

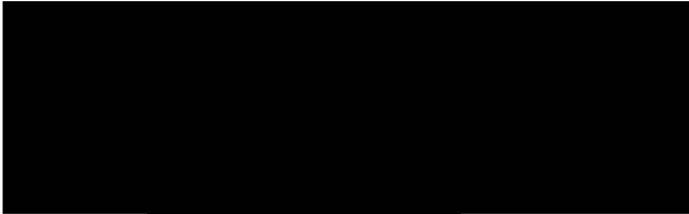
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE: [REDACTED]  
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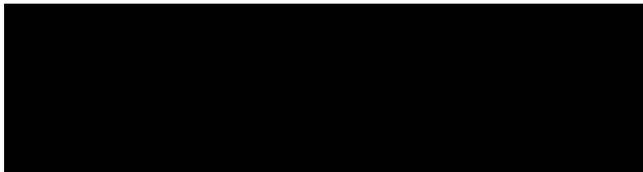
Office: VERMONT SERVICE CENTER

Date: JUN 04 2009

IN RE: Petitioner: [REDACTED]

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, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. Upon certification of the director's subsequent, adverse decision, AAO affirmed the decision of the director to deny the petition. The matter is now before the AAO on a motion to reopen. On motion, counsel submits additional evidence. The motion will be granted. The previous AAO decisions, dated March 10, 2006 and July 7, 2008, will be affirmed. The petition will be denied.

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.

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.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated March 10, 2006, we will repeat only certain facts as necessary here. In this case, the petitioner married T-R<sup>1</sup>, a U.S. citizen, in New York City. The director initially denied the petition on June 16, 2005, finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage. In our March 10, 2006 decision on appeal, we concurred with the director's determination. However, we remanded the petition for issuance of a Notice of Intent to Deny (NOID), as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii)(2006).<sup>2</sup> Upon remand, the director issued a NOID on June 26, 2006, which informed the petitioner, through his former counsel of record, [REDACTED], of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish the requisite abuse. The director denied the petition on March 9, 2007, stating that the record did not contain a response to the NOID. The director certified his decision to the AAO for review and notified the petitioner, through [REDACTED], that he could submit a brief to the AAO within 30 days of service of the director's decision. On certification, the AAO affirmed the director's March 9, 2007 decision, finding that the petitioner failed to respond to the director's NOID.

On motion, the petitioner's current counsel submits evidence, namely copies of current counsel's brief dated October 24, 2006, and a PS Form 3811, Domestic Return Receipt, showing a receipt from

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

<sup>2</sup> On April 17, 2007, Citizenship and Immigration Services (CIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing and adjudication of this petition.

the Vermont Center Director on October 28, 2006. That evidence, however, shows that counsel's response to the NOID, which was due on August 26, 2006, was not submitted timely. Accordingly, the decisions of the director and the AAO, dated March 9, 2007 and July 7, 2008, respectively, were proper.

In his October 24, 2006 brief, counsel states that the petitioner has suffered from physical, mental, and psychological abuse from his U.S. citizen spouse. As supporting documentation, counsel submits: an affidavit from the petitioner, dated October 18, 2006; an affidavit from [REDACTED], dated June 29, 2006; an affidavit from [REDACTED] dated August 30, 2006; an affidavit from [REDACTED] dated August 25, 2006; a letter from [REDACTED], dated July 20, 2006; a letter from [REDACTED] dated August 1, 2006; and copies of documentation previously submitted. Upon review of the evidence, we affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

In his October 18, 2006 affidavit, the petitioner reiterates the information from his December 14, 2004 affidavit, which was submitted on December 21, 2004 in response to the director's request for additional evidence and discussed at length in the AAO's March 10, 2006 decision. The petitioner states that his wife insulted and humiliated him publicly, became drunk, embarrassed him, and smacked him on the face; used profanities and threw dishes; insisted on having sexual relations at all times, even when the petitioner's son from a previous marriage was at their house; and ultimately became pregnant by another man. The petitioner explains that he is seeing a therapist to address his anxiety and depression from his marriage to his wife, and that he still has anxiety attacks and nightmares of her attacking and hurting him.

