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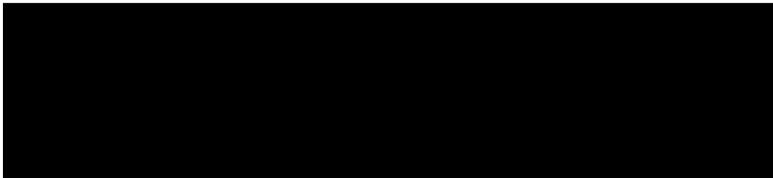
IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*for*   
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The December 19, 2006 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO<sup>1</sup>, we will only repeat them as necessary.

The director initially denied the petition on October 14, 2005, finding that the petitioner failed to establish that he had been battered by or subjected to extreme cruelty by his citizen spouse. The petitioner, through counsel, submitted a timely appeal. On appeal, the AAO concurred with the findings of the director but remanded the case because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on August 15, 2006 in accordance with the AAO's July 10, 2006 decision. On October 16, 2006, the petitioner, through counsel, submitted additional documentation in response to the director's NOID. After reviewing the additional evidence submitted, the director denied the petition on December 19, 2006, finding that the petitioner failed to establish the requisite abuse. The director certified her decision to the AAO for review and notified the petitioner and counsel that a brief could be submitted to the AAO within 30 days of service of the director's decision. Although counsel for the petitioner submitted a letter dated December 27, 2006 inquiring about the status of the petitioner's case, the letter did not address the merits of the case and was not accompanied by any additional evidence.

Upon review, we concur with the director's December 19, 2006 determination. As all of the relevant evidence that was submitted prior to appeal was discussed in the July 10, 2006 decision of the AAO, the only new evidence to be considered in this proceeding consists of the following:

- A copy of [REDACTED] credentials;

<sup>1</sup> The July 10, 2006 decision of the AAO is incorporated here by reference.

- An October 11, 2006 affidavit from [REDACTED], a friend of the petitioner; and
- A “prescription profile” of the medication’s prescribed to the petitioner from April 2001 through July 2002.

In addition to the submission of the aforementioned evidence, counsel for the petitioner submitted a brief in which he contests the findings made by the AAO and by the director regarding the inconsistencies noted in the record. Counsel first argues that there are no inconsistencies between the petitioner’s affidavit and [REDACTED] assessment. Despite the director’s reference to specific inconsistencies, counsel only generally states that the petitioner’s statement and [REDACTED] report “are consistent with one other [sic].” Counsel fails to offer any statement from the petitioner to rebut the director’s findings and does not offer any specific refutation of any of the director’s findings related to these two pieces of evidence. The unsupported statements of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even if the petitioner had attempted to explain the inconsistencies noted between his statement and [REDACTED] report, the record contains numerous other inconsistencies documented by the director and the AAO that were not contested by counsel.

Counsel further argues that the judge who granted the dissolution of the petitioner’s marriage did not make “a formal finding of a lack of credibility” as indicated by the director and the AAO. We do not find counsel’s argument to be persuasive. Contrary to counsel’s statement, the judgment issued by the court specifically found that both the petitioner and his spouse “have lied to the Court under oath and that both parties lack credibility.” Counsel’s argument that the judge did not indicate “what he believed the Petitioner was dishonest about” is equally unpersuasive. It is of little consequence that the judge did not specifically delineate each and every issue in which he felt the petitioner perjured himself. The petitioner was found to have lied under oath. Accordingly, and without regard for what issue he lied about, his testimony was not reliable.

Finally, counsel contests the Service’s finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty. To support this contention, the petitioner submitted a second affidavit from [REDACTED]. We note that [REDACTED]’s initial statement was found to lack sufficient detail to support the petitioner’s claim of abuse. In her new affidavit, [REDACTED] provides more specific details regarding incidents that she purportedly witnessed including both verbal and physical abuse. In particular, [REDACTED] claims to have witnessed an incident in which the petitioner’s spouse threw a remote control at the petitioner. This incident, however, was not described in either the petitioner’s statement or in [REDACTED] assessment.

The remaining evidence also does not carry sufficient weight to establish the petitioner’s claim of abuse. The copy of [REDACTED]’s credentials appears to have been submitted in response to the AAO’s indication that the record contained no such documentation. While we acknowledge the submission of these credentials, they do not add any evidentiary weight to the petitioner’s claims of abuse. Similarly, the petitioner’s submission of his prescription history does not carry sufficient weight to establish his claim of abuse. Counsel contends that this evidence “corresponds directly with the time of the abuse detailed in [REDACTED]’s affidavit” and shows that the petitioner was “deal[ing] with the emotional impact of his ex-wife’s abuse.” While we do not dispute the timeline provided by [REDACTED] the fact that the petitioner was given a prescription drug does not persuasively establish the claimed abuse. Although [REDACTED] indicated

that the petitioner suffered from “acute depression, anxiety, and anger” as a result of his relationship with his spouse, as discussed in the prior decision of the AAO and the director, the record does not adequately establish that the petitioner is credible and that the claims made in support of the petition establish that his spouse’s actions constituted battery or extreme cruelty. While the petitioner’s depression and other symptoms may be a direct result of his spouse’s actions, not any claimed action will suffice to establish the petitioner’s claim of abuse.

The petitioner has submitted no further brief or evidence since the director’s certification decision was issued. As discussed above, we concur with the director’s finding that the petitioner has not established that he was battered by or subjected to extreme cruelty by his citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the December 19, 2006 decision of the director is affirmed and the petition is denied.

**ORDER:** The petition is denied. The December 19, 2006 decision of the director is affirmed.