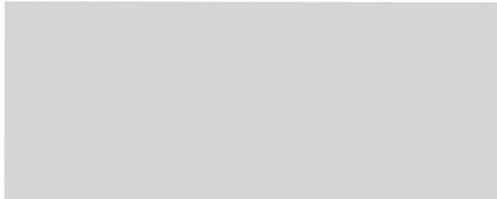


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



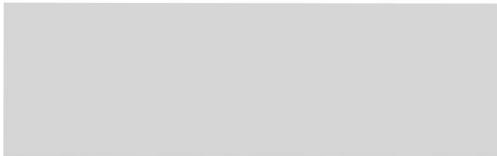
DATE: **MAY 07 2015**



IN RE: 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 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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360), 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 was subjected to battery or extreme cruelty by his U.S. citizen spouse. 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, 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 explained 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 set forth in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(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.

Facts and Procedural History

The petitioner is a citizen of Colombia who last entered the United States on May 4, 2006 as a B-2 nonimmigrant. The petitioner married K-C-,¹ a U.S. citizen, on [REDACTED] and he filed the instant Form I-360 on February 6, 2012. Upon review of the record, including the petitioner's responses to a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID), the director denied the petition on June 5, 2014, determining that the petitioner was not a credible witness, and that he provided insufficient evidence to establish that he had been subjected to battery and extreme cruelty by K-C-. On appeal, the petitioner asserts that the director abused her discretion in finding that his testimony was not credible. The petitioner asserts further that the record establishes, by a preponderance of the evidence, that he was battered and subjected to extreme cruelty by K-C- during their marriage.

Petitioner's Credibility

Section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). "The determination of what evidence is credible

¹ Name withheld to protect the individual's identity.

and the weight to be given that evidence shall be within the sole discretion of [USCIS].” Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The petitioner asserts that the director made erroneous factual conclusions in finding his testimony to be not credible. Specifically, he asserts that the director erroneously concluded that an immigration judge found him to be not credible during removal proceedings. He indicates further that the director erroneously concluded that he intentionally misrepresented himself on his 2002 nonimmigrant visa (NIV) application, by stating that he had never been in removal proceedings.

The record supports the petitioner’s claim that an immigration judge made no credibility finding against him. The petitioner has also overcome the finding that he misrepresented removal proceedings information on his NIV application. Although the record reflects that in November 2001, the petitioner was personally served with a Notice to Appear in Removal Proceedings (NTA) for an immigration court hearing on April 23, 2002, the record also reflects that the petitioner departed the United States in December 2001, prior to the hearing. The petitioner was also not present when an immigration judge ordered his removal on April 23, 2002, as the order was made in absentia. Further, the record reflects that the removal proceeding against the petitioner was later reopened and ultimately terminated. The director’s adverse credibility finding against the petitioner is therefore withdrawn.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner’s eligibility.

Battery or Extreme Cruelty

The petitioner recounted in his initial statement that he met K-C- in September 2009, and that they went out frequently and soon moved in together. He indicated further that within a short time the relationship began to deteriorate, and he provided a general description of K-C-’s behavior towards him prior to their marriage. Regarding claims of abuse occurring after the marriage, the petitioner recounted that in the summer of 2011, K-C- grabbed his arm during an argument, and threw pillows, magazines, and decorations around their room. The petitioner indicated further that K-C- called him names, that her behavior was a pattern, and that afterwards K-C- would act as if nothing had happened, which caused him to feel humiliated, anxious and nervous. Although the petitioner indicated generally that K-C- treated him badly, his statements lack probative and detailed descriptions regarding specific instances of the abuse he purportedly suffered. The statements do not reflect that K-C-’s described behavior was comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

The petitioner added, in a second statement submitted in response to the director’s RFE, that K-C- was possessive and controlling towards him, and that he was afraid to talk to friends on the phone when K-C- was at home. The petitioner stated that he was in constant fear that he would say something wrong and that K-C- would “blow up every time and hurt [him] even more[.]” In addition, he indicated that when K-C- yelled she would raise her hands as if she were going to hit

him, and that this made him flinch. The petitioner recounted that K-C- slapped his face “a couple of times” and accused him of lying to her. The petitioner, however, fails to describe any specific incident in detail.

In response to the director’s NOID, the petitioner indicated that he did not mention that K-C- hit him during counseling sessions, because he suffered physical abuse from his father when he was young, and this caused him to subconsciously block all memories of physical violence from his mind. The petitioner also stated he obtained a sexually transmitted disease (STD) from K-C-, that his marriage to her caused him “great psychological harm,” and caused him to suffer physical illnesses such as acid reflux, chronic constipation, and hemorrhoids. Medical records dated between August 2010 and April 2011 reflect that the petitioner suffered from digestive problems and obtained treatment for an unexplained medical problem, and medical evidence, dated August 30, 2011, reflects that the petitioner was treated for an STD. The medical evidence does not, however, demonstrate the causes of the petitioner’s STD or other ailments, and the evidence does not indicate that the petitioner’s medical conditions were caused by K-C-. The petitioner also submitted general articles on depression in men, repressed memory emotional defense mechanisms, and post-traumatic stress disorder; however, the articles are informational and do not address the petitioner or his claim.

The petitioner’s co-worker, [REDACTED] stated in an August 31, 2011 letter submitted with the Form I-360, that she once overheard K-C- yelling at the petitioner, and that he came to work depressed due to K-C-’s verbal abuse of him. The petitioner’s friend, [REDACTED] stated similarly in an August 18, 2011 letter that the petitioner sounded depressed when he talked to him on the phone and told him of K-C-’s mental abuse. These statements make only general claims of abuse, and lack probative details of the alleged abuse. Two letters from family members, submitted in response to the director’s NOID, also fail to describe any specific incident of battery or extreme cruelty by K-C- against the petitioner. The petitioner’s sister, [REDACTED] stated only that the petitioner stayed at her house on several occasions when K-C- did not let him stay with her. The petitioner’s mother, [REDACTED] indicated generally that the petitioner stayed with his sister when he was not allowed to stay at his house, and that he was deeply depressed by the situation.

A January 17, 2012 letter from the organization, [REDACTED] submitted by the petitioner in response to the director’s RFE, reflects that the petitioner was admitted to their domestic violence program on August 19, 2011, and that he attended 15 male survivor support group counseling sessions. The letter indicates that the petitioner reported that he was verbally and emotionally abused by K-C-, and that K-C- transmitted an STD to him, however, it provides no details about any specific incident of abuse. A February 26, 2014 psychological report reflects that the petitioner stated that K-C- hit his arm once while he was driving, and that K-C- was verbally and emotionally abuse towards him. The report reflects further that the petitioner was diagnosed with major depressive disorder and post-traumatic stress disorder with panic attacks, due to abuse by K-C-. Although both documents generally indicate that the petitioner was abused by K-C-, they do not describe any alleged incident of abuse in probative detail. Further, the counseling and psychological reports do not mention the petitioner’s claimed repressed memory condition.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “affidavits or any other type of relevant credible evidence of abuse may be submitted.” 8 C.F.R. § 204.2(c)(2)(i). In this case, however, the statements and documents submitted by the petitioner lack specific and probative details of the alleged abuse, and fail to demonstrate that the petitioner was battered or subjected to behavior comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Upon review, the evidence in the record does not establish, by a preponderance of the evidence, that the petitioner was battered by K-C-, or that K-C- subjected the petitioner to extreme cruelty during the marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish his 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.

ORDER: The appeal is dismissed and the petition remains denied.