



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 23 2015**

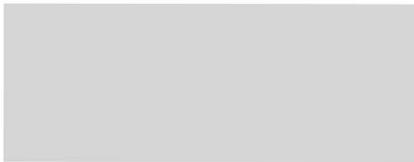
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(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 his United States citizen spouse.

The director denied the petition on the basis that the petitioner did not demonstrate that he was subjected to battery or extreme cruelty by his former wife during their marriage, and thus, he also did not demonstrate a connection between his divorce and the abuse. Consequently, the director further determined that the petitioner did not establish that he had a qualifying relationship with a U.S. citizen and that he was eligible for immediate relative classification based on such a relationship. On appeal, the petitioner submits a brief and resubmits previously submitted evidence.

Relevant Law and Regulations

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).

An alien who has divorced an abusive United States citizen 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 United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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:

(ii) *Legal status of marriage.* The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the

marriage will have no effect on the decision made on the self-petition. []

* * *

(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 . . . 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.

* * *

(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, a native of Palestine and stateless, last entered the United States on March 20, 2007, as a B-2 nonimmigrant visitor. He married S-H¹, a citizen of the United States, on [REDACTED] 2005 in Israel, and they later divorced in the United States on [REDACTED] 2012. On April 15, 2009, the petitioner was placed into removal proceedings which remain pending. The petitioner filed the instant Form I-360 self-petition on September 1, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner’s eligibility. The

¹ Name is withheld to protect the individual’s identity.

director denied the petition, and the petitioner timely appealed.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director erred in determining that the petitioner did not establish that he had a qualifying spousal relationship with a U.S. citizen and the corresponding eligibility for immediate relative classification because the petitioner did not demonstrate a connection between his divorce and the claimed abuse. Pursuant to 8 C.F.R. § 204.2(c)(1)(ii), the legal termination of a petitioner's marriage to an abusive U.S. citizen spouse does not impact the outcome of a Form I-360 self-petition that had been previously filed based on that qualifying marital relationship. Here, the record indicates that when the petitioner filed his Form I-360 self-petition on September 1, 2001, he was lawfully married to a U.S. citizen and therefore, demonstrated a qualifying spousal relationship and his corresponding eligibility for immediate relative classification based on that relationship. The petitioner and his wife did not divorce until [REDACTED] 2012, more than seven months after the filing of the self-petition, and thus, the termination of the marriage has no impact on the outcome of the instant self-petition. The petitioner does not fall within the parameters of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, and is therefore not required to establish a connection between the legal termination of his marriage and the battery or extreme cruelty by his United States citizen former spouse.

On appeal, the petitioner has established that he had a qualifying relationship with his U.S. citizen former spouse and the corresponding eligibility for immediate relative classification based on that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act. The director's determinations to the contrary are withdrawn.

Battery or Extreme Cruelty

The director correctly determined, however, that the petitioner did not establish that he was subjected to battery or extreme cruelty by his former spouse. The relevant evidence in the record includes the petitioner's statements, the statements of his family and friends, a victim information notice, a notice of revocation of an approved visa petition filed on the petitioner's behalf, and a letter from an imam.

In his initial statement, the petitioner indicated that he and S-H- were living well and loving towards each other but sometime after their second daughter was born, S-H- changed inexplicably towards him. The petitioner recounted leaving the marital home when S-H-'s parents came to stay from overseas, explaining that they caused many problems for him including threatening to hurt his daughters and tell the police that he did it. He indicated that after he left the home, S-H- withdrew the immigration papers she had filed on his behalf, and demanded money from him in exchange for continuing with his immigration application process and allowing him to see their children. The petitioner stated that he paid for all of his family's expenses but S-H- kept demanding more money. He indicated that during their physical separation, S-H- delivered their fourth child but refused to allow him to see the baby. The petitioner stated that S-H- threatened to hurt herself and their child and to tell the police that he did

it, if he came to the hospital. However, the petitioner did not provide any probative details or substantive information about any specific incident of claimed abuse or threats by his former wife.

In response to the director's RFE, the petitioner submitted a second statement in which he indicated that he filed a police report against S-H- for an incident that occurred on September 26, 2011, after the filing of the instant self-petition. The petitioner stated that his former wife followed him in her car, parked beside him, and began screaming and cursing at him, threatening to hit him with her car to kill him. The petitioner indicated that S-H- got scared and left when he threatened to call the police, and that his friend [REDACTED] witnessed the incident. The petitioner stated that he immediately filed a police incident report, but told the police that he did not want to press charges against his former wife for fear that she would take it out on the children who would have nowhere else to go. The petitioner did not submit the police incident report or a statement from Mr. [REDACTED] regarding the incident, but he proffered a victim information notice for an incident that occurred September 26, 2011, indicating that an offense of "threats" was committed against a victim bearing the petitioner's last name. However, the notice does not identify the perpetrator as S-H- and does not bear the petitioner's full name, address, or any other identifying information. The petitioner further asserted that his former wife would control him every day, telling him where to go, what to do, and who he could see. He claimed that if he did not follow her orders, S-H- would threaten to call the police or have him deported. The petitioner also stated that S-H- would make these threats in front of their children and once threw a DVD player at him out of anger. The petitioner did not describe in probative detail any particular incident of claimed abuse. The director correctly determined that the petitioner's statements below were insufficient to demonstrate that his former wife battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted a United States Citizenship and Immigration Services (USCIS) notice of revocation of an approved petition for alien relative (Form I-130) that his former wife filed on his behalf, her letter withdrawing that petition, and another USCIS notice indicating that S-H- withdrew a second petition she had filed on his behalf. S-H-'s letter indicated that she was withdrawing the petition because she felt threatened by the petitioner, that their life together had become a "living hell," and that she believed the petitioner would divorce her upon receiving lawful status through their marriage. The petitioner did not address in his personal statements the claims made by his former wife, indicating only that he was at a loss to understand why she suddenly changed her attitude towards him after their second child was born and withdrew the petition. The USCIS notices and the letter of the petitioner's former wife, considered separately or cumulatively, are insufficient to establish the requisite battery or extreme cruelty.

Statements by the petitioner's nephew and three friends also did not establish that S-H- subjected the petitioner to battery or extreme cruelty. Although all four affiants indicated that they have known the petitioner and his former wife for years and had a close association with the former couple, none stated that they were aware of S-H- abusing the petitioner during the marriage. Likewise, the imam's brief letter did not indicate any awareness of abuse in the petitioner's marital relationship. Thus, the director correctly determined that the statements and letters submitted by the petitioner did not demonstrate that S-H- subjected him to battery or extreme cruelty.

On appeal, the petitioner asserts that his written statements provided sufficient detail of the emotional abuse by his former wife to establish the requisite battery or extreme cruelty. However, as we have discussed, the petitioner's statements did not provide probative details about any particular incident of claimed abuse by S-H-, and on appeal, the petitioner has not explained how any of his former spouse's behaviors constituted battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The statements of the petitioner's nephew and friends, the imam's letter, and the victim information notice did not provide any further information about any claimed incident of abuse, and the petitioner has not submitted any additional evidence on appeal. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on such a relationship. The findings by the director to the contrary are withdrawn. The petitioner has not, however, demonstrated that he was subjected to battery or extreme cruelty by his former wife during their marriage. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. 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, 375 (AAO 2010). Here, that burden has not been met. The appeal is dismissed.

ORDER: The appeal is dismissed.