



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

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

MATTER OF A-I-O-

DATE: MAR. 23, 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 has not established that his former 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.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that he has established, through documentary evidence, that he was subjected to battery and extreme cruelty.

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. An alien who is divorced from an abusive U.S. citizen spouse 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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 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 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.

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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 Nigeria, who last entered the United States in New York on October 6, 2010, as an F-1 nonimmigrant student. The Petitioner wed A-W-,¹ a U.S. citizen, on [REDACTED] 2011. On August 23, 2011, the Petitioner adjusted his status to conditional permanent resident. On March 25, 2013, the Petitioner filed a Form I-751, Petition to Remove Conditions on Residence. The Petition was denied and U.S. Citizenship and Immigration Services (USCIS) terminated the Petitioner's conditional permanent resident status on April 3, 2014. The Petitioner and A-W- were divorced on [REDACTED] 2013.

The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on May 7, 2014. As the initial record was insufficient to establish the Petitioner's eligibility, the Director issued a request for evidence (RFE), and a Notice of Intent to Deny (NOID) the Form I-360 for, among other things, not establishing the requisite battery or extreme cruelty. The Petitioner timely responded to the RFE and the NOID with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

III. ANALYSIS

A. Battery or Extreme Cruelty

We find no error in the Director's determination that the Petitioner's spouse did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. To establish battery and extreme cruelty, the Petitioner initially submitted no evidence with the Form I-360. In response to the RFE and NOID, the Petitioner submitted a personal statement dated November 21, 2014, and a brief.

In his personal statement, the Petitioner recounted that in November 2010, he met A-W- through an Internet dating website. He later discovered that she resided near his friend's apartment in [REDACTED] Florida. He recounted that they struck up a conversation, "which later blossomed into love and courtship." In January 2011, he moved in with A-W- and they wed on [REDACTED], 2011. The Petitioner recalled that during their engagement period, A-W- was caring and loving, but shortly after the birth of their son, everything changed. He stated that A-W- insulted him in front of others and called him derogatory names. They also argued over money when A-W- refused to repay loans that he had made to her. He recalled that their arguments became increasingly worse when A-W- refused to contribute to the household expenses. When they argued, the Petitioner stated that A-W- would often lock him out of the house.

¹ Name withheld to protect the individual's identity.

The Petitioner also recounted that A-W- became very aggressive and physical towards him, stating that she pushed and sat on him, as well as slapped, punched, and pinched him. After an argument in May 2012, the Petitioner stated that A-W- punched him in the face and he fell to the ground. He recalled that A-W- subsequently left the household and stayed out of the home for two nights, leaving him without transportation. When he threatened to call the police, the Petitioner stated that A-W- threatened to run away with their son and have someone kill him. He did not provide further details about this incident. The Petitioner then stated that by June 2012, they “were practically separated” because A-W- was repeatedly hitting him and disappearing with their son. In November 2012, after an argument the night before, the Petitioner stated that he returned home from work to find that A-W- had moved out and taken their son with her, leaving him heartbroken and depressed. The Petitioner did not further describe specific acts or events in probative detail or otherwise demonstrate that he was subjected to ongoing intimidation, coercion, duress, stress, threats or acts of violence during the marriage.

On appeal, the Petitioner asserts that he has submitted sufficient evidence with the Form I-360, to demonstrate that he was subjected to, at the very least, verbal abuse and intimidation by his U.S. citizen former spouse, which resulted in severe emotional distress and social isolation. The Petitioner further asserts that even if USCIS had doubt as to the truth of the facts claimed, the Petitioner submitted relevant, probative and credible evidence that would lead USCIS to believe that it is “more likely than not” or “probably” true, that he has satisfied his the standard of proof. *Matter of Chawathe*, 25 I&N Dec. 369, 376).

The Petitioner is correct that USCIS “shall consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act; *see also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, “the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency’s] sole discretion.” *Id.* Here, the evidence submitted below and on appeal does not establish that the Petitioner has been battered or subjected to extreme cruelty as that term is defined by the regulation. The Petitioner asserts that he provided sufficient evidence to establish that he was abused, but he does not address the Director’s determination that his affidavit was of a general nature, and lacked specific details or descriptions of the incidents of the alleged abuse.

On appeal, the Petitioner also asserts that A-W-’s act, of “absconding” with their son without his consent and without notifying him of their whereabouts, is within the scope and level of extreme cruelty as required under the Act. In his November 2014 statement the Petitioner stated that his spouse abandoned him and took their son to live with her mother. He stated that he moved on with his life because he had to avoid anything that would lead to domestic violence. We acknowledge that the Petitioner’s separation from his son is a traumatic experience, however, the Petitioner has not provided sufficient evidence to support a finding that that his son was “absconded,” as implied. The record does not contain any records to show that A-W- had been charged, much less convicted of any crime involving the removal of the Petitioner’s child from the Petitioner’s custody. The record also does not demonstrate that A-W-’s act of leaving the marital home with their son was the basis of a concerted effort to assert control over the Petitioner or that it amounts to a form extreme

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cruelty as that term is defined. Accordingly, the Petitioner has not established that A-W- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

B. Qualifying Relationship and Eligibility for Immediate Relative Classification

In our *de novo* review, we find another ground of ineligibility. The Petitioner has not established that he had a qualifying relationship with A-W-. The Petitioner and A-W- were divorced on [REDACTED] 2013, and the Petitioner filed the Form I-360 on May 7, 2014. A petitioner who divorces a U.S. citizen spouse within two years prior to the filing of the Form I-360 may petition under section 204(a)(1)(A)(iii)(I) of the Act if the petitioner establishes that the divorce was connected to battery or extreme cruelty by the U.S. citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. In this case, as noted above, the preponderance of the relevant evidence does not establish that the Petitioner was battered or subjected to extreme cruelty. Therefore, the Petitioner has not demonstrated a causal connection between his divorce and battery or extreme cruelty and, accordingly, the Petitioner does not have a qualifying relationship with A-W-. Additionally, he is ineligible for corresponding immediate relative classification under section 201(b)(2)(A)(i) of the Act.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility. 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 A-I-O-*, ID# 16064 (AAO Mar. 23, 2016)