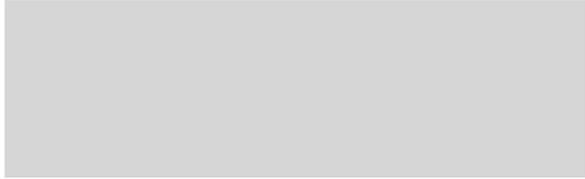


(b)(6)

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 20 2015**



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)

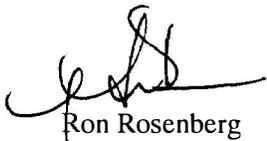
ON BEHALF OF PETITIONER:

NO REPRESENTATIVE OF RECORD

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, denied the petition. On appeal, the Administrative Appeals Office (AAO) affirmed the director's decision, and remanded the case for the director to issue a Notice of Intent to Deny (NOID). On remand, the director denied the petition and certified his decision to us for review. We affirmed the decision and the petitioner again appealed. We rejected the appeal as untimely. The petitioner filed a motion, which we denied as untimely. The matter is now before us on motion to reopen. The motion to reopen will be 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 U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner's former wife subjected him to battery or extreme cruelty.

On motion, the petitioner submits a statement and previously submitted evidence.

Relevant Law and Regulations

A motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

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 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 Turkey who entered the United States on May 6, 2000 as a nonimmigrant visitor. The petitioner married M-B--¹, a U.S. citizen, on [REDACTED] and divorced her on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on June 11, 2007. The petitioner was placed into removal proceedings on March 16, 2007 and on December 23, 2010 he was physically removed from the United States pursuant to an order of removal.

We conduct *de novo* review of the proceedings. In our previous decisions dated May 14, 2010 and December 18, 2012, we discussed at length the reasons for denying the petition. The petitioner does not state the new facts to be proved, or submit relevant documentation in support of his motion to reopen. The motion is denied for the following reasons. *See*, 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

We found in our previous decisions that the record did not establish that M-B- abused the petitioner as defined by the regulation. With the current motion the petitioner resubmits the marriage certificate, evidencing that he was married to a U.S. citizen, and a printout from our electronic records, claiming that we have the wrong social security number for him. On the Form I-290B the petitioner states that he was recovering from surgery, and he never received the NOID.² The petitioner does not address the basis for our decision that he was not subjected to battery or extreme cruelty by his former wife.

Qualifying Relationship

We stated in our previous decisions that because the petitioner's marriage to M-B- was dissolved before the petitioner filed the Form I-360 self-petition, the petitioner had to establish both that M-B- subjected him to battery or extreme cruelty, and that such battery or extreme cruelty was a factor in the divorce as described at section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. The petitioner did not establish that he was abused by his former spouse. Consequently, the petitioner cannot demonstrate that he had a qualifying relationship with a U.S. citizen at the time of filing the Form I-360 self-petition and was eligible for immediate relative classification. See, subsections 204(a)(1)(A)(iii)(II)(aa) and (ccc) of the Act. On motion, the petitioner states that he is unable to contact two witnesses in the United States from outside of the country. The petitioner does not address our finding that M-B- did not subject him to battery or extreme cruelty.

Conclusion

The petitioner has not established that M-B- subjected him to battery or extreme cruelty during their marriage, and that he had a qualifying relationship with a United States citizen. He is consequently ineligible for immigrant visa classification under section 204(a)(1)(A)(iii) of the Act and the appeal remains dismissed.

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 motion is denied. The AAO's decisions, dated May 14, 2010, December 18, 2012, December 13, 2013 and November 3, 2014 are affirmed. The petition remains denied.

² The record reflects that the director mailed the NOID to the petitioner at his last known address on November 22, 2010. Any issue regarding the petitioner's removal from the United States must be raised in the removal proceedings.