U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-J-N-

DATE: MAR. 9, 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 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].

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.
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> . . . .
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> (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 Germany who entered the United States on February 23, 2005, as a nonimmigrant E-2 treaty investor. The Petitioner married M-J-,[1] a U.S. citizen, on [redacted] 2010, in [redacted] Florida. The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 20, 2014. The Director issued a request for evidence (RFE) of, in part, the battery or extreme cruelty the Petitioner suffered during his marriage to M-J-. 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 by his spouse, and denied the Form I-360. The Petitioner filed a timely appeal.

[1] Name withheld to protect individual's identity.

III. ANALYSIS

We review these proceedings *de novo*. 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.

A. Battery or Extreme Cruelty

We find no error in the Director's determination that M-J- did not subject the Petitioner to battery or extreme cruelty. In his personal statement, the Petitioner stated that when he met M-J-, she had a history of drug use, and was sober during the first two years of their relationship. He stated that after he and his spouse moved to he had to work all the time. He indicated that because of his prolonged absences from home, he did not notice that she was relapsing,[2] and M-J- began to exhibit aggressive behavior such as breaking dishes and glassware, slamming doors, arguing without any reason, and attacking him. He stated that she broke a glass bottle on his forehead, for which he still has a scar, and would punch and slap him. The Petitioner did not submit evidence of the physical scar or medical reports indicating that the forehead injury required medical treatment. The Petitioner stated that he did not press charges because he did not want to cause problems for his spouse. The Petitioner's statement did not contain sufficient probative details that M-J- battered him or subjected him to extreme cruelty.

In order to demonstrate that M-J- had a history of violence, the Petitioner submitted reports from an online background check which showed that in 2013 M-J- was arrested twice for assault and battery and once for aggravated assault (domestic violence),[3] and twice for driving under the influence (DUI), in 2009 and 2012. The arrests for assault and battery occurred three years after the Petitioner stated that he last resided with M-J-, and did not establish that she abused the Petitioner or exhibited a pattern of abuse against him. The evidence included an email from who stated that someone told him that M-J- was seen taking drugs and cheating on the Petitioner in a bar. This evidence had no probative value to show that M-J- battered or subjected the Petitioner to extreme cruelty.

On appeal, the Petitioner submits a supplemental statement using identical language to his previous statement in describing the claimed abuse, which the Director indicated was deficient. He adds that his worry and stress about his spouse's drug use caused him to lose his job, and asserts that her behavior toward him was part of a pattern of violence amounting to extreme cruelty.[4] The Petitioner's statements and documentary evidence do not provide probative or sufficient details about particular incidences of

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[2] In response to the RFE, the Petitioner stated that M-J- joined him in after she attended a court hearing for driving under the influence in 2009. The 2009 DUI suggests that M-J-'s relapse began before the couple moved to which is inconsistent with the Petitioner's statement referenced in the text.

[3] A news article indicated that M-J-'s aggravated assault arrest involved her father, and one of the assault charges involved an altercation with her grandmother.

[4] He states that he has been unable to provide supporting materials from witnesses to the abuse because of his detention. The record indicates that U.S. Immigration and Customs Enforcement detained the Petitioner from June 2014 until May 2015. He has not submitted additional evidence into the record since May 2015.

abuse to establish that M-J-'s behavior constituted battery or extreme cruelty as defined in the regulation. The Petitioner indicates in his brief on appeal that on several occasions M-J- did not come home until 5 a.m., but he 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. *See* 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner has not presented any evidence with the Form I-360, in response to the RFE, or on appeal to show how M-J-'s drug and alcohol use constitutes psychological abuse. Upon review of the record, the Petitioner has not established that M-J- 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.

D. Qualifying Relationship and Eligibility for Immigrant Classification

Beyond the decision of the Director, the Petitioner has not established that he had a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification. Primary evidence of a qualifying relationship with a U.S. citizen spouse is a marriage certificate issued by civil authorities, and proof of the legal termination of the Petitioner's prior marriage. 8 C.F.R. § 204.2(c)(2)(ii). The record indicates that the Petitioner was previously married, and does not contain evidence that his first marriage was terminated prior to his marriage to M-J-. Consequently, the Petitioner has not established that he had a qualifying relationship as the spouse of a U.S. citizen and that he is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act. For this additional reason, the appeal must be dismissed.

IV. CONCLUSION

The Petitioner has not overcome the Director's determination that he was not battered or subjected to extreme cruelty by his U.S. citizen spouse. Beyond the decision of the Director, the Petitioner has not established that he had a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based upon that relationship. The Petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the reasons set forth above, with each considered as a separate and alternative ground for denial. The Petitioner bears the burden of proof to establish his eligibility. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of U-J-N-*, ID# 16038 (AAO Mar. 9, 2016)