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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**

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**APR 30 2009**

FILE:

Office: VERMONT SERVICE CENTER

Date:

EAC 07 208 50031

IN RE:

Petitioner:

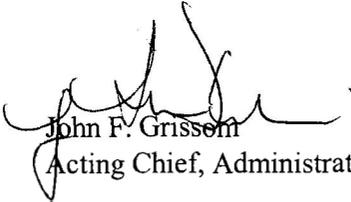
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grisson

Acting Chief, 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 petition will be denied.

The petitioner seeks immigrant classification under 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.

The director denied the petition for the petitioner's failure to establish that he was subjected to the requisite battery or extreme cruelty.

On appeal, the petitioner submits a brief asserting that United States Citizenship and Immigration Services (USCIS) used an improper standard when finding that the petitioner had not suffered cruel and unusual hardship.

The AAO concurs with the director's determination that the petitioner has not established that he was subjected to the requisite battery or extreme cruelty.

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 further explained 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 explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China who was admitted to the United States in K-3 status on July 10, 2005. The petitioner provided a copy of a translated marriage certificate showing that he married L-T<sup>1</sup>, a United States citizen on April 8, 2003 in China. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), Special Immigrant on July 10, 2007. Upon review of the record, including evidence submitted in response to the director's request for further evidence (RFE), the director denied the petition on July 24, 2008.

*Battery or Extreme Cruelty*

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

In the petitioner's initial personal statement, the petitioner indicated that he entered the United States in July 2005 to re-unite with his wife. The petitioner noted that after he arrived in the United States he became aware that his former wife had an affair while he was still in China and had a child as a result of the affair. The petitioner indicated that his former wife's infidelity and betrayal has subjected him to mental torture, made him feel depressed, have insomnia and headaches. The petitioner indicated that after a few months of this "torture" he moved out of the home and has now obtained a divorce.

In response to the director's RFE, the petitioner reiterated that his former wife's affair hurt their marriage relationship severely and caused him to have psychological problems. The petitioner provides a copy of a translated May 13, 2008 letter from [REDACTED], a California licensed acupuncturist, wherein [REDACTED] stated: "[the petitioner] came for treatment on 11.25.2005 because he has sweaty hands and mental stress. He has insomnia, back pain, frequent urination, hairloss, and high blood pressure." [REDACTED] noted that the petitioner had been treated for these conditions by him on seven different occasions. The record also includes a May 12, 2008 statement signed by the petitioner's friend, [REDACTED], who stated that he learned about the petitioner's former wife's affair and that the petitioner was very depressed about the scandal.

Upon review of the totality of the information in the record regarding the claimed abuse of the petitioner, the AAO finds that the petitioner has failed to describe in probative detail specific threatening or controlling behavior of his wife that constitutes battery or extreme cruelty. The petitioner has noted his feelings regarding his former wife's infidelity, but as the director found, infidelity is not considered extreme cruelty as set out in the regulations. The petitioner has not established that his former wife's infidelity constituted psychological or sexual abuse or was otherwise part of an overall pattern of violence. As described, L-T-'s actions, while maybe unkind and inconsiderate, do not rise to the level of the 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 claims made by the petitioner fail to establish that he was the victim of any act or threatened act of physical violence or extreme cruelty, that L-T-'s behavior was accompanied by any substantiated coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over him. The AAO finds that the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty.

The AAO has reviewed the statement of the petitioner's friend but finds that it is unclear whether this individual had personal knowledge of the petitioner's former wife's infidelity or if this was disclosed by the petitioner. Moreover, as observed above, infidelity does not constitute abuse as set out in the regulation. The AAO has also reviewed the letter signed by [REDACTED], but finds that [REDACTED] did not identify the underlying trauma or provide any information indicating that the claimed "abuse" by the petitioner's wife was a causative or contributing factor in the petitioner's physical and mental health condition. The record contains insufficient evidence to establish that the petitioner was subjected to battery or extreme cruelty by his former spouse. We note, for the benefit of counsel, that hardship is

not a factor for eligibility for this benefit. Accordingly, we concur with the findings of the director 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.

The petition will be denied and the appeal dismissed for the above stated reason. 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.