



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

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

MATTER OF E-A-P-

DATE: APR. 29, 2016

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* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that he was subjected to battery or extreme cruelty by his U.S. citizen spouse.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that he was subjected to extreme cruelty during the marriage.

Upon *de novo* review, we will dismiss the appeal.

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.

Section 204(a)(1)(J) of the Act 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].

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The eligibility requirements are further explained 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 are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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 is a citizen of the Philippines who entered the United States on November 30, 2007, as an H2B nonimmigrant seasonal worker. The Petitioner married A-P,¹ a U.S. citizen, on [REDACTED]

¹ Name withheld to protect individual’s identity.

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█ 2013, in New York.² The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 7, 2014. The Director issued a request for evidence (RFE) of, in part, the battery or extreme cruelty the Petitioner suffered during his marriage to A-P-. Upon review of the Petitioner's response, the Director determined that the record did not establish that the Petitioner was subjected to battery or extreme cruelty, and denied the Form I-360. The Petitioner filed a timely appeal.

III. ANALYSIS

Upon a full review of the record as supplemented on appeal, the Petitioner has not established his eligibility. We will dismiss the appeal for the following reasons.

We find no error in the Director's determination that A-P- did not subject the Petitioner to battery or extreme cruelty. In his initial statement, the Petitioner recounted that his former spouse canceled their wedding after the hall and church were paid for, and then immediately wanted to reconcile. He indicated that soon after they married, A-P- became involved in text messaging with someone else while they were together, and spent nights out. She refused to be with him on their first holidays. The Petitioner stated that his former spouse blocked him from her social media accounts and cheated on him, which a friend confirmed by showing him pictures of A-P- with another man from her Facebook page. He indicated he was very upset when she depleted their joint savings account. He stated that she moved out without notice in █ 2014, and that they briefly reconciled on the night prior to their interview on the Form I-130, Petition for Alien Relative, that A-P- filed on his behalf. In a supplemental statement, he described A-P- swearing at him, and added that she was frequently upset and would threaten him with deportation. He said he was careful in communicating with her, as he was afraid that she would have him deported. He indicated that after their relationship ended, his former spouse continued to spend his money and use his health insurance after she moved out and became pregnant with her boyfriend's child, and that he felt compelled to move to another state to escape the bad memories. The Petitioner's statements do not establish that he was subjected to violence or a pattern of behavior amounting to extreme cruelty as defined in the regulation.

The record contains a psychological evaluation from █ who assessed the Petitioner's emotional and behavioral functioning, and examined his relationship with A-P-. █ indicated that the Petitioner was extremely hurt by his former spouse's cruel behavior. He stated that the Petitioner purchased a "substantial engagement ring" for A-P-, and that he was puzzled when she wanted to keep it even after canceling the wedding. He indicated that the Petitioner was distressed that A-P- spent time away from home, was unfaithful, and rejected his advances. █ reported that A-P- yelled and cursed at the Petitioner, called him names, and threatened him with his immigration status. █ diagnosed the Petitioner with a major depressive disorder characterized by sadness, crying, irritability, and decreased ability to sleep or concentrate. █ diagnosis relies, in part, on a narrative by the Petitioner that is not

² The marriage was dissolved in New Jersey on █ 2015.

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corroborated by the Petitioner's statements or other evidence of record. While we do not doubt the Petitioner's statements that he felt taken advantage of in his marriage to A-P-, that she used inappropriate language with him, and that he suffered as a result of her behavior, the Petitioner himself does not describe being subjected to repeated threats and/or to A-P-'s rage as reflected in [REDACTED] report. While we do not question [REDACTED] expertise, as the Petitioner did not mention in his statements the events discussed in the evaluation, and because [REDACTED] does not describe any incidents of battery or extreme cruelty in detail, the evaluation has little probative value.

On appeal, the Petitioner submits a letter from [REDACTED] who states that he is treating the Petitioner for depression related to A-P-'s abusive treatment of him in his former marriage. While this evidence shows that the Petitioner is seeking help for depression, [REDACTED] did not describe any particular incidents of battery or extreme cruelty in his letter, nor did he explain how he determined that the Petitioner's depression was related to his former spouse's alleged abuse.

The Petitioner contends in his brief on appeal that his former spouse subjected to him to extreme cruelty through a cycle of abuse evidenced by A-P-'s abrupt behavior in canceling the wedding, reconciling, and sudden departure a few months after they married. The Petitioner, however, does not describe actions similar to specific acts of qualifying abuse cited in the regulation, such as acts or threatened acts of violence, rape, molestation, incest, or forced prostitution, or actions that were part of an overall pattern of violence. *See* 8 C.F.R. § 204.2(c)(1)(vi). Upon review of the record, the Petitioner has not established that A-P- subjected him to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of E-A-P-*, ID# 16318 (AAO Apr. 29, 2016)