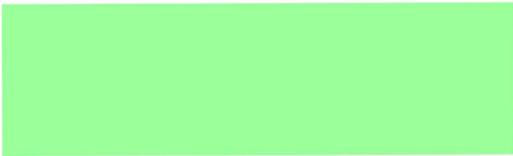


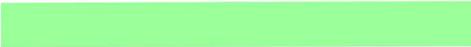


U.S. Citizenship
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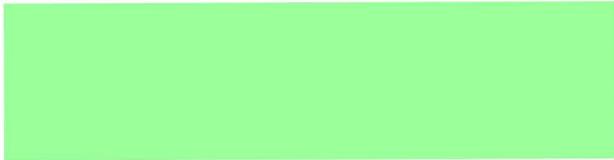


Date: **SEP 23 2013** Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the appeal will be dismissed.

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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s husband subjected her to battery or extreme cruelty during their marriage. The AAO dismissed a subsequent appeal. On motion, counsel submits a brief and additional evidence.

Relevant Law and Regulations

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].

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 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Jamaica who last entered the United States with advance parole on January 8, 2005. The petitioner married R-C-, a U.S. citizen, in Chicago, Illinois on May 26, 2005.¹ The petitioner filed the instant Form I-360 on November 23, 2010, which is now before the AAO on a motion to reopen and reconsider its prior decision dismissing the appeal. The motion will be granted.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

In its June 5, 2013 decision, the AAO determined that the evidence failed to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, the AAO found that the incidents discussed by the petitioner, including name calling and criticisms, drinking, financial problems, pressure to be sexually intimate and abandonment, did not indicate that her husband ever battered her or that his behavior involved threatened violence, psychological or sexual

¹ Name withheld to protect the individual's identity.

abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The AAO acknowledged that the psychological evaluation submitted by the petitioner stated that she was subjected to controlling behavior and verbal and sexual abuse, but explained that the evaluation did not discuss any specific instances of alleged abuse. The AAO also explained that the two unsigned statements from the petitioner's friends failed to discuss any specific instances of abuse.

On motion, counsel asserts that the petitioner's spouse engaged in conduct that is equivalent to the statutory provision for sexual abuse under the Illinois Criminal Code by manipulating her into having sexual relations with him and forcing her to engage in sexual acts she was uncomfortable with. Counsel further asserts that the petitioner was subjected to a systematic pattern of conduct that constitutes extreme cruelty, including verbal abuse, emotional abuse, intimidation, threats and control. Counsel submits information on the antidepressant medication Wellbutrin and a psychosocial assessment.

In her May 8, 2013 assessment, [REDACTED] a licensed clinical social worker, diagnosed the petitioner with adjustment disorder with mixed anxiety and depression. [REDACTED] stated that during her evaluation, the petitioner reported that her husband called her names and threatened deportation, but he never physically abused her. The petitioner reported that she became sexually intimate with her husband to prove that she was faithful to him. She stated that her husband used the fact that she had a child outside of their marriage to manipulate her. The petitioner also stated that her husband had financial problems, took money from their savings account and abandoned her.

De novo review of the record does not establish that R-C- subjected the petitioner to battery or extreme cruelty. Counsel's assertion that the petitioner's husband sexually assaulted her is not supported by the record. According to the psychosocial assessment, the petitioner reported that she became intimate with her husband to prove that she was faithful to him. The petitioner also reported that her husband would use the fact that she had a child outside of the marriage to "manipulate her, belittle her and get her to agree to things she normally would avoid." The petitioner's brief statements are insufficient to establish the claimed manipulation and sexual abuse. They do not describe behavior that is comparable to the types of acts 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. The petitioner has also not provided probative testimony to show that her husband's non-physical behavior, including name calling and criticisms, drinking, financial problems and abandonment, were accompanied by coercive actions or threats of harm, were aimed at insuring dominance or control over her, or otherwise constituted extreme cruelty. Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On motion, the petitioner has failed to establish that her husband subjected her to battery or extreme cruelty. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will remain dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is granted. The AAO's decision, dated June 5, 2013, is affirmed. The appeal is dismissed.