



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

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

MATTER OF N-K-X-L-

DATE: JAN. 8, 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). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**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).

An alien who is divorced from 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.

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 N-K-X-L-*

(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, a native and citizen of Vietnam, last entered the United States on March 8, 2006, under advance parole. He married T-C-<sup>1</sup> a U.S. citizen, on [REDACTED] 2001, in [REDACTED] Virginia. The Petitioner first filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 22, 2012. The Director denied that Form I-360 on December 5, 2013. The Petitioner filed a

<sup>1</sup> Name withheld to protect the individual’s identity.

*Matter of N-K-X-L-*

second Form I-360 on September 3, 2014. The Director issued two requests for evidence (RFEs) that, among other things, the Petitioner was battered or subjected to extreme cruelty by T-C-. The Petitioner responded to the RFEs with additional evidence, which the Director found insufficient to establish that the Petitioner was battered or subjected to extreme cruelty by T-C-. Therefore, the Director denied the Form I-360. The Petitioner timely appealed and, on appeal, filed a statement and additional documents.

### III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's ground for denial. Beyond the determination of the Director, the Form I-360 is also not approvable because the Petitioner did not establish his eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i). The appeal will be dismissed for the following reasons.

The preponderance of the relevant evidence does not demonstrate that the Petitioner was battered or subjected to extreme cruelty by T-C-. In his personal affidavit dated June 20, 2014, which he submitted with the Form I-360, the Petitioner claimed that he had a relationship with T-C- in Vietnam in 1991, but lost touch with her after she moved to the United States. He indicated that T-C- returned to Vietnam in 1999 and told the Petitioner that he was the father of her daughter, [REDACTED]. As a result, the Petitioner stated, he left Vietnam to join T-C- and [REDACTED] in the United States. He indicated that he did not want to leave his family and career in Vietnam, but he wanted to be with T-C- and [REDACTED]. According to the Petitioner, T-C- began to mistreat him after he arrived in the United States. He asserted that T-C- forced him to do all of the household chores, left him home alone with [REDACTED] overnight without notice or explanation, and did not allow him to leave the house, attend school, obtain a driver's license, or receive mail. He stated that, when he left the house, T-C- did not permit him to reenter and forced him to sleep in the hallway outside their residence in cold weather. The Petitioner also claimed that T-C- told him that he had no rights in the United States and that she would have him arrested or deported if he did not obey her. Furthermore, the Petitioner stated that T-C- eventually told him that he was not [REDACTED] father, and that he must vacate their shared home to make room for T-C-'s new boyfriend, whose child she was expecting. In response to the second RFE, dated January 23, 2015, the Petitioner submitted an additional affidavit, dated April 7, 2015, in which he stated that he "suffered extreme cruelty, neglect and emotional abuse" by T-C-.

The Petitioner's personal affidavits are vague and do not provide probative detail regarding the abuse he allegedly suffered. The Petitioner does not discuss specific instances of violence or threats of violence, such as psychological or sexual abuse or forceful detention, which resulted or could have resulted in physical or mental injury. He also does not provide specific detail about acts that were part of an overall pattern of violence. *See* 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the Petitioner provides a statement dated June 20, 2015, in which he states that, due to a fire in his home on January 27, 2005, he lost his belongings, including photographs, valuables, and contact information for individuals who could prove that the Petitioner was subjected to extreme

*Matter of N-K-X-L-*

cruelty. He also submits documentation from the [REDACTED] indicating that the Petitioner received assistance with food, clothing, and housing after a fire occurred at his home on January 27, 2005. The Petitioner does not explain the relevance of the fire in his home to his claim of battery or extreme cruelty by T-C-. Although he states that his belongings were destroyed in the fire, he does not state that any of those belongings would establish that he was battered or subjected to extreme cruelty. Additionally, although he states that he lost the contact information of people who could support his claim, he does not state who those people were, what detail they could have provided to show that the Petitioner was battered or subjected to extreme cruelty by T-C-, and whether he made any effort to recover their contact information.

As additional supporting evidence for his claim of battery or extreme cruelty, the Petitioner submitted a psychological evaluation from [REDACTED] Ph.D., dated June 6, 2014. [REDACTED] stated, in pertinent part, that the Petitioner reported that he relocated to the United States after T-C- told him that he was [REDACTED] father. [REDACTED] indicated that, according to the Petitioner's report, T-C- later became controlling and abusive in that she did not allow him to leave the house, attend school, receive mail, or get a driver's license, locked him out of the house during the winter, and threatened to have him deported. Additionally, [REDACTED] reported that, per the Petitioner, T-C- told him he was not [REDACTED] father, became pregnant with another man's child, and kicked the Petitioner out of the house. According to [REDACTED], the Petitioner developed symptoms of depression and anxiety as a result of T-C-'s mistreatment, and those symptoms continued long-term.

In response to the second RFE, the Petitioner submitted an additional psychological evaluation from [REDACTED] dated February 2, 2015. In that evaluation, [REDACTED] stated that the Petitioner developed depression and anxiety "as a result of the extreme spousal cruelty that included emotional abuse, humiliation, and degradation" by T-C-. [REDACTED] indicated that, according to the Petitioner, T-C- "berated him and humiliated him verbally," threatened him, and engaged in economic coercion. [REDACTED] stated that T-C-'s "dishonesty and infidelity" were considered degrading and humiliating in the Petitioner's culture.

The Petitioner also previously submitted a psychological evaluation from [REDACTED] dated November 21, 2011, in support of his first Form I-360. In that evaluation, which is in the record of proceedings, [REDACTED] stated that, according to the Petitioner's report, T-C- was abusive and controlling, had an extramarital affair, and lied to the Petitioner about the paternity of [REDACTED]

[REDACTED] psychological evaluations do not establish that the Petitioner was battered or subjected to extreme cruelty by T-C-. [REDACTED] spoke in general terms about abuse of the Petitioner by T-C- and did not discuss specific incidents of violence or threats of violence. [REDACTED] focused on the emotional effects on the Petitioner of T-C-'s infidelity and dishonesty but did not provide sufficient, probative detail to qualify those actions as battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). In particular, infidelity is not similar to the specific acts of qualifying abuse cited in the regulation, such as acts or threatened acts of violence, rape, molestation, or forced prostitution. *See* 8 C.F.R. § 204.2(c)(1)(vi). Therefore, the preponderance of the evidence does not establish that the

*Matter of N-K-X-L-*

Petitioner was battered or subjected to extreme cruelty by T-C- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### IV. CONCLUSION

The record does not demonstrate by a preponderance of the evidence that the Petitioner was battered or subjected to extreme cruelty by T-C-. The Petitioner is therefore 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). Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-K-X-L-*, ID# 15429 (AAO Jan. 8, 2016)