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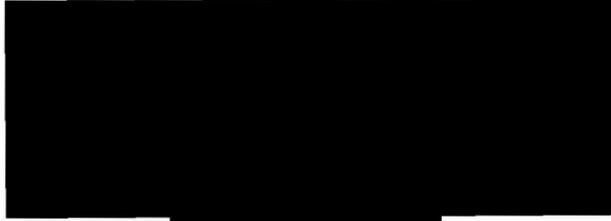
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
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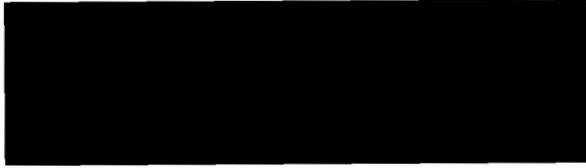
Office: VERMONT SERVICE CENTER

Date: **MAR 05 2009**

IN RE: [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)

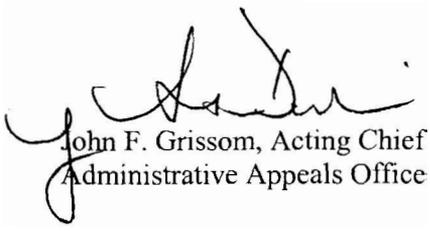
ON BEHALF OF PETITIONER:



**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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty.

Counsel submitted a timely appeal on September 25, 2007.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Kenya who entered the United States in B-2 status on August 3, 2004. He married T-O-,<sup>1</sup> a citizen of the United States, on May 6, 2005. T-O- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on July 12, 2005. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on May 8, 2006, after the petitioner failed to appear for a scheduled interview.

The petitioner filed the instant Form I-360 on May 16, 2006. On October 12, 2006, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner had a qualifying relationship with T-O-, and is therefore eligible for classification as an immediate relative; that the petitioner was subjected to battery and/or extreme cruelty by T-O-; and that the petitioner

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

married T-O- in good faith. On November 27, 2006, counsel responded to the director's request with a letter asking for additional time in which to respond. Counsel responded to the director's request on December 27, 2006, and submitted additional evidence.

The director issued a notice of intent to deny (NOID) the petition on February 28, 2007, which notified the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish eligibility. Counsel responded to the director's NOID on April 16, 2007 with a letter asking for additional time in which to respond. The director issued a second NOID on May 22, 2007, which again notified the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish eligibility. Specifically, the director requested additional documentation to establish that the petitioner had been subjected to battery and/or extreme cruelty. Counsel responded on July 16, 2007 and submitted additional evidence.

After considering the evidence of record, the director denied the petition on August 28, 2007.

### **Battery or Extreme Cruelty**

The sole issue on appeal is whether the petitioner has established that he was the victim of battery and/or extreme cruelty perpetrated by T-O-. In support of his assertion that he was the victim of battery and/or extreme cruelty, the petitioner submits several affidavits.

In his May 10, 2006 affidavit, the petitioner stated that T-O- went to visit her grandmother in Chicago in February 2006; that, one week later, T-O- called the petitioner to tell him that she "got involved with drugs"; and that, upon investigation, the petitioner learned that T-O- was in jail. The petitioner stated that he does not know when T-O- will be released from detention.

In his December 20, 2006 affidavit, the petitioner stated that after a few months of marriage, he noticed drastic changes in T-O-'s behavior; that T-O- "became really hostile"; that T-O- became emotionally unavailable; that T-O- "would come and go as she please[d]"; that, if the petitioner "even looked at her she would become verbally abusive"; that T-O- began spending time with individuals whom the petitioner did not know; that T-O- made obscene comments when the petitioner asked her about the individuals with whom she was spending so much time; that T-O- refused to work; that T-O- stole money from the petitioner; that T-O- told the petitioner to leave the house because it belonged to her; that T-O- was dealing drugs; that the petitioner became scared of T-O-'s violent behavior; and that the petitioner did not know what to do, as T-O- told him that she was going to control him and whatever he does.

In his July 18, 2007 affidavit, the petitioner stated that he and T-O- were happily married for "almost one year" until T-O- "began involving herself in drugs." The petitioner stated that T-O- became verbally abusive, and that "there was a lot of misunderstanding in the house." The petitioner stated that he is still trying to talk to T-O-, since he still loves her and hopes she will come back again.

In his September 22, 2007 statement on the Form I-290B, the petitioner stated that T-O- was very abusive; that T-O- was extremely violent; and that T-O- told him many times that she would not appear for his Form I-485 interview, which he feels was an attempt to control him.

Before considering the other affidavits of record, the AAO notes inconsistencies in the petitioner's affidavits. For example, the petitioner stated in his December 20, 2006 affidavit that he noticed drastic changes in T-O-'s behavior after only a few months of marriage. However, in his July 18, 2007 affidavit, the petitioner stated that they were happily married for nearly a year before the abuse began. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Further, although the petitioner stated that he and T-O- were married happily for nearly a year before the alleged abuse began, the petitioner stated on the Form I-360 that he and T-O- only shared a residence from May 2005 until February 2006, a period of nine months. If the marriage was a happy one for nearly a year, and the couple only lived together for nine months, then it is unclear to the AAO when the alleged abuse occurred. *See id.*

The record also contains two affidavits from the petitioner's brother. In his December 12, 2006 affidavit, the petitioner's brother stated that he rented the lower portion of his house to the petitioner and T-O-; that T-O- suddenly became abusive and controlling, and refused to find work; that T-O- shouted obscene words at the petitioner; that T-O- stole money from the petitioner; and that T-O- "would come and go as she please[d]," and that if the petitioner "even looked at her she would become verbally abusive and leave again." In his July 18, 2007 affidavit, the petitioner's brother stated that things were fine between T-O- and the petitioner for more than six months, but that T-O- began verbally abusing the petitioner; that T-O- stayed out all night; that T-O- abused drugs; that T-O- was arrested in Illinois for drug possession; and that, eventually, the relationship broke down.

In her December 20, 2006 letter, Josephat Obine stated that she knew the petitioner and T-O- to be a good couple until early 2006, when the petitioner told her that T-O- had become involved with drugs and was arrested.

In his undated letter, \_\_\_\_\_ stated that T-O- gave the petitioner "a hard time"; that the petitioner tried to work out the differences between himself and T-O-; and that T-O- dealt drugs.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision. The petitioner has failed to establish that he was subjected to battery and/or extreme cruelty by T-O-. Although the petitioner states that T-O- was verbally abusive and violent, he fails to describe, in detail, any particular incident of abuse. For example, while he states that T-O- was verbally abusive, he fails to explain what she said, and the context in which the abusive language was used.

Similarly, while the petitioner states that T-O- was physically violent, he fails to describe how she was violent: he does not state whether she ever struck him and, if so, the circumstances surrounding that incidence of abuse. While the petitioner states that T-O- was controlling, he fails to explain how she attempted to control him. The petitioner fails to describe the abuse he suffered in probative detail, and such lack of detail undermines his claim. Nor does T-O-'s drug abuse, in and of itself, constitute abuse.

While T-O-'s actions as described in the record may have been unkind and inconsiderate, they 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 and the letters submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that T-O-'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. He has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### **Conclusion**

The AAO agrees with the director's determination that the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

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 sustained that burden.

**ORDER:** The appeal is dismissed.