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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 06 048 50229

Office: VERMONT SERVICE CENTER

Date: JUL 22 2008

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused 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:  
[REDACTED]

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.

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

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the record did not establish that the petitioner's former wife battered or subjected him to extreme cruelty during their marriage.

On appeal, counsel submits a brief and additional evidence.

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).

An alien who is no longer married to a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), 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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of 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. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner. . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, 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 Service.

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ecuador who entered the United States as a nonimmigrant visitor (B-2) on February 6, 1999. On March 1, 2000, the petitioner married W-Z,<sup>1</sup> a U.S. citizen, in New Jersey. On April 30, 2001, W-Z- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and on the same day, the petitioner filed a corresponding Form I-485, Application to Adjust Status. On October 15, 2004, the marriage of the petitioner and his wife ended in divorce.<sup>2</sup> Action on the Form I-130 petition was subsequently terminated, and on June 10, 2005, the district director denied the corresponding Form I-485 application. The petitioner was subsequently issued a Notice to Appear (NTA) for removal proceedings, pursuant to section 237(a)(1)(B) of the Act in that after his admission

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> Superior Court of New Jersey, Chancery Division: Family Part, Bergen County, Docket No: FM-02-536-05.

as a nonimmigrant under section 101(a)(15) of the Act, the petitioner remained in the United States for a time longer than permitted.

On November 25, 2005, the petitioner filed the instant Form I-360 petition. On May 9, 2006, the removal proceedings were terminated to allow the petitioner to pursue his Form I-360 petition. On June 13, 2006, the director issued a Request for Evidence (RFE), explaining to the petitioner the insufficiency of the supporting evidence initially submitted with his Form I-360 petition and requesting the petitioner to submit additional evidence that his former wife battered or subjected him to extreme cruelty. The petitioner timely responded with additional testimonial evidence from friends. On August 30, 2006, the director issued a Notice of Intent to Deny (NOID) the petition because the evidence submitted by the petitioner in response to the RFE failed to substantiate a claim of battery or extreme cruelty. In response to the NOID, counsel requested an extension of time to submit additional evidence. On October 16, 2006, the director denied the petition and the request for an extension because the record did not establish the requisite battery or extreme cruelty and the petitioner had been given ample opportunity to submit additional evidence to support his petition and failed to do so. The petitioner, through counsel, submitted a timely appeal with additional testimonial evidence and two reports from psychologists.

On appeal, counsel contends that the petitioner met his burden of proof to establish his eligibility. As will be discussed in detail below, we concur with the director's determination. Beyond the director's decision, the record also fails to establish that the petitioner had a qualifying relationship with his former wife and was eligible for immediate relative classification based on such a relationship.

#### *Battery or Extreme Cruelty*

As evidence of battery or extreme cruelty, the petitioner initially submitted his own sworn statement dated, November 8, 2005, and that of his brother, [REDACTED], dated November 8, 2005.

In his November 8, 2005 statement, the petitioner indicates that about two years after his marriage, he began to see some changes in his ex-wife's mood and behavior towards him, that she started to lose patience over things she had never seemed to mind before and would go out more often than before and stay out later. The petitioner states that his ex-wife began to exclude him from her plans and conversations in front of friends, which made him feel that she was making fun of him. The petitioner reports that she began to make demands for money for unusual expenses and began to spend money "like there is no tomorrow." The petitioner says that his ex-wife refused to go places with him and that her "fits of anger" became longer. The most painful incident, the petitioner states, was when his ex-wife, during their immigration interview, revealed to the immigration officer that she had been cheating on the petitioner. Upon learning of his ex-wife's infidelity, the petitioner claims that he felt as if his whole world and everything he had put faith on had come crashing down.

[REDACTED] the petitioner's brother, states that the petitioner's ex-wife had a "fierce temper" and would yell at the petitioner in his presence for no apparent reason and hurl all sorts of insults and obscene

words, and that her behavior worsened after their marriage. Mr. [REDACTED] claims that the petitioner's ex-wife was insensitive and would not apologize to his brother or give any reason for her behavior. Mr. [REDACTED] claims that after the marriage of his brother and his ex-wife ended because of her infidelity, his brother was "brokenhearted" and felt betrayed and hopeless. Neither the petitioner's nor his brother's statements describe any specific instances of physical abuse by the petitioner's ex-wife, and the verbal insults and non-violent treatment described do not rise to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

Although the petitioner submitted four additional statements from friends in response to the director's RFE, the statements were not submitted with certified English translations. The regulation at 8 C.F.R. § 103.2(b)(3) stipulates that:

[A]ny document containing foreign language submitted to Citizenship and Immigration Services (CIS) shall be accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On appeal, counsel submits five additional statements from the petitioner, his friends and sister, as well as reports from two psychologists. In his statement dated November 7, 2006, submitted on appeal, the petitioner restates the same information contained in his November 8, 2005 statement. In addition, the petitioner states that his ex-wife insulted his mother, and when he tried to stop her from insulting his mother, she attacked him by scratching him on his neck and shoulders. The petitioner states that after the attack, he went to his friend's house, who saw the injuries and advised him to call the police and report the attack, but that he declined to get the police involved because of his love for his ex-wife and because he did not want to create any problems for her. The petitioner reiterates that he was very hurt and embarrassed by his ex-wife's confession of infidelity to the immigration officer. The petitioner states that on their way home following the interview, his ex-wife hit him on the head in the car and left him thereafter, and he has not seen her since.

