

**PUBLIC COPY**

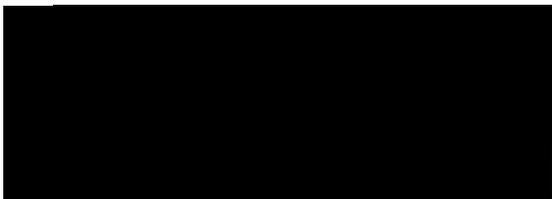
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529-2090

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



U.S. Citizenship  
and Immigration  
Services

Bj



FILE: [REDACTED]  
EAC 06 256 50808

Office: VERMONT SERVICE CENTER

Date: FEB 24 2009

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)

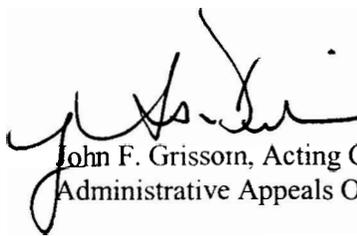
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 or reopen, 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 petitioner seeks 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.

The director denied the petition because the petitioner did not establish that he had a qualifying relationship with a U.S. citizen.

On appeal, the petitioner submits a statement and additional evidence.

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Dominican Republic who entered the United States (U.S.) on July 9, 2000 as a nonimmigrant worker (H2B). On June 7, 2002, the petitioner married V-A-<sup>1</sup>, a U.S. citizen, in New York City. V-A- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on March 19, 2007. The petitioner's concurrently filed Form I-485, Application to Adjust Status, remains pending.

The petitioner filed this Form I-360 on September 15, 2006.<sup>2</sup> On April 26, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of a qualifying relationship, the requisite battery

---

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

<sup>2</sup> The petition was filed by a person who is not eligible to represent individuals before U.S. Citizenship and Immigration Services (USCIS) an attorney or an accredited representative of an organization recognized and accredited by the Board of Immigration Appeals as defined in 8 C.F.R. §§ 103.2 and 292.1(a)(4). Accordingly, we will not recognize the individual in these proceedings.

or extreme cruelty and good moral character. The petitioner responded to the NOID with additional evidence. The director denied the petition on July 26, 2007 for lack of a qualifying relationship because the record contained evidence that the petitioner's marriage was annulled on September 26, 2003.

The petitioner timely appealed. On appeal, the petitioner submits a copy of his marriage certificate issued on August 2, 2007 and asserts that there is no record of the annulment of his marriage to V-A-. The petitioner's statements and the evidence submitted on appeal fail to overcome the ground for denial. Beyond the decision of the director, the record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with V-A- and that V-A- subjected the petitioner or any of his children to battery or extreme cruelty during their marriage.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

### *Qualifying Relationship*

In the NOID, the director stated that evidence in the record indicated that the petitioner's marriage to V-A- was annulled on September 26, 2003. The director included a copy of the annulment with the NOID. In response to the NOID, the petitioner submitted no evidence to discount the annulment judgment.<sup>3</sup> The petitioner filed his Form I-360 on September 15, 2006, nearly three years after the legal termination of his marriage. Accordingly, the director correctly determined that the petitioner had failed to establish the requisite qualifying relationship.

On appeal, the petitioner submits a copy of a certificate of his marriage registration issued by the New York City Clerk on August 2, 2007. In his August 8, 2007 affidavit, the petitioner states that he went in person to obtain the marriage certificate and explains, "at the time that I went to pick up these copies, I showed them the letter received by you, because I need to find out if in fact our marriage was ever annulled and by whom. The record didn't have now clue [sic] of having filed any annulment of my marriage to [V-A-]." The petitioner indicates that he made his inquiry to the New York City Clerk, not the New York County Court which issued the annulment judgment. The petitioner's statement and the August 2, 2007 marriage certificate do not establish that the petitioner was still married to V-A- within two years of the date the Form I-360 was filed, as required by

---

<sup>3</sup> New York County, New York State Supreme Court, Index Number [REDACTED] Annulment Judgment, filed September 26, 2003.

section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. In addition, as discussed below, the petitioner has also failed to demonstrate that V-A- battered or subjected him or any of his children to extreme cruelty during their marriage. He is consequently unable to establish that the legal termination of his marriage was connected to V-A-'s battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Accordingly, the petitioner has not demonstrated that he had a qualifying relationship with V-A- pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

#### *Eligibility for Immediate Relative Classification*

Beyond the decision of the director, the petitioner also failed to establish his eligibility for immediate relative classification based on a qualifying relationship. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that he had a qualifying relationship with V-A-. He consequently has also failed to establish that he was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

#### *Battery or Extreme Cruelty*

Beyond the decision of the director, the petitioner also had not demonstrated that V-A- subjected him or any of his children to battery or extreme cruelty during their marriage. The record contains the following evidence relevant to the petitioner's claim that V-A- battered and subjected him or his children to extreme cruelty:

- The petitioner's undated letter submitted with the Form I-360, his May 29, 2007 statement submitted in response to the NOID and his August 8, 2007 affidavit submitted on appeal;
- Statements of the petitioner's friends, [REDACTED] and [REDACTED];
- Statements of the petitioner's children, [REDACTED] and [REDACTED];
- Psychological report of V-A- dated October 9, 2005 by [REDACTED] and [REDACTED]; psychological report of the petitioner dated May 9, 2007, submitted in response to the NOID; and
- New York State Incident Reports dated June 7 and July 26, 2002 and an East Hampton, New York Police Department printout regarding an incident on January 4, 2003.

