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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



U.S. Citizenship
and Immigration
Services

Date: **JAN 30 2015**

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Self-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)

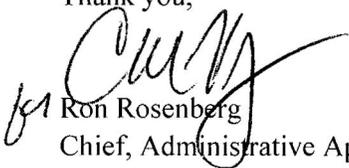
ON BEHALF OF THE PETITIONER:

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,


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 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 petition for failure to establish that the petitioner’s spouse subjected him to battery or extreme cruelty. The petitioner has not submitted any additional evidence on appeal.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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, 8 U.S.C. § 1154(a)(1)(J) 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Algeria, last entered the United States on February 5, 1989, as a B-2 nonimmigrant visitor. The petitioner married T-L-¹, a U.S. citizen, on December [REDACTED] in Pennsylvania. T-L- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf which was denied and the petitioner was placed into removal proceedings.² The petitioner filed the instant Form I-360 self-petition on March 14, 2012. The director subsequently issued an RFE of, among other things, the requisite battery or extreme cruelty. The petitioner timely responded with evidence which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome the director's sole ground for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's wife did not subject him to battery or extreme cruelty. In his initial affidavit, the petitioner recalled that he first met T-L- in 1989 or 1990, she asked him out on a date around 2004 and asked him to marry her in [REDACTED]. The petitioner stated that their first year of marriage was good, he got along well with her twin teenage sons, they hired an immigration

¹ Name withheld to protect the individual's identity.

² On July [REDACTED] the Philadelphia Immigration Judge ordered the petitioner removed in absentia. The petitioner's motion to reopen was granted and his next scheduled hearing is February [REDACTED]

attorney in 2008, and on June 30, 2009, he and T-L- were interviewed in conjunction with the immigrant petition she had filed on his behalf. The petitioner explained that in their second year of marriage, T-L- told him her sons were the most important thing in her life. He recalled that one of her sons was having problems in school and her father died around this time, causing T-L- to be under tremendous stress and emotional strain. The petitioner explained that when he tried to speak with T-L- about her stress, she did not want to discuss it or confide in him. He stated that also around this time, unbeknownst to him, T-L- had received an RFE concerning the immigrant petition interview but she did not respond to the letter or tell him she had received it. The petitioner stated that he and T-L- argued in May of [REDACTED], she told him to leave. In September of [REDACTED] they reconciled, he moved back in, and they worked on their marriage together. He recalled that in April of [REDACTED] one of T-L-'s sons was hospitalized with self-inflicted injuries. When T-L- began calling the petitioner names and stopped having intimate relations with him in May of 2011, he attributed the behavior to her emotional stress. The petitioner stated that he and T-L- retained current counsel in October of [REDACTED] and it is then he first learned that he had been ordered removed *in absentia*. He added that T-L- handed several "deportation letters" to current counsel which she had never shown to him. The petitioner recalled that when he asked T-L- why he was seeing the letters for the first time, she did not reply and he felt betrayed. He stated that attempts to address his deportation "problem" after this have cost him thousands of dollars and taken an emotional toll.

The petitioner also submitted the affidavits of three friends. [REDACTED] stated that everything was fine in the petitioner's marriage until T-L- wanted him to leave the home. She stated that she is not sure whether they tried to reconcile, the petitioner "acted as if he was emotionally abused" and in her opinion, he was stressed by the situation with his wife. [REDACTED] stated that the petitioner and T-L- separated due to irreconcilable differences, T-L- did not respond to his telephone calls, and he was stressed over the situation. [REDACTED] stated that she did not see much of the petitioner after he wed, was surprised to learn T-L- kept immigration mail from him, and he is "like an emotionally abused person." None of the affiants described any particular incident of claimed abuse or provided further probative information related thereto. The affidavits of the petitioner and his friends did not demonstrate that T-L- battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted two psychological evaluations. Dr. [REDACTED] Ph.D. stated that he interviewed the petitioner on January 2, 2012. Dr. [REDACTED] relayed the petitioner's claims consistent with the petitioner's affidavit, and determined that as a result of T-L-'s "betrayal," the petitioner developed symptomology of major depressive disorder and post-traumatic stress disorder. [REDACTED] Ph.D. stated that he was treating the petitioner with individual psychotherapy but did not indicate the number of sessions conducted. Dr. [REDACTED] briefly relayed the petitioner's claims, noted that he had been experiencing feelings of depression and anxiety, and diagnosed him with major depressive episode, single episode. While we do not question the professional opinions of Dr. [REDACTED] their assessments convey the petitioner's statements and provide no further probative details regarding the claimed abuse.

In response to the RFE, the petitioner submitted a supplemental affidavit in which he stated that he did not comprehend "until after psychotherapy" how badly his wife treated him. He recalled that she told

him to clean the dishes and do the laundry and when they would go out together, she would choose the restaurants at which they would dine and the movies they would see. The petitioner did not reconcile this statement with his first affidavit in which he referred to a single restaurant as their “favorite” and recounted in detail how they would dine there often and enjoy their favorite burger and fries. The petitioner added that he was “deathly afraid” that T-L- would try to interfere with his immigration application. He did not reconcile this statement with his initial affidavit in which he indicated that although he and T-L- argued, he attributed these arguments to the stress she was under, stated that they always came back together and supported each other, and he expressed shock when he learned that she had not shown him the immigration notices she received while they were separated.

On appeal, the petitioner has not submitted a brief or any new evidence. Rather, he submits a letter by counsel containing a verbatim recitation of an earlier letter filed with the Form I-360 self-petition. The letter asserts that the affidavits of the petitioner and his friends, along with the psychological evaluations, established that the petitioner has been “subjected to severe physical and psychological abuse” by his wife. However, we find no error in the director’s determination that the record did not establish the requisite battery or extreme cruelty below, and as noted, the petitioner has not submitted any additional evidence on appeal. Here, the petitioner’s affidavits and the affidavits from his three friends did not provide probative details regarding specific incidents of abuse. Likewise, the assessments by Drs. [REDACTED] did not provide any substantive information regarding the claimed abuse. The preponderance of the relevant, credible evidence does not demonstrate that T-L- battered the petitioner or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that his spouse 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 failed to demonstrate that his wife subjected him 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.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.