

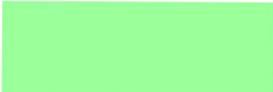


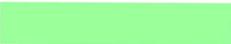
U.S. Citizenship
and Immigration
Services

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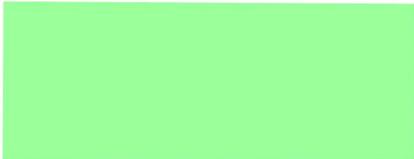
Date: **MAR 20 2015**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

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:

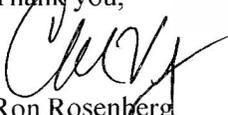


INSTRUCTIONS:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on a motion to reconsider. The motion will be granted and our prior decision to dismiss the appeal will be affirmed. The petition will remain denied.

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 former spouse, a U.S. citizen.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his ex-wife during their marriage. On appeal, we agreed that the petitioner did not establish that his ex-wife battered him or subjected him to extreme cruelty, and dismissed appeal. On motion, 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).

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 for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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 explained in 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 Romania who entered the United States on March 9, 2005, as a temporary non-agricultural worker. The petitioner married T-L¹, a U.S. citizen, on [REDACTED] 2008, in [REDACTED], Florida. The marriage ended in divorce on [REDACTED] 2010. The petitioner filed the instant Form I-360 self-petition on August 23, 2010. The matter is now before us on a motion to reconsider our prior decision dismissing the petitioner's appeal for failure to demonstrate that he was battered or subjected to extreme cruelty by his former wife. The petitioner's submission meets the requirements for a motion to reconsider.

We review these proceedings de novo. A full review of the record, as supplemented on motion, fails to establish the petitioner's eligibility. Our prior decision will be affirmed for the following reasons.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

In our September 25, 2014 decision, we reviewed the relevant evidence of record and determined that the petitioner failed to establish that T-L- battered him or subjected him to extreme cruelty. In so concluding, we observed that the petitioner's initial affidavit did not indicate that T-L- engaged in behavior constituting battery or extreme cruelty as that term is defined under the regulation at 8 C.F.R. § 204.2(c)(1)(vi). We noted that in his initial affidavit the petitioner asserted that T-L- was disrespectful toward him, engaged in an extramarital affair, and during arguments, threw keys and other small household items at him and slapped him. We further noted that in response to the director's Notice of Intent to Deny (NOID), the petitioner submitted affidavits from his sister and brother-in-law stating generally that the couple had arguments, but did not submit any evidence attesting to T-L-'s abuse. On appeal, the petitioner submitted a personal affidavit and additional affidavits from his sister and brother-in-law describing incidents that were not discussed either in the petitioner's initial submission or in response to the NOID. In our decision, we noted these discrepancies and concluded that the preponderance of the relevant evidence did not establish that T-L- battered the petitioner or subjected him to extreme cruelty, as anticipated by the statute and regulations.

On motion, the petitioner, through counsel, asserts that the additional incidents recounted on appeal were referenced in the petitioner's initial affidavit, that the third-party affidavits were consistent with other evidence, and that we failed to properly explain why the petitioner was not credible.

In adjudicating Form I-360 self-petitions, USCIS considers all relevant credible evidence; however, determination of what evidence is credible and the weight to be given that evidence is within our sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Here, although the petitioner had two opportunities prior to his appeal to describe incidents constituting battery or extreme cruelty, the petitioner did not mention that T-L- slammed his hand in a garage door, apparently causing an injury that lasted for weeks, until the appeal. His sister also attested to this incident on appeal. Regarding a different incident, in his initial affidavit, the petitioner stated that T-L- slapped him during arguments and that she "kicked him in the butt" on one occasion. On motion, the petitioner indicates that the following statement on appeal relates to the incident when T-L- "kicked him in the butt":

She got hysterical, started shouting and when she realized that she wasn't getting her way, she pushed me. I hit the door. I tripped and fell on the ground in front of the door and injured my knee. At the end she shouted "Get you're a stinky gypsy ass out of here!"

It is not apparent from the petitioner's statement that T-L- either intended to injure the petitioner or that the statement in any way relates to his prior claims of abuse. The petitioner states that photographs of the injury he sustained from this incident were submitted on appeal. However, the photographs of a small wound on a knee are dated June 20, 2009, three months after the petitioner and T-L- separated, and over six months after January 2009, when the petitioner claimed that the incident occurred. The discrepancy between the date of the photograph and the petitioner's description of the incident, as well as the petitioner's introduction of the event for the first time on

appeal, call into question the petitioner's credibility. In addition, the petitioner did not provide substantive information about the specific incidents mentioned, or any other incidents of abuse.

The petitioner's assertions, and those of friends and family members, that T-L- was rude to the petitioner and sometimes aggressive during arguments, do not establish that T-L- battered the petitioner or subjected him to extreme cruelty at that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

A petitioner who is divorced must file his self-petition within two years of the divorce date and demonstrate a causal connection between the divorce and any battery or extreme cruelty. As the petitioner has not established the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, beyond the director's decision, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(a)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.²

Conclusion

On motion, the petitioner has failed to establish that his ex-wife subjected him to battery or extreme cruelty during their marriage. Beyond the director's decision, the petitioner has also failed to demonstrate that he had a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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 granted. The AAO's September 25, 2014 decision is affirmed. The petition remains denied.

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. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).