



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

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

MATTER OF M-H-

DATE: MAY 10, 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) section 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 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.

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. 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 Cambodia, who last entered the United States with a K-1, nonimmigrant visa. The Petitioner wed S-T-¹ a U.S. citizen and later filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. As the initial record was insufficient to establish the Petitioner's eligibility, the Director issued a request for evidence (RFE) for, among other things, the requisite battery or extreme cruelty. The Petitioner timely responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

III. ANALYSIS

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 does not overcome this ground for denial. To establish battery and extreme cruelty, the Petitioner initially submitted a personal affidavit; a mental status exam from social worker, [REDACTED], and affidavits from [REDACTED]. The Director found the record insufficient to establish the Petitioner's eligibility. In response to the RFE, the Petitioner submitted affidavits from friends [REDACTED].

In his personal affidavit, the Petitioner recounted that he came to the United States from Cambodia to marry S-T-. He recalled that during the first five years of their marriage, they lived well together. He recounted that the problems began after a United States Citizenship and Immigration Services, (USCIS) officer came to their residence to see him. He stated that their male roommate answered the door, introduced himself as S-T-'s boyfriend, and told the officer that the Petitioner did not reside at the apartment. The Petitioner indicated that the information that S-T-'s boyfriend provided to the officer was not true and that during the work week, he resided with his boss because he did not drive and his place of employment was one hour drive from his home. The Petitioner recalled that when he first heard about the affair between his wife and their roommate, he was shocked and in denial. The Petitioner recounted that when he returned home the following weekend, he found that S-T- had moved out. The Petitioner did not further describe specific acts or events in probative detail or otherwise demonstrate that he was subjected to battery or extreme cruelty as defined in the regulation.

In their affidavits, the Petitioner's friends, [REDACTED] stated that the Petitioner told them that S-T- cheated on him and that as a result of her infidelity, he felt disappointed and hopeless. In their affidavits friend [REDACTED] and [REDACTED] indicated that the Petitioner suffered because S-T- left him. The Petitioner's friends did not provide substantive details of any specific incident of battery or extreme cruelty.

In her report, the social worker [REDACTED] stated that the Petitioner sought counseling at the [REDACTED] because of depression brought on by his wife's infidelity. [REDACTED]

¹ Name withheld to protect the individual's identity.

(b)(6)

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diagnosed the Petitioner with major depression disorder. In her report, [REDACTED] summarized what the Petitioner stated during the counseling sessions, but she did not provide additional, probative details regarding specific incidents of abuse.

On appeal, the Petitioner submits a brief, an update of the prior psychological evaluation, and copies of previously submitted evidence. In his brief, the Petitioner asserts that S-T-'s infidelity and subsequent abandonment amounted to psychological abuse. In her updated assessment, [REDACTED] reiterates that as a result of S-T-'s betrayal and abandonment, the Petitioner suffered from psychological abuse. Neither the Petitioner's brief nor the updated psychological evaluation provide sufficient additional details to show that S-T-'s treatment of the Petitioner involved battery, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Further, the Petitioner does not establish that S-T-'s behavior was accompanied by any substantiated coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over him. Accordingly, the Petitioner has not established that S-T- 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

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 M-H-*, ID# 16779 (AAO May 10, 2016)