



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

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

In Re: 18802369

Date: JUL. 14, 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 denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), finding that the Petitioner had not demonstrated that his U.S. citizen spouse subjected him to battery or extreme cruelty, as required. The matter is before us on appeal. We review the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 204(a)(1)(A)(iii)(I)(bb) of the Act provides that an individual who is the spouse of a U.S. citizen may self-petition for immigrant classification if they demonstrate, among other requirements, that they were “battered or subjected to extreme cruelty” perpetrated by the spouse during the marriage.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). U.S. Citizenship and Immigration Services (USCIS) must consider “any credible evidence” in a VAWA petition; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. See section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner, a native and citizen of Macedonia, married C-L-¹ a U.S. citizen, in 2017. He filed this VAWA petition based on his marriage to C-L- in January 2019. With the petition, and in response to the Director’s request for evidence, the Petitioner submitted personal statements, affidavits of support, financial records, civil documents, photographs, a background check report, and publications relating to domestic abuse.

¹ We use initials to protect the privacy of individuals.

The Director denied the VAWA petition, determining that the Petitioner had not established that he was subjected to battery or extreme cruelty by C-L- during their marriage. The Director explained that the record contained insufficient probative evidence that C-L-'s behavior and the effects of the alleged incidents satisfied the regulatory definition of battery or extreme cruelty. The Petitioner has not overcome this determination on appeal.

A. Relevant Evidence Relating to Battery or Extreme Cruelty Claim

In his statements, the Petitioner claimed C-L-'s behavior started to change about a month after they married. He stated that C-L- did not equally contribute to their income, never helped cook dinner, demanded he do all the cleaning, interrogated him about his communications with other people, and frequently expressed anger and disappointment when he did not have more money to give her or did not do what she wanted. According to his account, things worsened after September 2017 when C-L- started abusing drugs. He stated she got mad when he called his friends and family on the phone around her, became suspicious when he went out with guy friends, accused him of flirting with other women, picked fights with him over nothing, and demeaned and belittled him, his language, and his culture. He indicated C-L- frequently told him he did not deserve her and questioned her choice to marry him. He stated she excluded him from her social life and insisted he not interfere in her affairs. He also said she stopped coming home at night and would not answer her phone when he called.

The Petitioner also discussed various incidents where C-L- became disappointed and angry including one occasion at a concert where she got mad because he did not buy her VIP tickets. He recalled another time when she refused to eat the dinner he bought, accused him of ruining her night, and demanded he clean their apartment because of the mess she claimed he had made with his food. He stated that she also punished him on this occasion by getting rid of an expensive video game system he had borrowed from a friend. He described yet another occasion when she called him to ask for money, claiming to be in danger from people waiting for her outside of their apartment building. The Petitioner explained that, after suggesting to her that they should contact the police, anonymous individuals contacted him over the phone to threaten him and tell him to divorce C-L- and give her \$2,000. He opined C-L- was most likely just playing games with him to try to get him to give her money, but he still felt scared by the event. Similarly, he said C-L- got mad at him when he refused to use drugs with her and one time kicked him out of the house for refusing. He professed he was afraid of her and did not feel safe in their home when she used drugs because they made her not act like her normal self. He claimed she would threaten to call the police or immigration so he would be jailed or deported when she was irritated with him or trying to manipulate him, including once when he asked about her phone and another time when she wanted money from him. Although he did not indicate whether she made any attempts to carry out her threats, he recalled that her actions made him scared of upsetting her and to worry that she might hurt him when she was high or send somebody else to hurt him. He stated that he moved out after one such incident where C-L- was hysterical, yelled at him that she needed money right away, and threatened him that he would be dead and that he should "get ready to say hi to ICE" if he did not give her money. The Petitioner maintained that because of the way C-L- treated him, he was still fighting a lot of anxiety and sometimes felt like he was being watched, would not let people get close to him, and most of the time did not want to see or talk to others because he felt safest alone at work.

In the affidavit of I-P-, the Petitioner's cousin, she described visiting the Petitioner and seeing C-L- come home acting drunk or high. She recalled that C-L- bullied the Petitioner when he expressed concern about her well-being. I-P- further summarized how C-L- made her feel unwelcome, tried offering her drugs, insulted her and the Petitioner, and made her feel like she should leave, which prompted the Petitioner to express embarrassment, explain he was trying to help C-L- recover from her drug addictions, and admit he did not feel like a man because of how C-L- treated him. I-P- also recalled the Petitioner revealing he was scared of C-L- because she was obsessed with the idea of seeing him high and kept pushing him to do cocaine and marijuana.

Next, B-J-, the Petitioner's friend, shared in his affidavit an account of two occasions when he observed C-L- acting irritated with, insulting, and embarrassing the Petitioner. He said that on one of these occasions C-L- became upset because the Petitioner had not asked her permission before inviting B-J- and his wife over for a holiday lunch in their home, which led her to demand he make them leave and break a lamp on the floor to make a scene. He stated that he learned from the Petitioner that C-L- had become aggressive and hostile in the months after their marriage, blamed all their problems on him, and had been using his immigration status to manipulate him. He also affirmed that, after leaving C-L-, the Petitioner withdrew from his former social circles, spent most of his time working, suffered a lot, shut down emotionally, and was a different person.

