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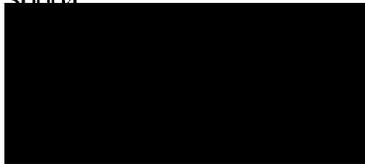
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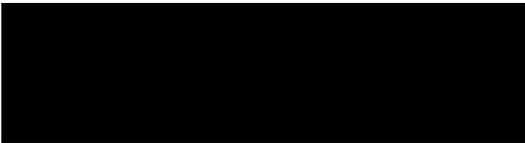
Petitioner:

Beneficiary:



PETITION: Petition for Special 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks classification as a special immigrant 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).

The director denied the petition based on a determination that the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his citizen spouse.

The petitioner filed a timely appeal to the director's decision. The AAO dismissed the appeal on November 3, 2004, concurring with the director's stated ground for denial. In addition, beyond the decision of the director, the AAO noted that the record remained absent evidence of the termination of the petitioner's marriage in Ghana. Accordingly, the AAO found that the petitioner failed to establish eligibility under 8 C.F.R. § 204.2(c)(1)(i)(A), (c)(1)(ii), and (c)(2)(ii) which require evidence regarding all prior marriages and divorces.

The petitioner, through counsel, filed the instant motion to reopen on December 2, 2004.

The regulation at 8 C.F.R. § 103.5(a)(2) states that a "motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

In the brief provided with his motion, counsel argues that the AAO failed "to recognize the 'any credible evidence' standard" used in self-petition cases. Additionally, counsel argues that the AAO did not "take into account the opinion of the professionals who analyzed the situation." We are not persuaded by counsel's arguments.

Although counsel cites to section 240A(b)(2)(D), a provision related to cancellation of removal, rather than provisions related to the instant provision and administrative hearings, counsel's argument that "any credible evidence" must be considered is correct nonetheless. The regulation indicates that the Service "will consider any credible evidence relevant to a self-petition filed by a qualified spouse or child ...." See 8 C.F.R. §§ 204.1(f)(1) and 204.2(c)(2)(i). It should be noted, however, that while we may find that the evidence submitted in support of the petition is credible, such a fact does not mean that the evidence demonstrates eligibility. For instance, a petitioner may submit evidence that he suffers from depression as a result of experiences that occurred in his marriage. However, while the evidence related to the claim of depression may be credible, that fact that he suffers from depression, does not establish that the cause of the depression (e.g., how he was treated during the marriage), is considered to be extreme cruelty. The statute does not state that we must *accept* all credible evidence, only that we *consider* such evidence when making a determination as to whether the petitioner meets the eligibility requirements.

Counsel argues that the AAO did not "give [sic] much respect" to the opinion of the petitioner's pastor or psychiatrist. Counsel refers to the regulations at 8 C.F.R. §§ 216.5(e)(3)(iv) through (vii) which relate to the removal of conditional residence. The regulations state that the Service's adjudication of extreme cruelty waivers "will be based upon the evaluation of recognized professionals. However, as correctly acknowledged by counsel in his brief, the regulatory provisions related to the instant self-petition do not provide for such reliance on professional evaluations. Rather, the regulation at 8 C.F.R. 204.2(c)(2)(iv) allows for the

submission of evidence of court orders of protections, police reports, and medical records, and as noted previously, "other forms of credible relevant evidence." The regulation further states that "[d]ocumentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred." Upon review of the evidence from [REDACTED] and [REDACTED] find such evidence is proof of non-qualifying abuse. We further that the evidence does not establish any qualifying abuse or pattern of abuse or violence.

In his affidavit [REDACTED] that the petitioner's spouse was "uncooperative" during counseling, that she was "intent on frustrating" the petitioner, and that although the petitioner "was the best husband that he could possibly be . . . [his wife] insisted on expecting more and more . . . [REDACTED] does not describe any particular incident in detail or provide specifics on how the petitioner's wife "frustrat[ed]" the petitioner. The fact that the petitioner's spouse did not want to remain married to the petitioner and "demanded that he leave the house," is not sufficient to establish that the petitioner was subjected to extreme cruelty.

In his initial report, dated June 30, 2002, [REDACTED] after interviewing the petitioner on one occasion for 60 minutes [REDACTED] includes that the petitioner's spouse became "rejecting, abusive, feeling entitled, to tak[e] advantage of him, and creating [a] humiliating environment." Although [REDACTED] uses terms such as "abusive" and "humiliating," the report gives no indication of physical abuse and does not describe any single incident or pattern of behavior on the petitioner's spouse's part to show how the petitioner was "abused" emotionally or psychologically or that he was "humiliate[ed]." That the petitioner's spouse was "insensitive and neglectful" does not lead to a finding that the petitioner was subjected to extreme cruelty.

Counsel further claims that the AAO "does not mention the March 9, 2004 addendum to the psychiatric report of June 30, 2002." Upon review of the record, we affirm counsel's claim and note that although the addendum was received by the AAO on May 24, 2004, well in advance of the AAO's decision, the addendum was not specifically mentioned in the decision. Given our review of the addendum for the instant motion, we consider our failure to note the addendum in our previous decision to be harmless error.

In the addendum [REDACTED] states that the petitioner's treatment during his marriage was more than simply "marital discord," and that the petitioner's wife "exploit[ed] his love and devotion." [REDACTED] then states that due to the petitioner's spouse's inability to become pregnant, she "start[ed] fearing [the petitioner's] rejection and then stating that she felt he did not love her and he didn't care about her, as if anticipating a massive slighting and humiliation from her husband to her." The single specific detail provided [REDACTED] to support his statement that the petitioner was "psychologically battered" and that his wife was "projecting [her] unacceptable thoughts and feelings onto the petitioner" is the claim that the petitioner's wife's told the petitioner, "If I were your boss I'd fire you."

While we find no reason to doubt the credibility of the evidence submitted by [REDACTED] in support of the petition, neither piece of evidence establishes that the treatment experienced by the petitioner rose to such a level as to be considered extreme cruelty. The record lacks evidence that the petitioner was forcefully detained by his spouse, that he was the victim of any act of violence, threatened or otherwise, or that he was the victim of sexual abuse or exploitation. The petitioner's sole claim for abuse appears to be based upon a claim of mental injury resulting from the "psychological abuse" he suffered. However, as discussed above, the evidence provided in support of the petitioner does not demonstrate that the treatment received by the petitioner during his marriage can be considered extreme mental cruelty.

As it relates to the additional finding of the AAO that the petitioner failed to provide evidence of the termination of his divorce, counsel asserts, "the statement in the psychiatric report concerning a 1996 marriage and a divorce one and a half years later is simply a typographical error that was overlooked." Counsel does not submit a statement from [REDACTED] objecting to this "typographical error," or, in the alternative, an addendum to the report to clarify the issue in question. The unsupported statements of counsel on appeal or in a motion 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 (BIA 1980).

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 met that burden.

**ORDER:** The motion is dismissed. The previous decision of the AAO is affirmed. The petition is denied.