

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B9

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAR 26 2008**  
EAC 04 255 52892

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 Deadnick*  
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 matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("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.

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 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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on October 3, 2005 for failure to establish the requisite battery or extreme cruelty. In its June 23, 2006 decision on appeal, the AAO concurred with the director's determination but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on October 24, 2006, which informed the petitioner, through counsel, that he had failed to establish the requisite battery or extreme cruelty. The petitioner responded to the NOID with additional evidence that the director found insufficient to establish the petitioner's eligibility. Accordingly, the director denied the petition on March 29, 2007 on the ground cited in the NOID and certified his decision to the AAO for review. On certification, counsel submits a second psychological assessment of the petitioner.

The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. Accordingly, we will only discuss the relevant evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted a "power and control wheel with respect to extreme cruelty or violence against men" from an unidentified source; affidavits from the petitioner's brothers, [REDACTED] and [REDACTED]; the petitioner's December 18, 2006 affidavit and a copy of the

petitioner's divorce decree.<sup>1</sup> We concur with the director's determination that these documents do not establish that the petitioner's former wife subjected him to battery or extreme cruelty during their marriage.

In his December 12, 2006 affidavit, [REDACTED] states that the petitioner's former wife humiliated him on a number of occasions in front of the family. However, [REDACTED] describes only one of these incidents in detail. At the end of 2003, [REDACTED] reports that while at a party, he saw the petitioner with beer splashed on his shirt while his former wife stormed out using expletives. Mr. [REDACTED] states that the petitioner came to his home later that evening when his former wife locked him out. [REDACTED] also notes that the petitioner's former wife was very rude to their mother on several occasions, which is "absolutely unconscionable" in their society and made it appear as if the petitioner was not in control of his marriage.

In his December 13, 2006 affidavit, [REDACTED] states that he once visited the former couple in the Fall of 2003. When the petitioner asked his former wife why she did not greet [REDACTED] upon his arrival, [REDACTED] reports that she told him not to dominate her, made a derogatory reference to his African culture, yelled at him and then slapped the petitioner's face. [REDACTED] also confirms that the petitioner's former wife was rude to their mother on several occasions.

In his December 18, 2006 affidavit, the petitioner states that he underestimated the fact that his former wife was hurt in a previous relationship and took her pain out on him; that he allowed her to do things to him and talk to him in ways he should not have allowed and that her behavior broke down his self-esteem and confidence and he became depressed. The petitioner does not describe the 2003 incidents discussed by his brothers, omissions that greatly detract from the credibility of these claims.

In his December 18, 2006 memorandum, counsel claimed that the petitioner obtained a divorce under a provision of Pennsylvania law which requires plaintiffs to be notified of the availability of counseling and "indicates the seriousness of the ground of divorce." Counsel further asserts that because the petitioner's former wife did not contest the complaint, she admitted "her unconscionable conduct." Contrary to counsel's claims, the copy of the petitioner's divorce decree submitted in response to the NOID shows that the petitioner obtained a divorce under section 3301(d) of the Pennsylvania Divorce Code, "Irretrievable Breakdown – Two Year Separation." The court records submitted contain no finding of facts or other evidence of the alleged abuse. Rather, the decree includes a "Counseling Notice" issued pursuant to the Pennsylvania Divorce Code, which requires that the plaintiff be notified of the availability of counseling when a divorce is sought under section 3301(d) of the Pennsylvania Divorce Code and "the court determines that there is a reasonable prospect of reconciliation." Contrary to counsel's final assertion, the record contains no evidence that the petitioner's wife was served with a copy of the petitioner's divorce complaint, but did not contest and thereby admitted her abusive

---

<sup>1</sup> The Philadelphia County, Pennsylvania Court of Common Pleas, Family Court Division issued the divorce decree on November 9, 2006 (No. [REDACTED] over two years after this petition was filed.

behavior. The petitioner merely submitted the one-sentence decree and an unsigned and incomplete “Praecepto to Transmit Record.”

In regards to the power and control wheel and counsel’s assertion (in his December 18, 2006 memorandum) that “[t]he concept of men as victims should not be looked at with skepticism,” we do not dispute that domestic violence affects both men and women. Rather, the issue here is whether the petitioner has established by a preponderance of the evidence that his former wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. We concur with the director’s determination that the evidence submitted in response to the NOID does not establish that the behavior of the petitioner’s former wife rose to the level of battery or extreme cruelty.

On certification, counsel submits a psychological assessment of the petitioner in support of the petitioner’s claim of extreme cruelty. The assessment is dated April 19, 2007, which was 21 days after the director issued his certified decision. The assessment is written by [REDACTED] whose prior assessment was submitted below in response to the director’s March 17, 2005 Request for Evidence. On certification, counsel does not explain why a follow-up assessment was not submitted below. Counsel was notified of the need for additional evidence of battery or extreme cruelty through the director’s initial decision on October 3, 2005. Counsel did not provide a second assessment on appeal. In our prior decision, we also discussed the insufficiency of the relevant evidence submitted below to establish battery or extreme cruelty. Finally, in the October 24, 2006 NOID, the director advised counsel yet again of the need for additional evidence of battery or extreme cruelty. Despite these three prior notices, issued over the course of an entire year, counsel did not submit a second psychological assessment below, but submits [REDACTED]’s report for the first time on certification.

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or certification. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The petitioner has provided no explanation and documentation of why the evidence submitted on certification was not available for submission below. Accordingly, the AAO need not and will not consider the evidence submitted for the first time on certification. If the petitioner wishes the evidence to be considered, he may submit it with a new self-petition. *See Matter of Obaigbena*, 19 I&N Dec. at 537.

Accordingly, the March 29, 2007 decision of the director denying the petition is affirmed. The petitioner has not demonstrated that his former wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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. The petitioner has not sustained that burden.

**ORDER:** The director's decision of March 29, 2007 is affirmed. The petition is denied.