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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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

B9

[Redacted]

FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: AUG 11 2010

IN RE: [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:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director initially approved the immigrant visa petition. However, upon receipt of correspondence from the Tucson Field Office, the director issued a notice of intent to revoke (NOIR), and ultimately revoked, approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director approved the petition for immigrant classification under 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 on March 30, 2004. On July 20, 2006, the director issued a NOIR upon his finding that the evidence of record failed to establish that the petitioner had been subjected to battery or extreme cruelty by his ex-wife, and the petitioner filed a timely response. The director found the petitioner's response inadequate, and revoked approval of the petition on November 30, 2007. On appeal, counsel submits a memorandum of law and additional evidence.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 1154 of this title." A director may revoke the approval of a petition on notice "when the necessity for the revocation comes to the attention of this Service." 8 C.F.R. § 205.2(a). As set forth below, the AAO finds that the visa petition was initially approved in error and affirms the director's revocation of that approval.

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, 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

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

*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 petitioner is a citizen of Mexico. He married C-S-<sup>1</sup> a citizen of the United States, on December 7, 2001. The petitioner filed the instant Form I-360 on September 26, 2002, and it was approved on March 30, 2004. The petitioner and C-S- divorced on June 18, 2004.

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

U.S. Citizenship and Immigration Services (USCIS) records indicate that shortly after the Form I-360 was approved, the petitioner appeared at the Tucson Field Office for an interview in connection with his adjustment of status application. According to the interviewing officer, when asked about his marriage to C-S- the petitioner stated that she quit her job as a receptionist, and was then fired from her next job. He stated that C-S- spent money uncontrollably, and that he filed for bankruptcy prior to filing for divorce. At no time did he discuss any abuse by C-S-. The officer stated that based on the petitioner's testimony, it appeared as though the marriage had failed due to financial difficulties.

As noted, the director issued a NOIR on July 20, 2006, and stated that "during an interview at the Tucson office, it was interpreted that that failure of your marriage to [C-S-] was based on financial difficulties, not spousal abuse." In his November 30, 2007 revocation decision, the director stated that "the claimed emotional abuse by your spouse does not rise to the level of extreme mental cruelty as envisioned by Congress."

The sole issue before the AAO is whether the petitioner has established that he was subjected to battery and/or extreme cruelty by C-S- during their marriage. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has not overcome the director's ground for revoking approval of this petition.

As evidence of his treatment by C-S-, the petitioner submits three personal statements; a statement from a family friend; a letter from a domestic violence outreach organization; and a psychological evaluation.

In his August 31, 2002 statement, the petitioner stated that he noticed a startling change in C-S-'s behavior after they married. The petitioner stated that when he called C-S- beautiful, she accused him of lying. He stated that she began calling him names and accused him of not caring about her. The petitioner also reported that C-S- accused him of being insufficiently jealous, and threatened to leave him. The petitioner stated that he was going to school, working, and training for a boxing competition, and was often very tired when he got home. However, C-S- was unsympathetic, and questioned his sexual orientation when he did not comply with her demands for sexual intercourse. She also questioned his sexual orientation when the petitioner socialized with male friends, and ridiculed his masculinity when he wanted to spend a holiday at his mother's home.

The petitioner stated that C-S- threw him out of the house frequently and that although he always apologized, he never really understood what he had done wrong. He stated that he has never cried as much in his entire life as he did while living with C-S- and that he became very depressed and was soon unable to function on a day-to-day basis.

In his second statement, which was submitted with counsel's July 15, 2003 response to a request for additional evidence issued by the director, the petitioner stated that C-S- made him believe that every argument was his fault; that she questioned his sexual orientation when he refused her demands for sexual intercourse; ridiculed his masculinity; called him names; threw him out of the apartment on

several occasions; became angry when he met with friends without first telling her; accused him of not caring for her; that he “tried and tried” to make things work; and that he has changed to the point that he does not think that he could ever put total effort into a relationship again.

In his third statement, which was submitted with counsel’s September 10, 2006 response to the director’s NOIR, the petitioner stated that when he called C-S- beautiful, she accused him of lying. On other occasions, she became angry when he did not tell her she was beautiful at the right time. He reported that C-S- called him names; told him constantly that he did not care for her; became angry over his lack of jealousy; threatened to leave him; threw his belongings out of the house on several occasions; became angry when he did not want to have sexual relations; questioned his sexual orientation; ridiculed his masculinity when he wanted to spend a holiday with his mother; and constantly questioned the petitioner’s feelings for her. The petitioner stated that he became depressed, and felt like his life was coming to an end.

In her September 3, 2002 statement, [REDACTED], a friend of the petitioner’s family, stated that C-S- was emotionally abusive, and that the petitioner told her that when he went home to C-S-, he did not know what to expect from her. Ms. [REDACTED] also stated that she noticed the petitioner’s state of depression, which she believed was exacerbated by the petitioner’s childhood experiences of his father’s abuse of his mother.

In her October 29, 2002 letter, [REDACTED] and [REDACTED], stated that the petitioner sought services from her agency after being abused by C-S-. According to Ms. [REDACTED], the petitioner received counseling, crisis intervention, advocacy, education, and referrals to other community resources. Ms. [REDACTED] provides no further probative information regarding the abuse or its effects on the petitioner.

The record also contains a letter from Dr. [REDACTED] a clinical psychologist who met with the petitioner on July 31, 2006 and August 1, 2006. Dr. [REDACTED] stated that the petitioner told him that he is afraid of commitment as a result of his experience, and has trouble trusting others. He stated that the petitioner told him that C-S- tried to control him; questioned his masculinity and sexual orientation; became angry if he refused to engage in sexual relations; threatened his immigration status; was unfaithful; and called him names. Dr. [REDACTED] diagnosed the petitioner with the following relevant conditions: (1) adjustment disorder with mixed disturbance of emotions and conduct; (2) relational problem related to a mental disorder; and (3) post traumatic stress disorder in partial remission.

On appeal, counsel contends that the petitioner was subjected to both battery and extreme cruelty. The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that C-S- subjected the petitioner to battery or extreme cruelty during their marriage. The record does not support counsel’s assertion that the petitioner was battered by C-S-, as the petitioner himself makes no allegation of, and the other, relevant evidence does not establish, that he was the victim of any battery by C-S-.

Nor does the record show that C-S-'s non-physical behavior constituted extreme cruelty. The petitioner's testimony lacks specific, probative details regarding specific instances of abuse. While the AAO does not question Dr. [REDACTED] professional qualifications, his letter also does not establish the petitioner's claim, as the behaviors described to him by the petitioner do not constitute extreme cruelty pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Although C-S-'s non-physical behavior as described by the petitioner may have been unkind and inconsiderate, and caused a great deal of emotional distress to the petitioner, he has failed to establish that her actions were comparable to those described 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. Nor has the petitioner established that C-S-'s non-physical 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. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." *See Hernandez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has failed to establish that C-S- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has failed to overcome the ground for revocation. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed. Approval of the petition is revoked.