



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

MAY 12 2015

FILE #:



PETITION RECEIPT #:



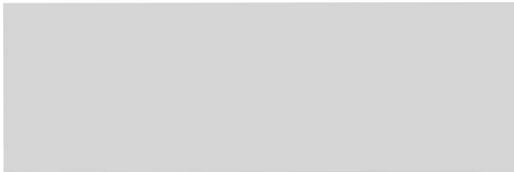
IN RE:

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)

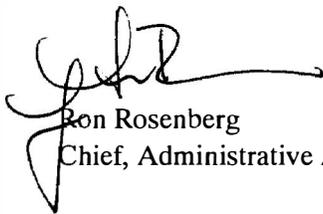
ON BEHALF OF PETITIONER:



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 Acting 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 was battered or subjected to extreme cruelty by his wife. 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, last entered the United States on April 27, 2009 as a nonimmigrant visitor. He married C-M-¹, a U.S. citizen, on [REDACTED] in [REDACTED], New York. The petitioner represents that he and C-M- separated in November 2009. On January 19, 2010, the petitioner filed an application for asylum. U.S. Citizenship and Immigration Services (USCIS) interviewed the petitioner with respect to his application for asylum, and subsequently referred the application to the immigration court, issuing the petitioner a Notice to Appear (NTA) on February 23, 2010. The petitioner filed his first Form I-360 self-petition on January 18, 2011. On February 22, 2011, the immigration judge denied the petitioner's application for asylum, and further found that the petitioner made a frivolous asylum claim, based on perceived discrepancies between the petitioner's statements in support of his application for asylum and his Form I-360 self-petition. The director subsequently denied the Form I-360 self-petition under section 208(d)(6) of the Act, which renders an alien found to have filed a frivolous asylum application permanently ineligible for any benefits under the Act. The petitioner appealed the denial to our office.

On February 2, 2012, the Board of Immigration Appeals reversed the immigration judge's finding of a frivolously filed asylum application. Accordingly, we remanded the petitioner's first Form I-360 self-petition back to the director for consideration of its merits. On February 22, 2013, the director issued a new decision denying the self-petition for failure to establish joint residency, good-faith entry into the marriage, and battery or extreme cruelty by the petitioner's spouse. The petitioner did not appeal that decision, and instead filed the instant Form I-360 self-petition on May 1, 2013. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme

¹ Name withheld to protect the individual's identity.

cruelty, among other documentation. 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 a full review of the record, 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 C-M- battered the petitioner or subjected him to extreme cruelty. In his initial personal affidavit, dated May 2, 2013, the petitioner indicated that C-M-'s parents' lack of support for his and C-M-'s marriage eroded the relationship. He recounted that C-M- had difficulty managing money, and complained when the petitioner asked her to curb her spending. The petitioner stated that C-M- became a jealous person, and accused him of flirting with other women on several occasions, sometimes checking his cellular phone for unknown telephone numbers. The petitioner recounted an incident when C-M- stormed out of a restaurant in anger and accused the petitioner of flirting with the waitress. The petitioner stated that C-M- sometimes hit him with her purse during arguments, and on one occasion tried to stab him in his legs. The petitioner did not further elaborate on the incident. The petitioner indicated that the relationship ended shortly after C-M- learned that she was pregnant. The petitioner stated that C-M- elected to terminate the pregnancy against his wishes. The petitioner submitted a sonogram bearing C-M-'s name, dated November 19, 2009. The petitioner recounted that he was forced to move out of C-M-'s parents' home, and that C-M- declined to return some of his possessions that he left when he departed the residence.

The petitioner also submitted an evaluation from Certified Traumatologist (), dated November 19, 2012. In her report, Ms. () stated that the petitioner attended fourteen sessions for trauma counseling to recover from his wife's behavior, which included threats of deportation, humiliation because of his financial situation, and attacks on his self-esteem. The letter does not describe any specific incidents of abuse. In addition, the petitioner submitted a letter from licensed mental health counselor () dated December 22, 2010. In his letter, Mr. () reiterated the petitioner's claim that C-M- hit him with her purse on one occasion, and attempted to stab him in the legs on another, but did not further describe either incident. Mr. () also indicated that C-M- refused to limit her spending, and frequently argued with the petitioner. He noted that C-M-'s parents disapproved of C-M-'s marriage to the petitioner, and that they ultimately asked him to move out of the house. Mr. () recounted that C-M- threatened the petitioner with deportation on one occasion, refused to have intimate relations with him, and terminated her pregnancy against the petitioner's wishes. Mr. () diagnosed the petitioner with Acute Stress Disorder.

