



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

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

In Re: 22774019

Date: DEC. 6, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions, codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center (the Director) denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) and a subsequent motion to reopen was dismissed. The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that, during the marriage, the petitioner, or their child, was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(i)(E). U.S. Citizenship and Immigration Services (USCIS) shall consider any credible evidence relevant to the VAWA petition; however, the definition of what evidence is credible and the weight that USCIS gives such evidence lies within USCIS' sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

“[B]attered or subjected to 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.

8 C.F.R. § 204.2(c)(1)(vi). To establish battery or extreme cruelty, a petitioner may submit evidence such as: police reports; records from a court, school, church, shelter, or social service agency; photographs; affidavits; or any other credible evidence. *Id.* at § 204.2(c)(2)(iv).

II. ANALYSIS

The Petitioner filed his VAWA petition in August 2018. In considering the VAWA petition, the Director reviewed the evidence on the record, including a personal statement from the Petitioner, a May 2018 psychological evaluation, a prescription for an antidepressant, undated photographs, and third-party statements describing mistreatment of the Petitioner by his spouse, R-B-,¹ throughout their marital relationship.

In March 2021, the Director issued a Request for Evidence (RFE), detailing numerous deficiencies in the record. Specifically, the Director summarized the contents of the statements in the record and found the evidence to be insufficient because said statements described marital incompatibilities and tensions rather than battery or extreme cruelty. Moreover, the Director found that while the psychological evaluation indicated that the Petitioner was being treated for depressive symptoms, the evaluator was “attributing the distress that [the Petitioner] experienced” to the divorce, not to battery and/or extreme cruelty perpetrated by the Petitioner’s spouse. Regarding the photographs, the Director acknowledged that while they appeared to depict the Petitioner’s medical condition, namely psoriasis, they did not establish battery or extreme cruelty. The Director provided examples of the types of evidence the Petitioner could submit to demonstrate that he had been subject to battery or extreme cruelty, including reports from the police, judges, medical personnel, and others; evidence that the Petitioner had sought refuge in a shelter for the abused; photographs of injuries; psychological evaluations or counseling reports; or medical reports. The Petitioner did not respond to the RFE and the petition was therefore deemed abandoned and denied.

In January 2022, the Petitioner filed a motion to reopen and asserted that the requested evidence in the Director’s RFE was not material to his case. The Director determined that the “evidence that was requested in the RFE” was “material to the issue of eligibility” and, as the Petitioner had not demonstrated eligibility for the benefit sought, dismissed the motion accordingly.

On appeal, the Petitioner argues that he has established that R-B- subjected him to battery or extreme cruelty because he provided ample evidence of his psychological pain and how R-B-’s mistreatment affected him. In support, he submits a statement and a March 2022 psychiatric report. In the psychiatric report, the evaluator states that the Petitioner reported that trouble started in his marriage in 2014, when he would come home and smell cigarettes in the apartment. His spouse would refuse to stop smoking even though she knew he was allergic to the smoke. She would also “verbally abuse him daily and called him F-names.” The Petitioner later learned that his spouse was cheating on him. When he confronted her, she told him that she wanted a divorce and threatened that she would call immigration and have him deported if he did not give her a divorce.

After she left, the Petitioner reported to the evaluator that he was “devastated and heartbroken” and “nervous and stressed.” His skin started feeling itchy each time he thought about R-B- and he would

¹ We use initials to protect the privacy of individuals.

scratch his skin, which lead to hives and welts. He also experienced depression and anxiety, could not sleep, lost his appetite for food, and worked long hours to avoid thinking about R-B-. The evaluator reports that the Petitioner's depression became so severe that he came suicidal and hopeless because he "wondered why he had gotten married because his hopes for children were lost." In the Petitioner's April 2022 statement submitted with the appeal, he avers that his skin condition, his depression, his suicide attempts, and his inability to work, eat, sleep, or socialize are related to R-B's conduct.

Upon *de novo* review, we find that the Director correctly determined that the evidence on the record described marital incompatibilities and tensions but did not establish that R-B- subjected the Petitioner to battery or extreme cruelty. We acknowledge evidence that the Petitioner has been diagnosed with conditions including PTSD and major depressive disorder and faced difficult personal circumstances related to the breakdown of his marriage. However, R-B-'s actions as detailed by the Petitioner, including smoking when he was allergic and having an extramarital affair, do not amount to an overall pattern of violence or psychological abuse or fit within any of the conduct described at 8 C.F.R. § 204.2(c)(1)(vi). The mental health documentation in the record, including the report submitted with the instant appeal, addresses difficulties such as apathy toward the marital relationship by one party, disagreements, infidelity, and abandonment of the marital home that resulted in the disintegration of the marital relationship. Although the Petitioner's written statements and mental health documentation refer to "verbal abuse from his wife," the record contains insufficient detail regarding the underlying incidents to establish that R-B- inflicted or threatened violence against him, psychologically or sexually abused or exploited him, or engaged in any other abusive actions that were part of an overall pattern of violence, as required. As such, the Petitioner has not satisfied his burden to demonstrate that R-B- subjected him to battery or extreme cruelty during their marriage.

ORDER: The appeal is dismissed.