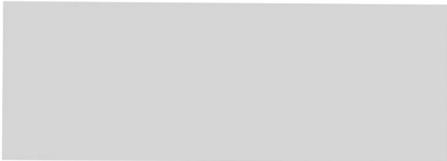


(b)(6)

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



MAY 26 2015

DATE:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, (“the director”) denied the petition and the Administrative Appeals Office (AAO) dismissed the petitioner’s appeal. The matter is now again before the AAO on a motion to reopen and reconsider. The motion will be denied.

The petitioner seeks immigrant classification under 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 United States citizen spouse.

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 affirmed the director’s decision. We further held that because the petitioner had not established the requisite abuse, he had also failed to demonstrate a connection between his divorce and the abuse. Consequently, he also did not establish that he had a qualifying relationship with a U.S. citizen and that he was eligible for immediate relative classification based on such a relationship. On motion, the petitioner submits additional evidence.

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 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 . . . 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 is a citizen of Ghana who last entered the United States on September 15, 2000, as a nonimmigrant student under an assumed name. He married T-B¹, a citizen of the United States, on [REDACTED] in [REDACTED] Virginia. The couple was divorced on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on September 13, 2013. The director issued a Request for Evidence (RFE) of, among other things, the abuse and extreme cruelty to which he was subjected. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition, and the petitioner timely appealed. On appeal, we affirmed the director's decision that the petitioner had not demonstrated battery or extreme cruelty by his former spouse. Consequently, we further determined that, beyond the director's decision, the petitioner also did not establish a connection between his divorce and the abuse, and therefore, he did not demonstrate the requisite qualifying relationship with a U.S. citizen and that he was eligible for immediate relative classification based on such a relationship. The petitioner has now filed a motion to reopen and reconsider.

The petitioner's submission does not meet the requirements for a motion to reconsider at 8 C.F.R.

¹ Name is withheld to protect the individual's identity.

§ 103.5(a)(3). The petitioner does not cite binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied the pertinent law or agency policy, nor does he show that our prior decision was erroneous based on the evidence of record at the time. Consequently, the motion to reconsider must be denied. See 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

The petitioner's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2), as he submits new evidence in order to establish the requisite abuse.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on motion, the petitioner has not overcome the grounds for denial. The motion will be denied for the following reasons.

Battery or Extreme Cruelty

In our prior decision, we found that the petitioner had not overcome the director's determination that he had not established the requisite battery or extreme cruelty. Our decision on appeal, incorporated here, considered all the relevant evidence in the record and described the deficiencies therein. In sum, we noted that the letter in the record from [REDACTED] a licensed social worker, was not supported by a personal statement from the petitioner describing T-B-'s abusive behavior, or by other evidence to show that T-B-'s actions, as described in [REDACTED] letter, constituted battery or extreme cruelty under the definition of that term at 8 C.F.R. § 204.2(c)(1)(vi). We also determined that the petitioner cited the wrong standard in asserting that [REDACTED] letter was sufficient to establish that his former spouse subjected him to "extreme hardship," when, in fact, the petitioner was required, but failed, to show by a preponderance of the evidence that he was subjected to battery or extreme cruelty by T-B-.

On motion, the petitioner submits three letters of support and resubmits [REDACTED] letter.² As discussed in our former decision, [REDACTED] letter is insufficient to establish the requisite abuse, and on motion, the petitioner has not cited to any factual or legal error in our prior determination. The letters from the petitioner's friends, [REDACTED] and [REDACTED] also fail to demonstrate that the petitioner was subjected to battery or extreme cruelty by T-B-. [REDACTED] states that T-B- treated the petitioner badly and gave him trouble, but does not further elaborate with any specific examples.

Although [REDACTED] recalled being a witness to T-B-'s treatment of the petitioner over the years, she does not describe the incidents she witnessed, and the acts of name calling and T-B-'s departure from the house after the couple's fight referenced in her letter is not battery or extreme cruelty as contemplated by the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Lastly, the letter from [REDACTED] also indicates that the author witnessed T-B- verbally and physically abusing the petitioner over the years, and references one occasion in March 2008 where T-B- said "filthy words." However, [REDACTED] letter also provides no probative details or substantive information about this or any other specific incidents of abuse. Accordingly, a full review of the record does not

² The petitioner also resubmitted his criminal history search record. However, this document is unrelated to the eligibility criterion at issue here, namely the requisite abuse.

establish by a preponderance of the evidence that T-B- subjected the petitioner 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

As discussed in our prior decision, the petitioner has failed to establish the requisite battery or extreme cruelty, and thus, has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, 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.

Conclusion

On motion, the petitioner has failed to overcome the grounds for denial. The petitioner has not established that his former spouse subjected him to battery or extreme cruelty, and therefore, also failed to establish that he has a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based on such a relationship, as required. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish 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 and the motion is denied.

ORDER: The motion is denied. The AAO's decision, dated October 21, 204, is affirmed, and the petition remains denied.