In his June 29, 2006 affidavit, [REDACTED] states that the petitioner is his friend from Colombia, and that in June 2001, the petitioner invited him to New York and introduced him to his U.S. citizen wife. [REDACTED] states that during the course of the afternoon, the petitioner's wife embarrassed the petitioner by insulting his sexual prowess. [REDACTED] states that he did not witness the petitioner and his wife together again after that afternoon, though the petitioner continued to confide in him. Mr. [REDACTED] reports that the petitioner had to spend all his savings because his wife worked only at temporary jobs, and after September 11, 2001, she did not work at all. [REDACTED] also states that the petitioner's health began to deteriorate, and that he lost weight and was socially isolated. [REDACTED] describes a party, discussed by the petitioner in his own testimony, at which the petitioner's wife got drunk, and embarrassed him and hit him in front of his friends. [REDACTED] also describes another incident discussed by the petitioner in his testimony, in which the petitioner's wife insulted the petitioner's sister and her friend. [REDACTED] also reports an incident involving the petitioner's wife, which the petitioner does not discuss in his own affidavits, namely, that during a visit from the petitioner's friends, the petitioner's wife called his friends "gay."

In his August 30, 2006 affidavit, [REDACTED] states that the petitioner was a loyal client of his when they lived in Colombia, and that the petitioner often spoke to him about living in New York with his U.S. citizen wife. Although [REDACTED] states that he witnessed a number of incidents in which

the petitioner's wife was aggressive and cruel to the petitioner, he relates only one. Again, the incident reported by [REDACTED] is one that the petitioner does not discuss in his own affidavits, namely, that while visiting the petitioner at his apartment with another friend, the petitioner's wife walked in and was angry to find them there, and accused the petitioner of acting like a "homosexual," and screamed, "Fagot Immigrant, leave and don't come back."

In her August 25, 2006 affidavit, [REDACTED] states that she is the best friend of the petitioner's sister and has known the petitioner's family from childhood. [REDACTED] relates an incident, which was also discussed by the petitioner in his testimony, in which the petitioner's wife, in a fit of jealousy, shouted obscenities at her and the petitioner's sister, and kicked them out of the petitioner's apartment, along with the petitioner.

In addition to the evidence discussed above, the record contains assessments of the petitioner from [REDACTED] LCSW-R, the first one dated January 17, 2004, stating that she and the petitioner have contracted for six sessions of therapy, and diagnosing the petitioner with generalized anxiety disorder. The record also contains [REDACTED] assessment of the petitioner's subsequent visit on February 17, 2004. It is noted that both assessments are discussed at length in the AAO's March 10, 2006 decision. On motion, [REDACTED] submits a July 20, 2006 assessment of the petitioner, stating that the petitioner has had three therapy sessions with her, and again diagnosing the petitioner with generalized anxiety disorder. It is noted that the record contains no explanation as to why the petitioner has had only three therapy sessions with [REDACTED], while in her January 17, 2004 assessment, she states that she and the petitioner had contracted for six sessions of therapy. The petitioner also submits a letter from [REDACTED]

who is the petitioner's primary care physician, stating that he has been treating the petitioner since March 2, 2004, for hypertension, benign prostatic hypertrophy, migraines, hypertriglyceredemia, hypercholesterolemia, and recently impaired fasting glucose. [REDACTED] does not provide any information indicating that the abuse of the petitioner's wife was a causative or contributing factor in his health condition. The diagnosis from [REDACTED] and the letter from [REDACTED] do not establish battery or extreme cruelty as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's claim that his wife smacked him on the face on one occasion is not corroborated by any evidence, other than [REDACTED]'s claim on motion that the petitioner told him about the incident. Also, as discussed above, both [REDACTED] and [REDACTED] report an incident that the petitioner does not discuss in his own affidavits, which creates inconsistencies that detract from the probative value of their testimony. Regardless of these inconsistencies, the record contains no evidence that the petitioner's wife's behavior evolved into a pattern of violence that included psychological or sexual abuse. As described, the actions by the petitioner's wife 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 his wife's non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner.

Upon review of the record in its entirety, 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 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 and the statements on his behalf regarding the petitioner's wife insulting and humiliating him publicly, getting drunk and embarrassing him, using profanities, throwing dishes, insisting on having sexual relations at all times, and ultimately becoming pregnant by another man, 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. 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.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The previous decisions of the AAO, dated March 10, 2006 and July 7, 2008, will be affirmed. The petition is denied.