



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

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

In Re: 24269923

Date: FEB. 9, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse of U.S. Citizen or Lawful Permanent Resident

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. 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

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. A petitioner who is divorced from their United States citizen spouse may also file a VAWA petition if they show that they were a *bona fide* spouse of a United States citizen within the past two years, among other requirements. Section 204(a)(1)(A)(iii)(II)(CC)(ccc) of the Act. 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. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

A. Relevant Factual and Procedural History

The Petitioner, a native and citizen of Nigeria, entered the United States as a non-immigrant visitor in May 2014. The Petitioner married K-D-¹, a U.S. citizen, in [REDACTED] 2015. The Petitioner subsequently divorced K-D- in [REDACTED] 2017. The Petitioner filed the current VAWA petition in June 2017. With the petition, and subsequent motions, the Petitioner submitted personal statements,

¹ We use initials to protect the privacy of individuals.

affidavits of support, a psychological evaluation, a letter from a homeless shelter, financial documents, a lease agreement, background checks, encounter summaries from [] Hospital Center for Adult Behavioral Health, multiple legal briefs, and photographs.

The Director denied the VAWA petition and two subsequent motions, determining that the Petitioner had not established that he was subjected to battery or extreme cruelty by K-D-. The Director determined that the Petitioner did not meet his burden of proof to establish that K-D-'s behavior and the effects of the alleged incidents on the Petitioner satisfied the regulatory definition of battery or extreme cruelty. The Petitioner has not overcome this determination on appeal.

B. Relevant Evidence Relating to Battery or Extreme Cruelty Claim

In his statements to the Director, the Petitioner stated that he and K-D- had a good and loving relationship during the early months of their marriage. In support of his claim of extreme cruelty through financial control and verbal abuse, the Petitioner stated that K-D-'s behavior changed towards him sometime in September 2016 when he advised his friends that he no longer required their financial support. The Petitioner stated that K-D- told him to get a second job and that she would call him names, demean him and become aggressive. The Petitioner also stated that K-D- would no longer have sexual relations with him and that she withdrew all the money from their bank account, only allowing him enough money to commute to and from work. The Petitioner further stated that on one occasion his former spouse pounced on him and tried to strike him but that he "was able to shield" his face and in another that she shoved and threw things at him. The Petitioner stated that he returned home from work one day in December 2016 and found his belongings outside of his and K-D-'s apartment. The Petitioner also provided details regarding the events following his separation from K-D- including his experience of being homeless and feelings of depression and hopelessness.

In addition to his personal statements, the Petitioner submitted a March 2017 psychological evaluation from M-I-, M.D. The document states that the Petitioner reported he was kicked out of his home and that his spouse threatened him with the police if he should try to return. The evaluation also states that the Petitioner also reported that the couple had been arguing over money for some time and that the Petitioner returned home to find his belongings outside and was asked to leave. The Petitioner then reported living in the subway and on trains until finding [] a homeless shelter in New York. The report also states that the Petitioner denied any physical or sexual abuse. The evaluation concluded that the Petitioner was experiencing adjustment disorder with depressed mood.

With his second motion, the Petitioner submitted his psychiatric record from [] Hospital Center for Adult Behavioral Health []. The psychiatric record includes notes showing the Petitioner's intake report in October 2021 and several follow up appointments through January 2022. The notes are based on the Petitioner's statements during his interactions with the social workers. The notes indicate that the Petitioner reported he has suicidal thoughts, had difficulty sleeping, and has anxiety related to his troubled relationship with his former spouse. He also stated that his former spouse tried to get him to sell drugs. The psychiatric record also states that the Petitioner claimed to have been physically, emotionally, financially, and sexually abused by his former spouse, who he reported also threatened to get him deported. The psychiatric record concludes that the Petitioner suffers from Major Depressive Disorder and Post Traumatic Stress disorder.

The Petitioner also provided affidavits from third parties familiar with his relationship with K-D-. A-O- provided an affidavit in which they state that they stopped visiting the Petitioner when K-D- reacted violently toward the Petitioner calling the Petitioner names. An affidavit from U-P- states that they attempted to help the Petitioner after he was left homeless following his separation from K-D-. An affidavit from E-O- states that he “noticed and or was informed” about the physical and emotional abuse perpetrated against the Petitioner. An additional affidavit from N-S-N- states that they were aware that K-D- physically, psychologically, mentally, and financially abused the Petitioner.

On appeal, the Petitioner asserts that the Director erred in determining that the Petitioner was not subjected to extreme cruelty and in not considering the Petitioner’s statement regarding battery by K-D-.² No additional documentary evidence was submitted on appeal; instead, the Petitioner relies on evidence previously evaluated by the Director.

