



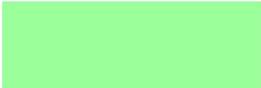
U.S. Citizenship
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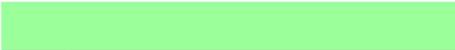


Date: **MAR 13 2015**

Office: VERMONT SERVICE CENTER

FILE: 

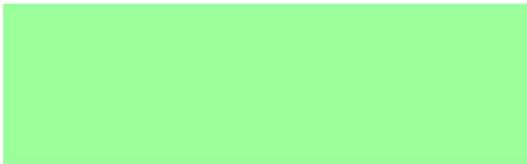
IN RE:

Self-Petitioner: 

APPLICATION:

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:

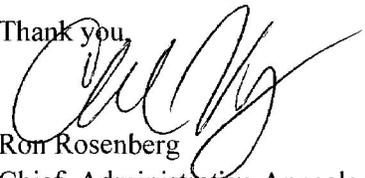


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 his U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner's wife battered him or subjected him to extreme cruelty. On appeal, the petitioner submits a brief.

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).

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:

(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.

* * *

(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 citizen of Colombia, entered the United States on September 11, 1993, with a C1 transit visa valid for 31 days. He married D-M-¹, a U.S. citizen, on September [REDACTED] in [REDACTED] and filed the instant Form I-360 self-petition on May 18, 2010. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty, among other issues. The petitioner responded with further 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*. Upon full review of the record, as supplemented on appeal, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The preponderance of the relevant evidence does not establish that D-M- battered the petitioner or subjected him to extreme cruelty. In his personal affidavit, dated April 19, 2010, the petitioner recounted that at some point after the couple married, D-M- began to change. He stated that she spent an increasing amount of time chatting on the computer and talking on the phone. The petitioner indicated that the couple had their first fight one or two months after the couple married, during which D-M- threw a dish on the floor and the petitioner was cut by one of the shards. The petitioner stated that during a subsequent fight, D-M- threw a pan at him. The petitioner asserted that D-M- was rude to

¹ Name withheld to protect the individual's identity.

his friends, spent time with her friends without the petitioner, and came home drunk on several occasions. The petitioner recounted that one occasion, D-M- became angry and aggressive when the petitioner threw away her liquor, and that he stayed away from the home for a few nights until D-M- called and apologized. The petitioner recounted that D-M- smoked at home, became aggressive when angry, and withdrew large sums of money from the couple's joint accounts.

The petitioner also recounted that in July 2008, he confronted D-M- regarding the withdrawals, and she became upset and threw her fork at him, and then threw her plate against the wall. The petitioner indicated that the shards of the plate cut his hand. He stated that while he was attending to his cut, D-M- damaged the couple's stereo and television set, and threw some of the petitioner's clothes out of the window. The petitioner stated that he ran out of the apartment and never returned. However, he also stated that he returned to the apartment after D-M- moved out, and that he had to fix the walls and repaint the apartment due to the damage D-M- caused.

In addition to his personal statement, the petitioner provided a psychoemotional assessment prepared by licensed mental health counselor [REDACTED] based on meetings with the petitioner on May 7th and 8th, 2010. In his report, Mr. [REDACTED] described the petitioner's relationship with D-M-, as recounted by the petitioner. Mr. [REDACTED] indicated that D-M- used alcohol and marijuana. He stated generally that D-M- would react angrily toward the petitioner, throwing things, pushing him away, and creating an atmosphere of tension. However, Mr. [REDACTED] evaluation is based on the petitioner's account and does not add probative information regarding specific incidents of abuse. In addition, Mr. [REDACTED] stated that the petitioner went to Ohio in the summer of 2008 to convince D-M- to come home in contrast to the petitioner's assertion that their relationship ended after an argument in their New York apartment.

In the RFE, the director correctly observed that the petitioner's statement lacked probative information regarding specific incidents of abuse sufficient to credibly establish that the petitioner was battered or subjected to extreme cruelty by his spouse. In response to the RFE, the petitioner submitted an affidavit from his friend, [REDACTED] dated December 18, 2010. In her brief affidavit, Ms. [REDACTED] attested that an unspecified time, the petitioner told her about his marital problems. She further stated that in October 2007, the petitioner stayed with her for a few days when he left his wife. Ms. [REDACTED] asserted that the petitioner had bruises on his face, which he told her were a result of a fight with some men that his wife brought home. The petitioner did not mention the October 2007 incident referenced by Ms. [REDACTED] either in his personal affidavit or meeting with the mental health counselor. Ms. [REDACTED] did not further describe this incident or provide substantial information about any other specific incidents of abuse.

On appeal, the petitioner submits a brief, but no additional evidence to support his claim. In the brief he asserts that the director's decision is internally inconsistent because he found the petitioner not credible with regard to the abuse but credible relevant to other aspects of the petition. The petitioner objects to the director's determination regarding the credibility of his statements with respect to the alleged abuse. The petitioner argues that because director found the petitioner's statements credible with respect to other grounds of eligibility, the petitioner should be found credible regarding the claimed abuse. While some evidence may be relevant to more than one criterion, each must be independently established. See INA § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii) (prescribing six distinct eligibility criteria for the benefit sought by the petitioner).

Upon *de novo* review of the record, the relevant evidence does not establish that D-M- battered the petitioner or subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's affidavit contains insufficient probative information regarding the specific incidents of abuse to demonstrate that qualifying abuse occurred. Similarly, the psychological evaluation provides few details of specific incidents, and is inconsistent with the petitioner's affidavit, as described above. We consider any credible evidence relevant to the petition; however, determination of what evidence is credible and the weight to be given that evidence is within our sole discretion. See 8 C.F.R. § 204.2(c)(2)(i). Ms. [REDACTED] affidavit, which references an incident that was never discussed by the petitioner, does not provide probative details regarding the event. The petitioner provided no other evidence of the claimed abuse. When considered in the totality, the petitioner has not submitted sufficient evidence to establish that D-M- battered him or subjected him to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that his wife battered him or subjected him to extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.