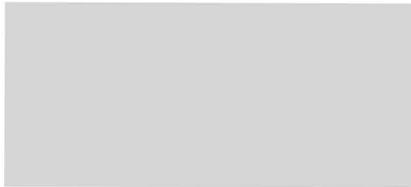




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 23 2015

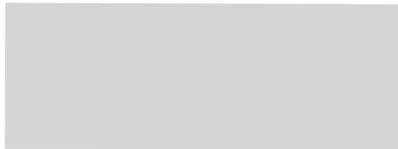
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before us on a motion to reopen. The motion will be denied.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(I), as an alien battered or subjected to extreme cruelty by his or her lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner was battered or subjected to extreme cruelty by his former wife, a lawful permanent resident of the United States. On appeal, we affirmed the director's decision, concluding that the preponderance of the relevant evidence did not demonstrate that the petitioner had been abused by his wife.

On motion, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II). An alien who has divorced an abusive lawful permanent resident may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

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 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 for a self-petition under section 204(a)(1)(B)(ii) of the Act are further explicated in the regulation at 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 . . . lawful permanent resident 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)(B)(ii) 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 is a citizen of Mexico who asserts that he last entered the United States in 1995, under unspecified circumstances. On [REDACTED] 2004, the petitioner married G-A-¹, a Mexican citizen and lawful permanent resident of the United States, in California. On July 30, 2004, G-A- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf which was approved on October 24, 2005. The petitioner and G-A- divorced on [REDACTED] 2010. The petitioner filed the instant Form I-360 self-petition on September 20, 2011. The director subsequently issued two Requests for Evidence (RFEs) regarding, among other issues, the requisite battery or extreme cruelty. The petitioner timely responded by resubmitting his personal affidavit which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner appealed.

¹ Name withheld to protect the individual's identity.

During our *de novo* appellate review, we determined that the record, as supplemented on appeal, did not overcome the director's ground for denial. We further concluded that, beyond the director's decision, the petitioner had not established that he had a qualifying relationship as the spouse of a U.S. lawful permanent resident and was eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.² We hereby incorporate by reference our December 1, 2014 decision.

The petitioner now files a motion to reopen. On motion, the petitioner asserts that ineffective assistance of prior counsel resulted in deficiencies in the evidence previously presented. The petitioner submits an additional personal affidavit, a psychological evaluation, and an affidavit of a friend. Although the petitioner has submitted new evidence on motion, it does not establish his eligibility. Accordingly, the petitioner's motion to reopen will be denied for the following reasons.

Battery or Extreme Cruelty

In our December 1, 2014 decision we noted the petitioner's representations that G-A- was unfaithful to him, allowed their home to be foreclosed upon, and threatened to withdraw the petitioner's approved immigrant petition. We observed that G-A-'s behavior, as described by the petitioner, did not demonstrate that G-A- battered him or subjected him to extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

On motion, the petitioner submits an additional personal affidavit, in which he recounts that G-A- drank heavily, engaged in an extramarital affair, refused to take further action on his approved immigrant petition, and threatened him with deportation. He further states that G-A- was easily angered, and yelled at him and their children. He briefly describes one incident between G-A- and his stepson, during which G-A- scratched the petitioner on his face, and he also discusses his decision to pay G-A- \$1500 so that she would cease to harass him about claiming their son as a dependent on his tax return.

The petitioner submits a mental health evaluation prepared by licensed therapist [REDACTED]. In her evaluation, Ms. [REDACTED] describes G-A-'s behavior, as noted above, and diagnoses the petitioner with Depressive Disorder (Unspecified) due to G-A-'s abuse and their subsequent divorce. The petitioner also submits an affidavit from his friend, [REDACTED] indicating that G-A- came home late and drunk and was unfaithful to the petitioner. Ms. [REDACTED] further states that G-A- kicked the petitioner out of the house, and the petitioner slept in his car or Ms. [REDACTED] garage.

As described by the petitioner, Ms. [REDACTED] and Ms. [REDACTED] on motion, G-A-'s behavior does not constitute battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). We do not question Ms. [REDACTED] professional judgment that the petitioner suffers from depression because of G-A-'s behavior and a lack of self-esteem due to their divorce; however, neither her evaluation, nor the additional affidavits establish that the depression resulted from behavior

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. sup. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

constituting battery or extreme cruelty. When viewed in the aggregate, as supplemented on motion, the preponderance of the relevant evidence does not establish that the petitioner's former spouse subjected him to battery or extreme cruelty during their marriage as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner has not established the requisite battery or extreme cruelty on motion, and therefore he still has not demonstrated any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not established that he had a qualifying relationship with a lawful permanent resident and was eligible for immigrant classification based upon that relationship, as required by sections 204(a)(1)(B)(ii)(II)(aa), (cc) of the Act.

Conclusion

On motion, the petitioner has not established that his former wife battered him or subjected him to extreme cruelty. Consequently, the petitioner remains ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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 motion is denied. The December 1, 2014 decision of the Administrative Appeals Office is affirmed. The petition remains denied.