In her October 25, 2006 statement, the petitioner's sister, [REDACTED], reports that she witnessed and can verify that the petitioner's ex-wife was cruel to him physically, emotionally and mentally. Ms. [REDACTED] states that the petitioner's ex-wife would call him names, "physically abuse him for no reason," threatened not to help him with his immigration papers, and throw him out of their home so the petitioner had to find a friend to stay with until she decided he could be allowed to come back. Ms. [REDACTED] states that the petitioner's ex-wife would hit him and mistreat him in public and in front of family and friends, and she indicates that she saw scratches and bruises around the petitioner's

neck and face on unspecified occasions, which the petitioner told her were caused by his ex-wife. Ms. [REDACTED] does not describe in probative detail any specific incident of battery or extreme cruelty that she witnessed, and she does not otherwise explain the basis of her knowledge of the alleged abuse.

The remaining statements from the petitioner's friends, [REDACTED] and [REDACTED] Aguilar are not accompanied by the required certified translation and, therefore, are accorded no evidentiary value. 8 C.F.R. § 103.2(b)(3)

In his psychological assessment, [REDACTED] states that he interviewed the petitioner once on December 3, 2005, at the request of counsel. Dr. [REDACTED] reports that the petitioner's spouse called him derogatory names; pushed, grabbed and scratched him and "occasionally got drunk and stole money from his pockets," yet in his own statements, the petitioner does not report that his ex-wife stole money from his pockets. Dr. [REDACTED] emphasizes that "[m]ost profoundly of all, [the petitioner's ex-wife] cheated on him with another man." Although consistent with the petitioner's description of his ex-wife's infidelity as "the most painful incident" in his marriage, Dr. [REDACTED] provides no probative explanation sufficient to establish that the infidelity of the petitioner's ex-wife rose to the level of extreme cruelty, as defined in the regulations at 8 C.F.R. § 204.2(c)(1)(iv). Dr. [REDACTED] also fails to provide any detailed description or probative discussion of any other alleged incident of abuse cited in his report and simply concludes: "It is my professional opinion as a psychologist that Mr. [REDACTED] developed an Adjustment Disorder with mixed Anxiety and Depressed Mood as a result of the spousal abuse . . . during his marriage to Ms. W-Z." Moreover, despite his diagnosis of the petitioner, Dr. [REDACTED] does not recommend, or indicate that he provided any treatment for the petitioner.

In his letter addressed to counsel, [REDACTED] states that he met with the petitioner once and that based on his single interview of the petitioner on November 16, 2006, unspecified testing, and a review of affidavits of the petitioner's friends and brother provided to him by counsel, he believes that the petitioner "has endured significant psychological harm." Dr. [REDACTED] diagnoses the petitioner with Major Depressive Disorder, and states that "although the anxiety that was evident during his marriage appears to have subsided to a significant extent, the depressive disorder remains quiet evident." Dr. [REDACTED]'s description of the alleged abuse of the petitioner's ex-wife, as related to him by the petitioner, is inconsistent with the petitioner's two prior statements. Specifically, Dr. [REDACTED] relates that by their third year in marriage, the petitioner's ex-wife began threatening and blackmailing him stating that she would go to immigration and report that the petitioner had hit her, and that the petitioner was a criminal in his home country. The petitioner never claimed in his prior statements that his ex-wife threatened him in this manner. Dr. [REDACTED] did not provide any treatment to the petitioner, but states that the petitioner's depression will "not only improve with treatment but is likely to further improve as his residency status is finalized and he is reassured that he can remain in this country."

The letters from Dr. [REDACTED] and Dr. [REDACTED] fail to support the petitioner's claim of battery or extreme

cruelty. Although they diagnose the petitioner with depression and anxiety, their letters provide no substantive analysis or probative details that demonstrate the alleged abuse perpetrated against the petitioner.

