



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

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

In Re: 26081745

Date: APR. 27, 2023

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. *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 of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish he entered into a good faith marriage or was subjected to battery or extreme cruelty by his spouse. The Director dismissed a subsequently filed motion to reopen and reconsider for not meeting the respective motion requirements. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *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

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if they demonstrate they entered into the marriage in good faith and were battered or subjected to extreme cruelty perpetrated by the spouse during their marriage. Section 204(a)(1)(A)(iii)(I) of the Act. The petitioner must also show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

The term “battered 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). While we must consider any credible evidence relevant to the VAWA self-petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The Petitioner married a U.S. citizen, E-R-,¹ in [] 2012. In January 2020, the Petitioner filed the instant VAWA petition based on his marriage to E-R-, claiming that she engaged in abusive behavior. The record reflects that they resided together from September 2012 until July 2015, and they divorced in [] 2015. In the initial decision, the Director reviewed the Petitioner's tax records from 2020 and 2021, receipts from banking transactions, and wedding photographs. The Director noted that the tax records were filed in single status and were from many years after the Petitioner claimed to have resided with E-R-; the bank receipts did not identify the account owner to whom he was transferring or depositing funds; the mere sharing of funds was insufficient evidence of shared financial responsibility or resources; and the photographs from a single event were insufficient to show he entered into a good faith marriage with E-R-. The Director determined that the Petitioner did not establish he entered into a good faith marriage with E-R- or was subjected to battery or extreme cruelty by her.

The Director dismissed a subsequently filed motion to reopen for not submitting new facts sufficient to overcome the initial decision and motion to reconsider for not establishing the prior decision was made in error or was based on an incorrect application of law or policy. In making this decision, the Director reviewed the Petitioner's statement, third-party affidavits, photographs, and his marriage certificate. The Director noted the Petitioner's statement provided little evidence regarding his and E-R-'s courtship, intent, or subsequent life milestones, and while E-R- showed apathy and was unkind towards him, marital tension and incompatibility do not by themselves constitute extreme cruelty. The Director stated the third-party affidavits did not offer specific information regarding their residence or specific details indicating firsthand knowledge of their domestic life; the photographs of the Petitioner and E-R- were only from a handful of occasions and were unsupported by primary corroborating documentation; and the marriage certificate did not by itself establish he entered into his marriage in good faith.

On appeal, the Petitioner submits an updated statement, a psychologist's statement, a psychological evaluation, and several third-party affidavits. First, we will address whether the Petitioner has established he was subjected to battery or extreme cruelty by E-R-. The Petitioner states that E-R- became manipulative after they married, he was not allowed to have contact with his friends, and she controlled all their home affairs and his decisions. He states that he began to struggle mentally, was ashamed he allowed E-R- to manipulate and control him, and became estranged from her after she began traveling to Florida and remaining there for long periods of time. Lastly, the Petitioner mentions he sought professional help after his separation from E-R-, was diagnosed with major depressive disorder, takes an antidepressant to cope with his disorder and his past marriage, and regularly sees a psychologist. The Petitioner's psychologist states that the Petitioner completed five therapy sessions, and he developed major depressive disorder, post-traumatic stress disorder, and generalized anxiety disorder due to the domestic violence he experienced. The psychologist mentions E-R- was verbally,

¹ Initials are used throughout this decision to protect the identity of the individual.

mentally, and physically abusive towards the Petitioner, and she used threats to his immigration status, harassment, and social isolation to control him. The Petitioner further reported to the therapist that E-R- did not allow him access to their finances, he was not allowed to answer his cell phone in the evening, and she referred to him as a worthless immigrant. Lastly, one of the Petitioner's friends mentions E-R- was controlling, unloving, and dishonest with the Petitioner.

The Petitioner has submitted evidence indicating E-R- exhibited controlling behavior, she showed apathy towards him and was unkind, and they had marital tension and incompatibility. While the Petitioner states he sought professional help after separating from E-R-, which occurred in July 2015, the psychologist's statement and evaluation are dated August 2022. There is no evidence he sought psychological help in the first seven years after separating from E-R-. As such, his claim of psychological hardship is given minimal weight. Furthermore, the psychologist maintains the Petitioner was physically abused during his marriage to E-R-, but the evaluation does not include sufficient detail or corroborating documentation to establish he was physically abused or otherwise battered or subjected to extreme cruelty by her. While we are sympathetic to the Petitioner's difficulties in his marriage to E-R-, he has not established, by a preponderance of the evidence, that he was battered or subjected to extreme cruelty by E-R- as described in 8 C.F.R. § 204.2(c)(1)(iv). Therefore, the Petitioner has not established his eligibility for immigrant classification as an abused spouse of a U.S. citizen under the VAWA.

As we determined the Petitioner has not established he was subjected to battery or extreme cruelty by E-R-, which is dispositive of the appeal, we decline to reach and hereby reserve the Petitioner's arguments and evidence regarding whether he entered into marriage with E-R- in good faith. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (explaining that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.