



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

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

MATTER OF J-S-M-

DATE: SEPT. 24, 2015

MOTION TO REOPEN VERMONT SERVICE CENTER DECISION

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

The Petitioner seeks classification as an immigrant abused spouse. *See* Immigration and Nationality Act (INA, or the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. We rejected a subsequent appeal, and the matter is now before us on motion to reopen. The motion will be granted.

The Director denied the petition because the Petitioner did not establish the requisite abuse. On appeal, the Petitioner submits a brief and additional evidence.

I. APPLICABLE LAW

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 for a self-petition under section 204(a)(1)(A)(iii) of the Act are 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

(b)(6)

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:

(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. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Kenya who entered the United States on April 11, 2005, as a B-2 nonimmigrant visitor. He married R-B-¹, a U.S. citizen, on [REDACTED] 2008, in [REDACTED] Texas. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant on November 16, 2012. The Director denied the petition because the Petitioner did not establish the requisite abuse. We rejected the Petitioner's subsequent appeal and he timely filed this motion to reopen.

We review these proceedings *de novo*. Upon a full review of the record as supplemented on motion, the Petitioner has overcome the Director's ground for denial. The motion to reopen will be granted and the appeal will be sustained for the following reasons.

III. BATTERY OR EXTREME CRUELTY

The relevant evidence submitted below and on motion demonstrates that the Petitioner was subjected to battery and extreme cruelty by his spouse. The Petitioner submitted two personal affidavits, affidavits from family and friends, and a letter from a counselor at the Petitioner's church.

¹ Name withheld to protect the individual's identity.

(b)(6)

In his affidavits, the Petitioner credibly described how R-B- regularly humiliated him both at home and in public. He stated that she was controlling, verbally abusive, and caused the Petitioner to feel “caged and helpless.” The Petitioner recounted that R-B- called him derogatory names, threatened to have him removed from the United States, and also threatened his life. He stated that R-B-’s treatment of him caused him to become depressed and suicidal. The Petitioner’s aunt, [REDACTED] described how the Petitioner became distant during his marriage to R-B- and also described the Petitioner’s depressed and emotional state when he left R-B- in May 2011. The Petitioner’s friends, [REDACTED] and [REDACTED], both provided substantive details about R-B-’s treatment of the Petitioner. [REDACTED] described witnessing an argument between the Petitioner and R-B- when he came to visit them at their home. He stated that he heard R-B- call the Petitioner derogatory names and act very controlling. [REDACTED] stated that after the Petitioner and R-B- were married, the Petitioner became distant. [REDACTED] also recounted one incident when he stopped by the Petitioner’s home unannounced and observed R-B- breaking a drinking glass on the floor and verbally abusing the Petitioner. [REDACTED] further stated that any time that he was with the Petitioner, the Petitioner would leave immediately to go home if he received a telephone call from R-B-. [REDACTED], a church member and counselor at the Petitioner’s church, stated that he provided weekly counselling sessions for the Petitioner for one month. [REDACTED] confirmed that the Petitioner related his fear of R-B- and her threats to harm him. [REDACTED] also stated that during their sessions, the Petitioner described feeling controlled, humiliated, and suicidal as a result of R-B-’s treatment of him.

On motion, the Petitioner submits a third affidavit and a letter from licensed psychologist [REDACTED]. In his affidavit, the Petitioner describes two specific incidents when R-B- sexually assaulted him. [REDACTED] states that she met with the Petitioner for two sessions and that he presents as a “highly sensitive and extremely fragile individual” who expressed “sorrow and feelings of helplessness due to emotional and physical abuses he has suffered from his wife.” [REDACTED] further states that she believes that it is in his best interest to seek help from specialists experienced in dealing with Post Traumatic Stress Syndrome, major depression, and anxiety. Upon a full review of all the relevant and credible evidence submitted below and on appeal, the Petitioner has overcome the basis of the Director’s denial decision. The statements of the Petitioner and his aunt and friends submitted below describe in probative detail the emotional violence he suffered by his spouse. The Petitioner has demonstrated by a preponderance of the evidence that his spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

The Petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361; see also *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 been met. The Petitioner established that he was subjected to battery or extreme cruelty by R-B- during their marriage. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The motion to reopen is granted and the petition is approved.

Cite as *Matter of J-S-M*, ID#12302 (AAO Sept. 24, 2015)