In his first letter, the petitioner described marital problems caused by V-A-'s family, who he asserted tried to separate the couple. The petitioner stated that V-A-'s mother forced her to have an abortion, that he once took V-A- to the hospital when she became sick due to her family's abuse, and that her brother threatened to kill the petitioner and V-A-. The petitioner further stated that he later found out that V-A- and her family were using drugs and used his money to purchase drugs. The petitioner

explains that he was consequently “obligated to separate [him]self from her.” The petitioner indicated that V-A- was abused by her family and was not a willing participant in or instigator of her family’s mistreatment of the petitioner. The petitioner also did not mention any abuse inflicted by V-A- upon himself or his children.

However, in his May 29, 2007 statement in response to the NOID, the petitioner asserted that V-A- cursed him, told his children about her drug use, hurt his back and threatened not to attend their immigration interview if he did not pay her. The petitioner stated that he was treated by a psychologist and lost 20 pounds due to his marital problems. However, the petitioner stated that V-A- began mistreating him after his children came to the U.S. and after the former couple received their interview notice from USCIS. The record shows that the petitioner’s children gained lawful permanent resident status on June 25, 2005 and that the petitioner and V-A- were interviewed at the USCIS New York District Office on August 15, 2005. According to the petitioner’s statements, V-A- did not begin mistreating him until after their marriage was annulled in 2003. On appeal, the petitioner asserts that their marriage was destroyed by V-A-, but he does not describe any incidents of abuse in detail or indicate that the abuse began before the termination of their marriage. Accordingly, the petitioner has not established that V-A- subjected him or any of his children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The remaining, relevant documents also fail to establish the petitioner’s claim. The petitioner’s sons, [REDACTED] and [REDACTED], state that V-A- treated them well after they came to the U.S., but that she later changed and they found out she was having a relationship with another man. The petitioner’s daughter, [REDACTED], states that V-A- was nice to her after her arrival in the U.S., but changed after a while. [REDACTED] states that V-A- fought with the petitioner and told her she went out with other men. None of the petitioner’s children discuss V-A-’s alleged drug use, how it affected them, or any other incidents of abuse. In addition, the letters of the children reiterate that V-A-’s mistreatment of the petitioner did not begin until after their arrival in 2005, well after the marriage was terminated in 2003.

The petitioner’s friends also fail to provide probative, detailed information regarding the alleged abuse. [REDACTED] states that the petitioner told him that V-A- was using drugs and did not want to go to their immigration interview unless the petitioner gave her money. Mr. [REDACTED] also states that the petitioner’s daughter told him that V-A- told her about her drug use. Mr. [REDACTED] explains, however that he “did not understand what happened” and only learned of the petitioner’s marital problems when he asked the petitioner. Mr. [REDACTED] does not indicate that he ever witnessed or was otherwise aware of any incidents of abuse and he does not specify when the alleged abuse occurred.

[REDACTED] states that V-A- had extramarital affairs and “did such terrible things, a married woman should never do.” [REDACTED] does not describe any of these things in detail, does not indicate that she ever witnessed any incidents of abuse or that she otherwise had knowledge of the alleged abuse. [REDACTED] also does not state when the alleged abuse occurred. Similarly, [REDACTED] states that V-A- said bad things to the petitioner in front of other people, but he did “not know really why she changed her behaviour.” [REDACTED] provides no further, relevant information. [REDACTED]

██████████ states that V-A- “verbally abused” the petitioner in front of her, but she does not describe any of those incidents in detail and explains that she does “not know [V-A-] very well.” Mr. ██████████ also does not describe any incidents of abuse and merely states that V-A- “mistreated” the petitioner. ██████████ and ██████████ all fail to state when V-A-’s alleged mistreatment or abuse occurred.

██████████ psychological reports of the petitioner and V-A- also fail to establish the requisite battery or extreme cruelty. Dr. ██████████ states that V-A- suffered from depression, anxiety and panic disorder due to her mother’s past physical and psychological abuse and her worry over the petitioner’s possible deportation. Dr. ██████████ evaluation of V-A- was done on October 9, 2005 and contains no indication of any battery or extreme cruelty inflicted by V-A- upon the petitioner or any of his children during their marriage from 2002 to 2003. Dr. ██████████’s psychological report of the petitioner similarly lacks probative value. The report is based on a single interview of the petitioner on May 8, 2007 after the NOID was issued. Dr. ██████████ diagnoses the petitioner with adjustment disorder with mixed anxiety and depressed mood. He states that the petitioner reported that V-A- pushed, grabbed and scratched him, pulled his hair, threw utensils at him and forced him to have sex against his will. Dr. ██████████ does not describe any particular incidents in detail and the petitioner himself does not describe any of these actions in any of his statements submitted below and on appeal. Dr. ██████████ also fails to specify when the purported abuse occurred.

The police and incident reports confirm that the petitioner and V-A- had problems with her family, but do not demonstrate that V-A- abused the petitioner or his children. The June 7, 2002 incident report states that V-A- reported that her brother said he would shoot the petitioner, but that she did not feel threatened by her brother’s statement, that her brother did not possess any firearms and that she did not believe that her brother would carry out his threat. The July 26, 2002 incident report states that V-A-’s parents had come to the petitioner’s workplace to speak with him, but the petitioner and V-A- did not want to see them. The report states that V-A-’s parents left without incident. The January 4, 2003 police report states that the petitioner reported that V-A- was missing and he was unable to contact her. The report states that a police officer contacted V-A- who stated that she was filing for divorce.

In sum, the relevant evidence fails to establish that V-A- subjected the petitioner or any of his children to battery or extreme cruelty. The record also does not show that V-A- abused the petitioner or any of his children during their marriage. Accordingly, the petitioner has failed to establish that V-A- subjected him or any of his children 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 not demonstrated that he had a qualifying relationship with a U.S. citizen, that he was eligible for immediate relative classification based on such a relationship, and that he or any of his children were subjected to battery or extreme cruelty by the U.S. citizen during the qualifying relationship. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.