that M-K- socially isolated him, prevented him from learning English, publicly humiliated him, and stalked him. In his letter, the petitioner’s friend ██████████ asserted that he once saw M-K- “screaming [at] and abusing” the petitioner near his store but did not provide any detailed information regarding the purported incident or describe any other specific incident of abuse.

In addition, according to licensed psychologist ██████████ the petitioner claimed that his relationship with M-K- changed after the birth of their first child. However, the petitioner’s affidavits did not contend that his relationship with M-K- changed after the birth of their first child, but rather, in both affidavits, he stated that the birth of their first child, “was the best thing that happened to [them] . . . and made [them] even happier.” Furthermore, the record does not support the petitioner’s contention that M-K- socially isolated him. A statement from the petitioner’s friend, ██████████ stated that “[a]ny time [he] need any kind of help [he] can always count on [the petitioner],” suggesting that the petitioner was available to meet Mr. ██████████ at any time. Mr. ██████████ also described “hanging out” with the petitioner and their friends. Mr. ██████████ stated that he became friends with the petitioner and his family in ██████████ and that the petitioner is a kind man who cares a lot about his family and friends. The evidence does not demonstrate that the petitioner was isolated or that M-K- abusively controlled him such that her actions constituted battery or extreme cruelty as defined in the regulation. Regarding the cut on the petitioner’s finger, although the record contains documentation showing the petitioner received medical treatment for a cut on his hand, the petitioner failed to provide probative details regarding this encounter, only briefly describing the alleged incident in two sentences. To the extent the record includes the children’s report cards, contrary to the petitioner’s contention that the report cards show the children’s poor performance in school, the report cards show that none of the couple’s three children had been tardy or absent from school and their teachers’ comments were all positive, indicating what a pleasure it was to have them in class.

On appeal, the petitioner asserts that he had to beg his wife to help him adjust his immigration status and that even though he has friends, he remains socially isolated and rarely goes out. The petitioner further asserts that the director failed to give proper weight to the evidence. The petitioner does not, however, describe any specific behaviors of M-K- that constituted battery or extreme cruelty. After a careful review of all of the relevant evidence, the petitioner has not established by a preponderance of the evidence that his wife ever battered him or their children, or that her behavior included actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 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 failed to establish that his wife subjected him or their children to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.