In response to the RFE, the petitioner submitted an additional personal affidavit, dated December 18, 2013. In his affidavit, he further described C-M-'s debt and her unwillingness to reduce her spending. He recounted that she spent the money that he gave her to pay a traffic ticket on something else. The petitioner further discussed C-M-'s jealousy, indicating that she often accused the petitioner of looking too closely at her friend, or being too affectionate when he greeted people. The petitioner stated that C-M- would hit him on the back of his head and ask him who he was "checking out." He also indicated that she tricked him into going to an abortion clinic, telling him that it was a psychologist's office. The

petitioner stated that he left the clinic angry and later learned from a mutual friend that C-M- terminated the pregnancy.

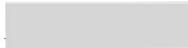
The petitioner also submitted a letter from his cousin, [REDACTED], dated December 3, 2013, indicating that he observed that the petitioner was initially very happy in his relationship with C-M-, but over time became withdrawn. Mr. [REDACTED] stated that the petitioner told him that C-M- was very jealous, and that he wanted to avoid problems with his wife.

In her decision, the director extensively quoted the RFE, which indicated that the petitioner lacked credibility based on perceived inconsistencies in his evidence.² In addition, the director imputed the immigration judge's credibility finding to the instant proceeding, and found that the petitioner's statements were insufficiently reliable in the absence of corroborating evidence. The director also noted that C-M-'s behavior, as described by the petitioner in his affidavits, did not constitute battery or extreme cruelty. On appeal, the petitioner asserts that the record does not support the director's finding that he is not credible, and that C-M-'s termination of her pregnancy over the petitioner's objections constitutes extreme cruelty.

Upon *de novo* review of the entire record, the petitioner has not established that C-M- battered him or subjected him to extreme cruelty. The director erred in imputing a credibility determination by the immigration judge to the instant proceedings, and further erred by requiring the petitioner to provide corroborating evidence to establish his claim. The issue in the instant matter is not the petitioner's credibility. Rather, as the director correctly concluded, the determining factor in this case is that the relevant evidence does not establish that C-M- battered the petitioner or subjected him to extreme cruelty. The petitioner must demonstrate that his spouse battered him or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Here, the petitioner asserts that his wife spent too much money, threatened to deport him, declined to engage in sexual relations, and accused him of flirting with other women. These behaviors do not reflect that C-M- engaged in an overall pattern of violence against the petitioner. The petitioner briefly stated that C-M- hit him with her purse when she was angry, and tried to stab him in his legs on one occasion; however, neither the petitioner's affidavits, nor the psychological evaluations that he submitted, substantively describe any specific incident of physical abuse. On appeal, the petitioner asserts that C-M-'s decision to terminate her pregnancy amounts to psychological abuse. We acknowledge that the loss of the pregnancy was upsetting to the petitioner; however, C-M-'s decision to terminate her pregnancy is not properly characterized as psychological abuse, and does not fall under the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence does not establish that C-M-

² In the RFE, the director stated that the petitioner's statement that he went to stay with his aunt in New York one month after arriving at C-M-'s parents' home was inconsistent with his uncle's affidavit, submitted in support of the petitioner's first I-360 self-petition, which stated that the petitioner was "kicked out" of C-M-'s house. There is no inconsistency in these statements. The record establishes that the petitioner initially stayed with C-M- and her parents upon his arrival from Colombia, but left to his aunt's house in New York shortly thereafter. The petitioner and C-M- married in New York in [REDACTED] and in August, the petitioner moved back to C-M-'s parents' home in [REDACTED]. He represents that he lived there until C-M- and her parents asked him to leave in November 2009.

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NON-PRECEDENT DECISION

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battered the petitioner 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 her 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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.