



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 05 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [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 PETITIONER:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 appeal. The appeal will be sustained.

The petitioner seeks immigrant classification under 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 based on the petitioner’s failure to establish a qualifying spousal relationship, and that his spouse battered him or subjected him to extreme cruelty.

On appeal, the petitioner submits an affidavit and 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, 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 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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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.

Relevant Facts and Procedural History

The petitioner, a citizen of Zimbabwe, entered the United States on December 11, 2000 as an H-4 nonimmigrant dependent of his wife, P-M-¹. The petitioner married P-M-, now a U.S. citizen, in 1983 in Zambia. The petitioner and P-M- have been married for over thirty years, and have five children together. In [REDACTED] 2012, the petitioner initiated divorce proceedings, which are still ongoing. He moved out of the couple's shared residence on [REDACTED] 2012, and filed the instant Form I-360 self-petition on March 21, 2014. The director issued a Request for Evidence (RFE) of, among

¹ Name withheld to protect the individual's identity.

other things, the petitioner's and P-M-'s qualifying relationship and battery or extreme cruelty. The petitioner responded with additional evidence, which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record of proceeding, as supplemented on appeal, establishes the petitioner's eligibility for the benefit sought. The appeal will be sustained for the following reasons.

Qualifying Relationship

In support of his initial Form I-360 self-petition, and in response to the RFE, the petitioner asserted that he married P-M- in Zambia in 1983. The petitioner indicated that P-M- had possession and control of the couple's marriage certificate from Zambia, and refused to give the petitioner a copy. The petitioner submitted evidence of the couple's divorce proceedings, and his H-4 nonimmigrant visa. On appeal, the petitioner submits a copy of the couple's marriage certificate confirming that the couple married in Zambia in 1983. U.S. Citizenship and Immigration Services (USCIS) records verify that P-M- is a naturalized U.S. citizen. Accordingly, the petitioner has established that he has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act. The portion of the director's decision finding to the contrary is hereby withdrawn.

Battery or Extreme Cruelty

With his initial Form I-360 submission, the petitioner provided an extensive personal affidavit chronicling the couple's thirty-year relationship in probative detail. The petitioner documented a pattern of controlling behavior by P-M- that began in the 1980s while the couple was studying in the United Kingdom, and continued after the couple moved back to Zimbabwe, and later in the United States. The petitioner recounted in substantive detail various instances of financial abuse, which when viewed in their totality with the other evidence of record demonstrate a pattern of psychological abuse. Further, the record reflects that the petitioner was legally dependent on P-M- under the terms of his H-4 nonimmigrant visa. The petitioner described how P-M- traveled overseas for extended periods, during which time she did not provide any financial support for the petitioner, and removed the petitioner from her health insurance, leaving him uninsured. The petitioner recounted that P-M- refused to file an immigrant petition for him after she became eligible to do so, although the couple was still married and residing together, and she petitioned for their eligible children. In addition, documentary evidence supports the petitioner's assertion that P-M- sought to have the petitioner arrested based on false claims of physical violence. The record indicates that on [REDACTED] 2012, after the petitioner filed for divorce, and in the midst of a custody dispute over the couple's youngest son, P-M- called the police and alleged that the petitioner attempted to strangle her for three seconds. The petitioner denied to police that this occurred, and the police did not observe any injuries; however, the petitioner was nonetheless arrested pursuant to P-M-'s private person arrest form. The matter was not prosecuted. In an April 17, 2012 report from the Superior Court of California Child Custody Recommending Counselor (CCRC), the CCRC concluded that there was no evidence to corroborate physical violence, and recommended that the petitioner and P-M- share joint custody. The report further indicated that during an interview

conducted to ascertain the best interests of the child, the petitioner's son expressed concern over P-M-'s treatment of the petitioner, and doubt as to the veracity of P-M-'s accusations.

In her decision, the director erred in concluding that in the absence of additional documentation, the petitioner's personal statements alone were not sufficient evidence of battery or extreme cruelty. The regulations do not require a self-petitioner to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(1). Here, the petitioner submitted several credible, detailed affidavits describing numerous incidents of psychological and financial abuse over a thirty-year period, which when viewed in the totality, constitute extreme cruelty. *See* 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, upon *de novo* review of the record, the petitioner has established that he was subjected to extreme cruelty by his U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The director's decision to the contrary is hereby withdrawn.

Conclusion

On appeal, the petitioner has demonstrated a qualifying spousal relationship, and that he was subjected to extreme cruelty by his U.S. citizen wife. As the petitioner has overcome all of the director's grounds for denial, he is consequently eligible for immigrant classification under section 204(a)(1)(a)(iii)(I) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish eligibility. 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 been met. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the petition is approved.