



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF I-O-O-

DATE: OCT. 13, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition based on a finding that the Petitioner did not establish that he was battered or subjected to extreme cruelty by his U.S. citizen spouse. On appeal, the Petitioner submits affidavits from two friends and a letter from a physician.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 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)(1), which provides, in pertinent part:

(b)(6)

Matter of I-O-O-

(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.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner last entered the United States on September 15, 2010 as a B-2 nonimmigrant visitor. He married A-M-,¹ a U.S. citizen, on [REDACTED] 2011 in [REDACTED] Illinois. He filed the Form I-360 on July 11, 2014. The Director issued a request for evidence (RFE) that the Petitioner was battered or subjected to extreme cruelty by his U.S. citizen spouse. The Petitioner did not submit additional

¹ Name withheld to protect the individual’s identity.

(b)(6)

Matter of I-O-O-

evidence in response to the RFE. Therefore, the Director found that the evidence was insufficient to establish that the Petitioner was battered or subjected to extreme cruelty by his spouse, and denied the petition accordingly.

We review these proceedings *de novo*. The evidence submitted below and on appeal does not overcome the Director's decision to deny the petition. Therefore, we will dismiss the appeal.

III. BATTERY OR EXTREME CRUELTY

The evidence does not establish by a preponderance of the evidence that the Petitioner was battered or subjected to extreme cruelty by his U.S. citizen spouse.

As evidence in support of his Form I-360, the Petitioner submitted affidavits from two friends. [REDACTED] stated that, in late 2012, he noticed that A-M- began to "go . . . out too much and come . . . back home very late at night," demanded money from the Petitioner, insulted and made negative comments about the Petitioner, had extramarital affairs, and told the Petitioner in public that she did not love him and that he could not stop her from having boyfriends. [REDACTED] claimed that A-M- emotionally abused the Petitioner and "did not respect this marriage . . ." [REDACTED] alleged that A-M- made negative comments about the Petitioner, blamed the Petitioner for all marital problems, spoke publicly about her boyfriends, and invited her boyfriend to a party the Petitioner organized for A-M-'s birthday. According to [REDACTED], A-M- was "not ready to make the marriage work . . ." Both [REDACTED] and [REDACTED] described the abuse the Petitioner allegedly suffered only in vague terms, and focused mainly on issues of marital discord. Neither discussed any particular violent incidents or a pattern of violence amounting to battery or extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The Petitioner also submitted, with his Form I-360, an Incident Report from the [REDACTED] Police Department regarding a report of domestic battery by A-M- against the Petitioner. The Incident Report, dated [REDACTED] 2014, indicated that the Petitioner informed the police that he and A-M- "were involved in a verbal altercation regarding money." The Incident Report stated that, according to the Petitioner's account, A-M- "pushed and grabbed at the [Petitioner] causing him to reel." The responding officers "observed that the [Petitioner's] shirt was torn and items were strewn about the apartment." According to the Incident Report, the Petitioner did not suffer any physical injuries and did not want to file a criminal complaint against A-M-. The Incident Report also indicates that A-M- was not present when the responding officers arrived at the apartment and that she did not return when they were there. The Incident Report, which stated that A-M- "pushed and grabbed at" the Petitioner on one occasion and did not cause him physical injury, is not sufficient to establish that the Petitioner was subject to violence amounting to battery or extreme cruelty.

The Petitioner also previously submitted photographs of text messages on a cellular telephone. The Petitioner did not include an explanation of the relevance of these messages, and the photographs do not clearly indicate the identities of the sender or recipient of the messages. The messages appear to document some disagreements regarding a relationship, but they do not provide evidence of battery or

(b)(6)

Matter of I-O-O-

extreme cruelty, and we give them little weight in the absence of information regarding the identities of the individuals involved and their relationship to the Petitioner or A-M-, if any.

On appeal, the Petitioner submits two additional affidavits from friends. [REDACTED] states that the Petitioner told him that he did not like to go home because he “was going through some marital problems” [REDACTED] claims that, on December 24, 2012, he visited the Petitioner and A-M- at their home and “saw and heard [A-M-] yelling, abusing and beating [the Petitioner] for no apparent reason(s).” He also asserts that he witnessed a visit by the [REDACTED] Police Department to the Petitioner’s home on [REDACTED] 2014, “because of the noise and fight.” According to [REDACTED] the Petitioner did not want A-M- to be arrested because his religion and culture prohibit him from jailing his wife. Although [REDACTED] provides the dates of two alleged incidents, he does not discuss either in probative detail. Nor does the Incident Report for the [REDACTED] 2014 incident indicate that [REDACTED] was present when the responding officers arrived or that the responding officers questioned [REDACTED] regarding what he observed. His statements that A-M- yelled, abused, and beat the Petitioner and that there was a “fight” do not provide sufficient detail to establish that the Petitioner was the victim of battery or extreme cruelty. Additionally, [REDACTED] states that he “witnessed [REDACTED] yelling, abusing, using vile language” against the Petitioner. [REDACTED] does not explain his reference to a person named [REDACTED] or the relevance of her behavior to the Petitioner’s claim of battery by A-M-. The reference to an individual not involved in these proceedings diminishes the relevance and reliability of [REDACTED] statement.

Another friend, [REDACTED] alleges in her affidavit submitted on appeal that the Petitioner endured “extreme marital cruelty.” [REDACTED] states that A-M- engaged in “a wayward life[style],” withheld sex from the Petitioner, was controlling and insulting toward the Petitioner in public, threatened to report him to immigration authorities, had extramarital affairs, and subjected the Petitioner to “physical, emotional and mental torture.” [REDACTED] speaks of the abuse the Petitioner allegedly suffered only in general terms and does not describe any specific instances of battery or extreme cruelty. She provides no detail or specific examples of the physical, emotional, and mental abuse she claims the Petitioner endured. Additionally, [REDACTED] descriptions of A-M-’s extramarital affairs and “wayward lifestyle” indicate that A-M- may have been unfaithful, but adultery and marital discord do not, on their own, amount to battery or extreme cruelty.

The Petitioner also submits on appeal a letter from [REDACTED] who asserts that the Petitioner’s blood pressure recently increased. [REDACTED] states that the Petitioner should modify his diet, exercise, and avoid stress. The Petitioner provides no explanation of the relevance of this letter and [REDACTED] does not mention abuse as a reason for the Petitioner’s high blood pressure.

The Petitioner did not submit, below or on appeal, a personal declaration describing any battery or extreme cruelty he allegedly suffered. The evidence he did submit is insufficiently detailed to support a finding that he was subjected to acts constituting battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(vi).

IV. CONCLUSION

The evidence does not establish by a preponderance of the evidence that the Petitioner was battered or subjected to extreme cruelty by A-M- during his marriage. Therefore, 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 proving eligibility for the benefit sought. 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. Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of I-O-O-*, ID# 14460 (AAO Oct. 13, 2015)