



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

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

MATTER OF M-U-A-

DATE: MAY 11, 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[.]

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II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of the Dominican Republic, who last entered the United States with a B-2 nonimmigrant visa. He married M-A-¹, a U.S. citizen and later filed a 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. The Director denied the petition and the Petitioner timely appealed.

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 evidence submitted on appeal does not overcome this ground for denial. The Petitioner submitted below: personal statements, a letter from his mother-in-law, [REDACTED] and letters from his friends [REDACTED] and [REDACTED]. He also submitted letters from Licensed Clinical Social Worker, [REDACTED].

In his initial statement, the Petitioner briefly recounted that he met M-A- when he delivered a package to her mother's house. He stated that they began a relationship and subsequently wed. The Petitioner recalled that he was aware of M-A-'s prior drug use, but that she was "clean" when they met. He recalled that a few years into their marriage, M-A- resumed using drugs and was later convicted and incarcerated for selling heroin. The Petitioner recounted that when M-A- was using drugs; she was aggressive, argumentative, and would verbally insult him. He recalled isolating himself from friends and family to avoid her "humiliating" behavior, which included exposing herself to others. He recalled that during her incarceration, M-A- gave birth to their daughter and she promised to stay clean upon her release. In an effort to help with her sobriety, the Petitioner recalled giving her three hundred dollars to pay for beauty school classes. When he noticed that the beauty school never contacted M-A-, the Petitioner stated that he asked M-A- about her enrollment and that she became upset and called him names. The Petitioner stated that he then realized that M-A- had used the funds that he had given her to pay for drugs. He recounted that over time, the verbal abuse and drug use continued, but he stayed in the marriage because of his daughter and with the hope that M-A- would finally stop using drugs.

In response to the RFE, the Petitioner submitted a supplemental statement, in which he recounted that M-A- caused him financial hardship by stealing money and cell phones from him and his friends. He recalled that on one occasion, their joint income tax returns were confiscated to pay for her outstanding child support payments. He further recalled that when M-A- was using drugs, she often accused him of hiding her drugs, verbally abused him, and threatened to report him to immigration. He recounted that he was devastated when M-A- finally told him, and a subsequent DNA test proved, that their daughter was not his biological child. The Petitioner did not further

¹ Name withheld to protect the individual's identity.

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describe specific acts or events in probative detail or otherwise demonstrate that he was subjected to ongoing intimidation, coercion, duress, threats or acts of violence during the marriage.

In her letter, the Petitioner's mother-in-law, [REDACTED] indicated that she went to the Petitioner's home to help the couple work on their communication skills. While there, she witnessed her daughter act aggressively and violently towards the Petitioner. [REDACTED] did not provide any further details about her daughter's behavior on that day, nor did she cite to any other specific instances of the claimed abuse. In his letter, the Petitioner's friend [REDACTED] stated that he had been friends with the couple before they were married. He indicated that he saw the Petitioner go through M-A-'s drug use and subsequent incarcerations. He also recalled being present when M-A- became aggressive towards the Petitioner, but he provided no other details regarding the claimed abuse. In his letter the Petitioner's friend, [REDACTED] recalled witnessing the Petitioner's humiliation when he told him about M-A-'s drug use, but he also provided no details about any specific acts of abuse. In their letters, [REDACTED] and [REDACTED] indicated that they witnessed M-A- verbally abuse the Petitioner when she was on drugs. They did not, however, describe any specific incidents of battery or extreme cruelty. In her letter, social worker [REDACTED] summarized what the Petitioner stated during their psychotherapy sessions regarding M-A-'s drug use, subsequent incarceration, and the emotional abuse that he was subjected to by M-A-. [REDACTED] diagnosed the Petitioner with Posttraumatic Stress Disorder (PTSD) and recommended that he continue with his therapy sessions. While we do not question [REDACTED] professional expertise, her evaluation does not provide additional, probative details regarding specific incidents of abuse to indicate that M-A- ever battered the Petitioner or that M-A-'s behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the Petitioner asserts that M-A-'s drug addiction, verbal and financial abuse, as well as M-A-'s degrading and humiliating behavior amount to extreme cruelty. To strengthen his claim of abuse, the Petitioner submits an updated evaluation from social worker, [REDACTED]. In her evaluation, [REDACTED] explains her PTSD diagnosis and states that the Petitioner reported that M-A- was verbally and emotionally abusive towards him. Again, [REDACTED] does not describe any specific incidents of battery or extreme cruelty and does not provide probative information of the alleged abuse sufficient to support the Petitioner's claims. Accordingly, the Petitioner has not established that M-A- 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.

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ORDER: The appeal is dismissed.

Cite as *Matter of M-U-A-*, ID# 16781 (AAO May 11, 2016)