Finally, in an additional affidavit, another friend of the Petitioner's, B-I-, affirmed that the Petitioner changed his behavior after he married C-L- and appeared extremely exhausted and stressed by his relationship problems. He also stated he remembered seeing C-L- trying to get the Petitioner to take drugs, get furious when he refused and then laugh at, insult, and humiliate him for refusing. B-I- also noted that he was present the night when C-L- called the Petitioner to ask for money prior to him being threatened by anonymous individuals over the phone.

B. The Petitioner Has Not Established That His Spouse Subjected Him to Battery or Extreme Cruelty

Under section 204(a)(1)(A)(iii)(I)(bb) of the Act, a VAWA self-petitioner must demonstrate that they were "battered or subjected to extreme cruelty" perpetrated by their spouse during the marriage. This term 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).

In denying the VAWA petition, the Director determined that the evidence submitted by the Petitioner did not establish that the behavior of C-L- during their marriage included battery or that it was part of an overall pattern of violence that would constitute extreme cruelty. Specifically, the Director concluded the Petitioner's statements and witness affidavits lacked sufficient probative details

necessary to establish a pattern of violence or attempt to control the Petitioner through psychological or economic means and that publications about domestic abuse he also submitted were general and not specific to his circumstances. The Director described the behavior of the Petitioner's spouse as relating to marital tensions and incompatibilities and acknowledged that his spouse may have been unkind and inconsiderate, shown a great deal of apathy towards him and their relationship, appeared manipulative, not shown respect for his thoughts and desires, caused him to experience emotional and physical distress, and placed strains on their relationship resulting in a failed marriage; but, determined that such conduct by itself did not constitute extreme cruelty.

On appeal, the Petitioner argues that he established C-L- subjected him to battery or extreme cruelty because he provided ample evidence describing "numerous patterns of physical, verbal, emotional, and psychological abuse," including incidents of threats of deportation and incarceration, offensive name calling, statements and actions to isolate him from his friends and family, unreasonable demands for money, attempts to force him to take drugs, yelling at and humiliating him, kicking him out of their home, and making fun of him. He contends that USCIS did not give proper weight to the evidence of record and mischaracterized his spouse's abusive behavior. In support of his contention that he was the victim of extreme cruelty, the Petitioner cites *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003) and argues that C-L-'s behavior was part of a larger pattern of violence against the Petitioner.

Upon *de novo* review, we find that the Director properly reviewed and assessed the evidence in the record in determining that it did not demonstrate that the Petitioner was subjected to the conduct constituting battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(iv). As stated above, while USCIS must consider "any credible evidence" in a VAWA petition, we determine, in our sole discretion, the weight to give that evidence. See section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). The Petitioner's statements do not describe battery by his spouse, but rather focus on C-L-'s substance abuse, her increasing alienation of him in her personal and social life, her name-calling and threats, and her outbursts of anger, jealousy, and disappointment due to differing interests and disagreements about domestic and financial responsibilities. While we acknowledge that the Petitioner described several incidents of alleged abuse involving such conduct by C-L-, he did not describe in any probative detail threatened or actual physical violence, including forceful detention, or other conduct by his spouse that demonstrates an overall pattern of violence by her constituting battery or extreme cruelty during their marriage as that term is defined by regulation.

Although the Petitioner cites *Hernandez* to support his assertion of extreme cruelty, he has not shown that his spouse subjected him to extreme cruelty as that term is defined by the regulation or that her actions are in any way analogous to the extreme cruelty discussed in *Hernandez*, where the Ninth Circuit held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. 345 F.3d. at 833-35. As an initial matter, the instant case arose outside of the Ninth Circuit, and therefore *Hernandez* is not a binding precedent. Further, even if we were to defer to *Hernandez* as persuasive authority in this case, the facts constituting extreme cruelty in *Hernandez* are not analogous to the actions of the Petitioner's spouse as described in the record. The plaintiff in *Hernandez* was subjected to years of her abusive spouse's cycle of violence including brutal beatings and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, and periods of contrition and emotional manipulation to convince the petitioner to return to him after she had sought refuge with a relative in the United States. *Id.* at 840-41. The *Hernandez* court determined that the

plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Id.*

While we are sympathetic to the Petitioner's claim that he was frightened and saddened by C-L's drug and alcohol use, threats, jealousy, financial demands and irresponsibility, demeaning and manipulative language, and exclusion of him from her personal and social life during their relationship, the described conduct does not support a determination that she subjected him to threatened or actual violence, including forced detention or psychological abuse or exploitation, or that she engaged in any other abusive actions that were part of an overall pattern of violence. The evidence in the record as it stands is insufficient to establish that the harm received by the Petitioner due to his spouse's behavior, and the impact on him as a result, constitutes battery or extreme cruelty.

Consequently, the Petitioner has not demonstrated his eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.