C. The Petitioner Has Not Demonstrated 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).

The Petitioner argues, on appeal, that the Director did not properly consider the instances of battery perpetrated against the Petitioner by K-D-, that K-D- attempted to control him financially by keeping his paychecks and through his immigration status by not attending his immigration interview, that throwing him out of the home was an act of cruelty and that K-D- used offensive language designed to diminish the Petitioner’s self-worth. The Petitioner continues to point to his homelessness and the need to sleep in subways and trains following his former spouse’s decision to separate as evidence of extreme cruelty. The Petitioner contends that as a result of his homelessness, the abusive language of his former spouse, and his separation from K-D-, he suffered severe emotional trauma.

Upon de novo review, the Director correctly assessed the evidence in the record and determined that it does not demonstrate that the Petitioner was subjected to the conduct described in the regulations. 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner’s statements about his former spouse’s behavior are general and do not describe in any probative detail incidents of battery or physical abuse by his spouse even

² As an initial matter, the Petitioner argues that the Director should have granted an extension of time to file the second motion based on his attorney’s hospitalization. We note that although the Director’s decision appears to have inadvertently referenced an “untimely filing,” the Director did not dismiss the motion because it was untimely filed but rather, dismissed the motion on the merits after considering the Petitioner’s additional evidence and arguments in support of his VAWA eligibility.

though he claims that she pushed and pounced on him. The Petitioner's 2017 personal statement stated that in one incident his former spouse pounced on him when he returned from speaking with a neighbor and shoved him in another altercation. He did not further provide substantive information for either of these claims. Instead, he focused on the emotional harm that the Petitioner claims to have suffered from outbursts of anger by K-D- and ultimately from the break-up of the marriage. Additionally, the contemporaneous 2017 psychological evaluation from M-I- indicates that the Petitioner denied any physical or sexual abuse during their appointment. We acknowledge the evidence in the record, that the Petitioner suffers from Major Depressive Disorder and Post-Traumatic Stress Disorder and that the psychiatric record from [] refers to physical, emotional, and sexual abuse by the Petitioner's former spouse. However, the notes from [] do not provide a detailed description of the events that occurred between K-D- and the Petitioner that led the writer to conclude that the Petitioner was subjected to physical, emotional, and sexual abuse. Similarly, the supporting affidavits of N-S-N-, U-P-, E-O-, and A-O- do not provide detailed descriptions of instances of abuse witnessed firsthand or describe any behavior by K-D- that is encompassed within the regulatory definition of "subjected to battery or extreme cruelty." Instead, the affidavits mostly focus on the Petitioner's wellbeing following his separation from his former spouse.

In addition to not providing sufficient detail regarding specific instances of battery or sexual abuse, the evidence contains contradictions that diminish their evidentiary value. The psychological evaluation from M-I- completed in March 2017, right after the break-up of the marriage, states the Petitioner denied any physical or sexual abuse. The evaluation from [] completed in 2021 following the denial of the VAWA petition, states that the Petitioner reported being asked by his spouse to sell drugs or other "bad" things. This incident does not appear anywhere in the Petitioner's statements to the Director or in the earlier 2017 evaluation. In addition, while the [] psychiatric record also indicates he was sexually abused by his spouse, the Petitioner did not raise any instance of sexual abuse by K-D- in his personal statements to the Director and as stated, the Petitioner denied sexual abuse at the time of the report by M-I-. The record contains no explanations for the discrepancies between the Petitioner's statement, the psychological evaluation from M-I-, and the medical report from [] which further cast doubt on the Petitioner's version of events. As such, the Petitioner has not satisfied his burden to demonstrate that K-D- subjected him to battery or extreme cruelty during their marriage. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (explaining that a petitioner must establish that they meet each eligibility requirement by a preponderance of the evidence and that in determining whether a petitioner has satisfied their burden, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence).

We are sympathetic to the Petitioner's claim that homelessness and abandonment by his former spouse resulted in emotional harm to the Petitioner and acknowledge the evidence of the Petitioner's psychological diagnoses. However, K-D-'s conduct as described by the Petitioner in his written statements and his psychological records, including her abandonment of the Petitioner, financial demands, demeaning and manipulative language, and exclusion of the Petitioner from their apartment, does not support a determination that she subjected him to threatened or actual violence including forced detention, psychological or sexual abuse or exploitation, or any other abusive actions that were part of an overall pattern of violence that constitutes battery or extreme cruelty as defined in the regulations.

For these reasons, the Petitioner has not established that he was subjected to battery or extreme cruelty by his U.S. citizen spouse during the marriage, as required. Consequently, the Petitioner has not demonstrated his eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.