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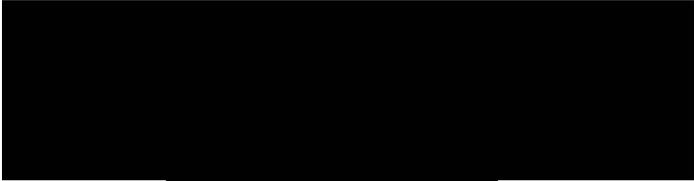


U.S. Citizenship  
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**JUN 03 2009**



FILE: [REDACTED]  
EAC 03 201 52456

Office: VERMONT SERVICE CENTER

Date:

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. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the immigrant visa petition but subsequently revoked that approval. 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 his wife subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a second affidavit from [REDACTED] and an affidavit from [REDACTED]. [REDACTED] regarding the petitioner's abuse claim.

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 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 filed 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 Ecuador, who claims to have entered into the United States without inspection on January 20, 1993. On January 28, 1997, the petitioner married M-R-<sup>1</sup>, a U.S. citizen, in Manhattan, New York. On February 21, 1997, M-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed Form I-485, Application to Register Permanent Residence or Adjust Status. On April 2, 1998, the director denied the Form I-485 for lack of prosecution, and automatically terminated action on the Form I-130, pursuant to O.I. 103.2(O). On April 19, 2004, the petitioner and M-R- were divorced in the Superior Court of New Jersey.<sup>2</sup>

The petitioner filed the instant Form I-360 on June 27, 2003. On April 15, 2005, the director issued a notice of action, granting a 60-day extension to present additional evidence, to withdraw the petition, or to request additional time to respond. On August 12, 2005, the director denied the petition, determining that the petitioner did not submit a response to the notice of action. On September 15, 2005, counsel filed an appeal and submitted evidence that he had timely responded to the director's April 15, 2005 notice. On September 29, 2005, the director approved the petition. On December 2, 2005, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status. Upon further review, the director determined that the petitioner had not demonstrated eligibility for the

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

<sup>2</sup>

benefit sought, namely, that the petitioner had not demonstrated the requisite abuse, and issued a notice of intent to revoke on August 29, 2006. On February 20, 2007, the director revoked approval of the petition, determining that the petitioner did not submit a response to the notice of intent to revoke. On August 23, 2007, the director denied the petitioner's I-485, Application to Register Permanent Residence or Adjust Status, based on the director's February 20, 2007 revocation. On July 30, 2007, counsel filed a motion to reopen the director's decision to revoke approval of the petition. On October 11, 2007, the director granted the motion and affirmed his previous decision to revoke approval of the petition on the aforementioned ground. Counsel timely appealed.

On appeal, counsel submits a second affidavit from [REDACTED] and an affidavit from [REDACTED] regarding the petitioner's abuse claim.

### *Battery or Extreme Cruelty*

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's affidavits dated June 13, 2000; August 30, 2001; and December 20, 2004;
- An affidavit from [REDACTED], dated July 23, 2007, and a subsequent statement dated October 30, 2007;
- An affidavit from [REDACTED], dated October 31, 2007;
- A statement dated August 29, 2002, and translation, from [REDACTED] and [REDACTED];
- A March 8, 2000 psychological evaluation from [REDACTED].

In his June 13, 2000 affidavit, the petitioner states that after two months of marriage, he realized that M-R- was on drugs, including "IV heroin" and that M-R- started taking money from their bank account. The petitioner explains that his marriage consequently was a disaster, that M-R- disappeared from his life, and that his suffering does not stop.

In his August 30, 2001 affidavit, the petitioner explains that he was currently separated from M-R-. The petitioner states that M-R- constantly threatened him and cursed "using [a] strong tone of voice," and that M-R- used drugs and alcohol, was possessive, and treated him like an animal when he asked for sex. The petitioner explains that he could not afford to pay for food or rent and suffered from depression, and that he could not seek help from the proper authorities because he could not speak English.

