



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 23 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:



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 appeal. The appeal will be dismissed.

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 Pakistan, represents that he first entered the United States in 1988 without inspection, admission, or parole. In 1998, the petitioner was granted voluntary departure by a U.S. Immigration Court. The petitioner represents that, upon his return to Pakistan, people to whom his late-father owed money began to threaten him. The petitioner further represents that, after he was brutally beaten, his aunt helped him change his identity, and he returned to the United

States in 2000 using the name “ [REDACTED] ” In [REDACTED] L-S-, the petitioner’s U.S. citizen girlfriend, gave birth to the petitioner’s daughter, A-V-.¹ The petitioner and L-S- subsequently married on [REDACTED] 2011 in [REDACTED], Texas. The petitioner filed the instant Form I-360 petition on August 12, 2015. The director issued a Notice of Intent to Deny (NOID) advising the petitioner, among other issues, that the submitted documentation failed to establish a qualifying relationship with a U.S. citizen or that he had been battered or subjected to extreme cruelty by his spouse. 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, does not overcome all of the director’s grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship

In the decision denying the petition, the director indicated that U.S. Citizenship and Immigration Services (USCIS) was unable to confirm that the petitioner and ‘ [REDACTED] ’ were the same person, and, therefore, could not conclude that the petitioner had a qualifying relationship with a U.S. citizen. On appeal, the petitioner submits a divorce decree from the [REDACTED] District Court, dated [REDACTED] 2015, containing the petitioner’s true name and his alias, establishing that these individuals are the same person. DNA test results and a review of USCIS records confirms that ‘ [REDACTED] ’ and the petitioner are the same person.² The petitioner has, therefore, 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 withdrawn.

Battery or Extreme Cruelty

The petition cannot be approved, however, because the preponderance of the relevant evidence does not demonstrate that the petitioner’s spouse battered him or subjected him to extreme cruelty. With his initial Form I-360 submission, the petitioner provided a personal affidavit in which he stated that, after he and L-S- married, L-S- began to suspect him of marital infidelity. He indicated that L-S- yelled and threw things at the petitioner, and that he had to call the police so that L-S- would stop hitting him. The petitioner did not describe specific instances of such behavior, nor did he indicate whether any of the submitted police reports corresponded to the incidents to which he referred. The petitioner described an altercation with L-S- that occurred in December 2012, during which L-S- accused the petitioner of having an affair, hit him, and told him to leave. The petitioner indicated that L-S- hit him again once he was outside, and that the incident resulted in an injury to his ear. The petitioner provided a photo of his bleeding ear; however, the petitioner’s brief

¹ Names withheld to protect the individuals’ identities.

² We observe, however, that the petitioner has used at least three different dates of births on his documentation and applications.

description of the incident does not explain how he became injured in the manner depicted in the photograph.

The petitioner also described an incident that occurred in [REDACTED] 2013, during which L-S- again accused the petitioner of infidelity, yelled at him, and threw an egg at the wall. The petitioner stated that he called the police. The police report for the incident indicates that the couple had a verbal dispute, and that the petitioner would leave for the night. In addition, the petitioner discussed an incident that occurred on [REDACTED] 2013. The petitioner stated that L-S- again accused the petitioner of having an affair, and threatened to have the petitioner deported. The petitioner indicated that L-S- took A-V-, then [REDACTED] years old, and put her in the car without a seatbelt. The petitioner stated that he stood behind the car and called the police. When the petitioner eventually stepped aside, he was hit by the mirror of L-S-'s car as she departed the premises. A police report dated [REDACTED] 2013 confirms that the petitioner stood behind L-S-'s vehicle to block her departure, and that the petitioner was hit by the mirror of the vehicle.

In response to the NOID, the petitioner submitted a letter from the petitioner's cousin, [REDACTED] [REDACTED] stating that the petitioner kept him informed about his relationship with L-S- and told him that L-S- hit him. He recounted seeing a scar on the petitioner's neck, and the petitioner told him that L-S- had thrown a pair of scissors at him. Mr. [REDACTED] wrote that he advised the petitioner that next time he should call the police, and noted that when L-S- punched the petitioner a few weeks later, the petitioner called the police. However, the scissor or the punching incidents were not discussed by the petitioner in his affidavit. The police reports provided do not indicate that L-S- punched the petitioner, and the petitioner stated that he did not call the police on the day of the ear injury.

The petitioner also submitted a letter from his friend, [REDACTED], who wrote that the petitioner told her that L-S- abused the petitioner physically and mentally, but did not describe any specific incidents. The petitioner's cousin, [REDACTED] briefly stated that L-S- was physically abusive toward the petitioner and A-V- and indicated that L-S- injured the petitioner's ear, but did not describe that incident, or any other incident of abuse. The petitioner's aunt and uncle, [REDACTED] and [REDACTED] described in a letter seeing scratches and bruises on the petitioner and that L-S- should not hit the petitioner but did not substantively describe any specific incident of abuse.

De novo review of the entire record does not establish that L-S- battered the petitioner or subjected him to extreme cruelty. The director erred in discounting much of the relevant evidence as not credible due to the petitioner's use of an alias to reenter the United States and convictions for credit card abuse and trademark counterfeiting that occurred in 1993 and 1998. However, upon consideration of the relevant evidence, the record does not contain a substantive description of acts by L-S- that constitute battery and extreme cruelty. The petitioner indicated that he and L-S- had numerous arguments, that L-S- yelled at him, threw things when she was angry, and threatened to have him deported. The police reports indicate that the couple argued but do not demonstrate abuse. The record suggests that the petitioner and L-S- were involved in a custody dispute over A-V- after the end of the relationship. However, neither the petitioner's brief description of L-S-'s aggressive behavior, nor those provided by his friends and family members, are sufficiently detailed to establish by a preponderance of the evidence that L-S- battered the petitioner or subjected him to

extreme cruelty. Accordingly, the petitioner has not established that he was battered by his U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has demonstrated a qualifying spousal relationship, and but he has not established that he was battered or subjected to extreme cruelty by his U.S. citizen wife. As the petitioner has not overcome all of the director's grounds for denial, he is consequently ineligible 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 not met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.