



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 03 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: 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 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 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 a United States citizen.

The director denied the petition finding the petitioner did not establish that the petitioner was battered or subjected to extreme cruelty by his former spouse during their marriage, and that the petitioner is a person of good moral character. On appeal, we concurred with the director’s determination that the petitioner did not establish that his former wife battered or subjected him to extreme cruelty during their marriage but withdrew the director’s determination that the record was insufficient to demonstrate that he is a person of good moral character. Beyond the director’s decision, we determined that the petitioner did not establish a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immediate relative classification because he divorced his former spouse prior to filing the petition and did not establish a causal connection between alleged abuse and the divorce. Our previous decision is incorporated here by reference. The matter is before us on motion to reopen. In support of the motion to reopen, the petitioner submits a brief and additional affidavits and evidence.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, the petitioner submits a second affidavit which repeats much of the earlier statements in his first affidavit but also alleges new claims of physical abuse. In his statements submitted below, the petitioner generally described only a single incident in which his former wife, T-C,¹ “pushed” him during an argument and then shut herself in their bedroom. Included in his new statement on motion, the petitioner describes an incident during Ramadan in September of 2008 which he initially discussed in his statement submitted at the time of filing. In his prior statement, the petitioner claimed that his former wife made him violate Ramadan by having oral sex with him while he was asleep on a Sunday morning on his day off. He indicated that once he realized what happened he went to the bathroom and cried. On motion, however, the petitioner claims that after coming home from work around 10:30 pm, he woke up in the middle of the night to his wife performing oral sex on him. He states that he went to the bathroom to take a shower and when he told T-C- the next morning that “what she did was not right . . . and disrespectful,” T-C- began to yell at him, threw things at him and spilled hot coffee on him. The petitioner then states that he left for work and when he got to work, his boss told him T-C- had telephoned his work and called the petitioner a derogatory name.

¹ Name withheld to protect individual’s identity.

On motion, the petitioner also describes an incident which took place around the holiday season in 2008 when he caught T-C- in an affair. The petitioner states that he saw T-C- with her ex-boyfriend, [REDACTED] and when he told T-C- that he saw her, he claims that she started hitting him, pushed him, and choked him. In contrast, in his initial statement, the petitioner indicated that he learned of T-C-'s affair with [REDACTED] through another boyfriend of T-C-'s, [REDACTED]. The petitioner described going with [REDACTED] to the apartment where T-C- was staying at the time. The petitioner indicated that [REDACTED] and [REDACTED] began arguing but that T-C- refused to see the petitioner.

The petitioner also provides additional affidavits on motion from friends, which provide only general claims regarding the alleged abuse. For instance, the affidavit from his friend, [REDACTED] states that the petitioner told him T-C- would “kick and punch” the petitioner, but Mr. [REDACTED] provides no detailed description of any specific incident of battery or extreme cruelty. Likewise, the affidavits from his other friends indicate that T-C- was abusive, irrational, and manipulative but they do not describe specific incidents of battery or extreme cruelty in detail. Similarly, the second letter from [REDACTED] a licensed mental health counselor, indicates her belief that the petitioner has been “traumatized” and that he has experienced “culture shock,” “cultural abuse,” and “sexual abuse.” However, she provides no additional details regarding any of the petitioner’s claimed incidents of abuse.

The petitioner also submits information from organizations about domestic violence. However, the information is general and does not relate to specific incidents in which the petitioner claims to have been abused by his former wife.

The petitioner asserts that he “filed substantial evidence . . . which in its totality establishes by clear and convincing evidence of battery and extreme cruelty.” He asserts that he provided “specific incidents of abuse.” The petitioner must satisfy the basic evidentiary requirements required by the statute and regulations. The petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Service. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2). In this case, the petitioner’s claims on motion differ significantly from his earlier statements of her behavior. Apart from these claimed incidents the petitioner does not probatively describe any other act of battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) in detail. His friends do not provide a detailed description of specific incidents in which they witnessed first-hand or were told of in which T-C- battered or subjected the petitioner to extreme cruelty. Similarly, the licensed mental health counselor does not provide detailed facts of specific incidents to establish T-C- battered or subjected the petitioner to extreme cruelty. The new facts as presented on motion are insufficient to overcome our prior determination. Consequently, the motion to reopen must be denied.

ORDER: The motion is denied. The October 20, 2014 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed and the petition remains denied.