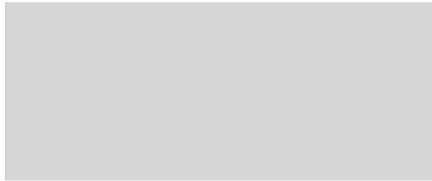




U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

JUL 23 2015

FILE #:

PETITION RECEIPT #:

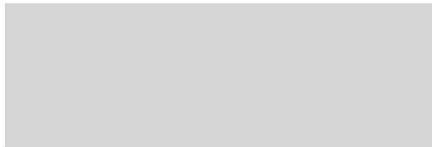
IN RE:

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:



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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on motion. The motion will be denied.

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, finding the evidence insufficient to establish that the petitioner had resided with his spouse during their marriage, that she subjected him to battery or extreme cruelty, and that he had entered into the marriage in good faith. The petitioner filed a timely appeal. In our decision on appeal, we found that the petitioner had demonstrated that he resided with his spouse and that he entered into the marriage in good faith. However, we found that the evidence did not establish that the petitioner's wife subjected him to battery or extreme cruelty. Therefore, we dismissed the appeal. Our prior decision is incorporated here by reference.

On motion, the petitioner submits a brief, an excerpt of an affidavit submitted below, an updated affidavit, and a letter regarding his current medical condition. Although the petitioner has met the requirements of a motion to reopen, as will be discussed, these new facts are not sufficient to establish error or overcome our previous determination. Additionally, the petitioner has not met the requirements of a motion to reconsider by citing binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy or was incorrect based on the relevant evidence in the record at the time of the decision.

In his brief filed on motion, counsel asserts, on behalf of the petitioner, that our finding that the petitioner had not established battery or extreme cruelty is "vague, unspecific, erroneous," does not address relevant evidence or legal authority, and is an abuse of discretion. Specifically, he asserts that although the supporting affidavits from witnesses "might lack some secondary details and polish, . . . they look credible and provide enough evidence of domestic violence for starting good faith criminal or civil prosecution of the abusive conduct by his spouse, R-J-¹ to the satisfaction of the [Violence Against Women Act]." Counsel also contends that we did not address the pattern of violence and abuse described in the petitioner's affidavit and the affidavits of his witnesses. Counsel notes that battery and extreme cruelty can include abuse other than physical abuse. According to counsel, the pattern of battery and extreme cruelty against the petitioner included R-J-'s illicit drug use "as a means to deliberately inflict psychological and physical harm with their poisonous and choking secondary smoke," abusing alcohol, extorting money from the petitioner to purchase drugs, threats from R-J- and her friends, including threats to withdraw the immigration petition and have the petitioner deported, degrading the petitioner in public, attempting to force the petitioner to consume drugs, and appearing in public under the influence of drugs. Counsel states that the abuse the petitioner experienced caused the petitioner mental suffering to the extent that he was forced to leave the home and seek psychological treatment. Finally, counsel notes that the protections for abused spouses are gender-neutral, and that he "should not be penalized . . . because he is a man."

¹ Name withheld to protect the individual's identity.

The preponderance of the relevant evidence does not demonstrate that the petitioner was subjected to battery or extreme cruelty by R-J-. In our prior decision, we discussed the claims made in the petitioner's July 3, 2013 affidavit in detail. We found that the petitioner made only general statements regarding the claimed abuse and did not describe any particular incident with specific and probative detail. We found the statements of the petitioner's friends similarly lacking in detailed accounts of specific incidents of battery or extreme cruelty. In his April 3, 2014 affidavit submitted on appeal, the petitioner did not provide any additional evidence to establish his claim of abuse. Rather, the petitioner listed generally R-J-'s behavior and actions, but did not provide a description regarding any particular incident.

In an updated affidavit submitted on motion, the petitioner alleges that he suffered a leg injury on August 14, 2014 and was hospitalized for surgery. He states that he continues to be in pain and has difficulty moving. He provides a letter from Dr. [REDACTED] M.D., confirming that he broke his ankle and underwent surgery, and that he continues to undergo treatment. The petitioner claims that R-J- has not helped him during his recovery but instead called him to request money. Additionally, the petitioner contends that R-J- called him shortly before his injury and demanded money, threatening to have him deported or to have her friends beat him up if he did not comply. He also states that R-J- previously failed to appear at two immigration interviews in order to "disrupt" them. He reiterates that R-J- used drugs while the two were living together, causing the petitioner to "suffer from the secondary smoke and disgust."

The petitioner's general assertions are not sufficient to demonstrate that R-J- battered him or that due to her actions he was otherwise threatened with violence, psychologically or sexually abused, or subjected to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Although the petitioner has submitted sufficient new facts for a motion to reopen, those facts do not overcome our prior determination.

Furthermore, the petitioner has not met the requirements of a motion to reconsider. He asserts on motion that we erred in finding that R-J-'s actions did not constitute extreme cruelty. The petitioner notes that many types of mistreatment can qualify as domestic violence amounting to extreme cruelty, including psychological and verbal abuse, harassment, threats, and other forms of non-physical and physical abuse. He cites *Hernandez v. Ashcroft*, 345 F.3d 824, 834-35 (9th Cir. 2003), in support of his claim that our finding that R-J-'s behavior did not qualify as extreme cruelty was incorrect.

However, the petitioner has not established that R-J- engaged in behavior analogous to that discussed in *Hernandez* or that otherwise amounted to extreme cruelty as defined in the regulation. In *Hernandez*, the Ninth Circuit Court of Appeals held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. *Hernandez v. Ashcroft*, 345 F.3d at 833-35. As the instant case arose in the Second Circuit, *Hernandez* is not a binding precedent. Moreover, the majority of circuits have held, contrary to *Hernandez*, that extreme cruelty is a discretionary determination not subject to judicial review. *Rosario v. Holder*, 627 F.3d 58 (2d Cir. 2010); *Johnson v. U.S. Att'y Gen.*, 602 F.3d 508 (3d Cir. 2010); *Wilmore v. Gonzales*, 455 F.3d 524 (5th Cir. 2006); *Stepanovic v. Filip*, 554 F.3d 673 (7th Cir. 2009); *Perales-Cumpean v. Gonzales*, 429 F.3d 977 (10th Cir. 2005); *Bedoya-Melendez v. U.S. Att'y Gen.*, 680 F.3d 1321 (11th Cir. 2012).

Finally, even if we were to defer to *Hernandez* as persuasive authority in this case, the facts constituting extreme cruelty in *Hernandez* are not analogous to R-J-'s actions as described in the record. The plaintiff in *Hernandez* was subject to a cycle of violence for years, including brutal beatings and a stabbing, leaving the plaintiff bleeding and locked in her home without medical care, constant verbal abuse, and periods of contrition and emotional manipulation to convince the plaintiff to return to her husband after she sought refuge in the United States. *Hernandez*, 345 F.3d at 829-32, 840-41. The *Hernandez* court determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Id.* at 840. In the instant case, the evidence does not demonstrate that R-J-'s treatment of the petitioner, which included insults, lack of support while he recovered from an injury, drug and alcohol abuse, threats to withdraw her immigration petition and have him deported, extorting money from him, and threats of violence, were part of an overall pattern of violence or otherwise constituted extreme cruelty under the regulation.

In these proceedings, the petitioner bears the burden of proving his 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 motion will be denied.

ORDER: The motion is denied. The appeal remains dismissed and the petition remains denied.