In his December 20, 2004 affidavit, the petitioner states that he suffered while he lived with M-R- because she was involved with drugs on a daily basis, stole his money, and sold their belongings for drug money. The petitioner explains that he tried to help her but failed, and that she constantly attacked and insulted him, "treating me to kill me or tell the INS to deport me." The petitioner states that he could not eat, sleep, or perform his "working daily duties." The petitioner states that M-R- used the most profane words and made him feel miserable. The petitioner explains that he thought

he should return to his country but later decided to do the honorable thing by trying to help her. The petitioner states that he could no longer socialize with his friends, but stayed by himself in his bedroom and listened to his homeland music. The petitioner also states that M-R- was screaming every minute, that he “could not resist,” and that he was afraid of her. The petitioner explains that he lost weight and no longer cared about himself.

In his August 29, 2002 statement, [REDACTED] states that, at first, the petitioner and M-R- were very happy, but as time went by, the petitioner’s personality and emotions changed. [REDACTED] states that the petitioner told him that he was having problems with M-R-, that she was on drugs and drinking with unknown people, and that he was ready to abandon his home. [REDACTED] states that when he visited the petitioner at his home, M-R- was on drugs, using improper words, and threatening to have the petitioner deported. [REDACTED] also states that on another occasion, he visited the petitioner at 2:00 a.m., and the petitioner was very worried because M-R- was not home. [REDACTED] explains that the petitioner is psychologically and emotionally hurt.

In his July 23, 2007 affidavit, [REDACTED] states that he witnessed the extreme cruelty the petitioner suffered during his relationship with M-R-. [REDACTED] states that sometimes he saw M-R- walking on the streets of Newark with unknown persons, “drinking and consuming can drugs,” and that M-R- was constantly yelling and asking the petitioner for money to buy drugs. [REDACTED] explains that the petitioner no longer cared about himself and did not want to work or go out. [REDACTED] recalls M-R- throwing things, stealing the petitioner’s money, calling the petitioner and himself “wetbacks,” and threatening to have them deported.

In his October 30, 2007 statement, [REDACTED] states that M-R- aggressively demanded money from the petitioner and embarrassed the petitioner by walking the streets in a really bad area of Newark. [REDACTED] states that he knew M-R- stole the petitioner’s money because he constantly had to give money to the petitioner to pay his rent or buy his food. [REDACTED] states that M-R- threw things, including glasses, decorations, and the petitioner’s personal things, and sometimes she threw them out the window. [REDACTED] explains that M-R- constantly abused the petitioner, and that the petitioner was unable to protect himself because he was illegal and afraid to leave the country.

In her October 31, 2007 statement, [REDACTED] states that the petitioner used to go to her house for advice and economic help. [REDACTED] states that the petitioner told her that M-R- was using drugs, stealing his money, and constantly abusing him. [REDACTED] recalls one day before Thanksgiving when she went to visit the petitioner, whereupon M-R- opened the door and threatened to have her deported, pushed the petitioner back inside when he tried to apologize, and told her that she knew [REDACTED] was the petitioner’s mistress. [REDACTED] states that she saw M-R- in downtown Newark one day with another man and she was laughing and saying that she married the petitioner for his money and that she would make his life miserable in order to take all his money.

The petitioner does not explicitly state or otherwise indicate that his wife subjected him to battery

Accordingly, we will only discuss the petitioner's claim of extreme cruelty. The petitioner's testimony and the testimony given on his behalf do not indicate that the petitioner's wife's behavior during their relationship rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not describe in probative detail any particular incidents where his wife threatened him with physical or mental injury. The petitioner's statements regarding his wife using drugs, taking his money, using foul language, treating him like an animal when he asked to have intimate relations, threatening to have him deported, and her eventual abandonment do not establish that his wife subjected him to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence.

The psychological evaluation from [REDACTED] also fails to establish that the petitioner's wife subjected him to extreme cruelty. [REDACTED] states that the petitioner was referred by his counsel and that his evaluation is based on one meeting with the petitioner of unspecified length on March 8, 2000. [REDACTED] reiterates the petitioner's claims that M-R- abused drugs and took his money, but concludes that the petitioner "appeared to be free of any major mental or psychiatric disorder." [REDACTED] does not indicate that he treated or recommended any treatment for the petitioner. As such, his testimony fails to establish that the behavior of the petitioner's wife rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner does not claim and the record does not indicate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.