On appeal, counsel cites *Hernandez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2003), in support of his claim that the actions of the petitioner's ex-wife constituted extreme cruelty. Counsel's reliance on *Hernandez* is misguided for three reasons. First, as this case arose outside the jurisdiction of the Ninth Circuit Court of Appeals, the *Hernandez* decision is not a binding precedent. Second, *Hernandez* addressed an alien's eligibility for suspension of deportation under former section 244(a)(3) of the Act, 8 U.S.C § 1245(a)(3) (1996), a different statutory provision than that involved in this case, namely section 204(a)(1)(A)(iii) of the Act. Third, while the *Hernandez* court gave deference to the regulation at 8 C.F.R. § 204.2(c)(1)(vi) in its interpretation of the term "extreme cruelty" as used in former section 244(a)(3) of the Act, the court applied the term to facts that are clearly distinguishable from those in this case. *Id.* at 839.

In *Hernandez*, the alien's husband severely beat her repeatedly in Mexico and once attacked her with a knife, cutting the alien's hand to the bone. *Hernandez*, 345 F.3d at 829-30. Her husband's battery resulted in extensive physical injuries that left visible scars on the alien's head and hand that were observed by the Immigration Judge. *Id.* at 830-31. After one severe beating, the alien fled to her sister's home in the United States. *Id.* at 830. Her husband called her repeatedly and then came to the United States to see her, apologized and promised to see a marriage counselor if the alien returned to Mexico with him. *Id.* Yet when the alien returned to Mexico, her husband became violent again and eventually attacked the petitioner with a knife. *Id.*

The pertinent issue in *Hernandez* was whether the alien was "subjected to extreme cruelty in the United States" by her husband, as required by the former section 244(a)(3) of the Act, when her husband never physically assaulted her in this country. The *Hernandez* court held that the alien's husband subjected her to extreme cruelty in the United States because although not overtly violent, his actions were part of a contrite phase in his cycle of domestic violence and hence fit the regulatory description of extreme cruelty as acts that, in and of themselves, "may not initially appear violent but that are part of an overall pattern of violence." *Id.* at 840-41 (quoting 8 C.F.R. § 204.2(c)(1)(vi)).

In this case, the behavior of the petitioner's ex-wife, which includes the claims that the petitioner's ex-wife yelled and hurled insults and obscene words at the petitioner, refused to go to places with the petitioner, would stay out late at night, excluded the petitioner from her plans, threw him out of their home, cheated on him while they were still married, and eventually abandoned the petitioner, do not rise to the level of domestic harm described in *Hernandez*. Further, the non-physical actions of the petitioner's ex-wife described above do not demonstrate that her behavior was accompanied by any coercive actions or threats of harm or that her actions were aimed at insuring dominance or control over the petitioner. While the petitioner and his sister allege on appeal that on unspecified occasions the petitioner's ex-wife hit and scratched the petitioner and threatened the petitioner with his immigration status, the petitioner provides no explanation for the failure to make these claims previously. As such,

the evidentiary value of these additional claims is severely diminished. Regardless, the general assertions regarding the alleged physical abuse and threats related to his immigration status, without further descriptive details, are insufficient to establish a claim of battery. Also, although Dr. [REDACTED] determined that the “[the petitioner] developed an Adjustment Disorder with mixed Anxiety and Depressed Mood as a result of the spousal abuse he absorbed during his marriage to his [ex-wife],” Dr. [REDACTED] fails to provide any detailed description or probative discussion of the alleged spousal abuse. Similarly, although Dr. [REDACTED] determined that the petitioner “has endured significant psychological harm,” he fails to provide detailed description or probative discussions of the alleged psychological harm. Both Dr. [REDACTED] and Dr. [REDACTED] in their reports, fail to document that the petitioner’s ex-wife’s actions were aimed at maintaining dominance and control over the petitioner, which manifested into an overall pattern of violence against him.

On appeal, counsel also argues that the director was prejudiced against the petitioner because of his gender. We acknowledge the fact that both women and men are subjected to domestic violence and find no indication of gender bias in the director’s decision. The director did not determine that the petitioner was not subjected to abuse because of his gender, but because the relevant evidence failed to establish that the behavior of the petitioner’s former spouse rose to the level of battery or extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Accordingly, we concur with the director’s determination that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Qualifying Relationship and Eligibility for Immediate Relative Classification*

Beyond the director’s decision, the present record fails to establish that the petitioner had a qualifying relationship with his former spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act extends eligibility to aliens who have divorced their U.S. citizen spouses only if they can demonstrate “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” As discussed above, the petitioner failed to establish that his former wife subjected him to battery or extreme cruelty and consequently has not demonstrated the requisite connection between their divorce and such abuse. Accordingly, the present record fails to establish that the petitioner had a qualifying relationship with a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

In addition, the present record also fails to demonstrate that the petitioner was eligible for immediate relative classification based on his relationship with his former wife, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. As the petitioner failed to demonstrate a qualifying relationship with his former wife, he has also not established that he was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On

appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The denial of the petition will be affirmed for the reasons stated above, with each considered an independent and alternative basis for denial. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.