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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

EAC 06 179 50500

Office: VERMONT SERVICE CENTER

Date:

MAR 16 2009

IN RE:

Petitioner:

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

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. Grissom, 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)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner did not establish that his former wife battered or subjected him or either of his children to extreme cruelty during their marriage.

On appeal, the petitioner submits additional statements from himself and his friends.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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 the spouse of a lawful permanent resident under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Aliens who have divorced their abusive spouses remain eligible to self-petition under these provisions of the Act if they were a bona fide spouse of a lawful permanent resident within the past two years and they “demonstrate[e] a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

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 clause (ii) or (iii) of subparagraph (B), 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, 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)(B)(ii) 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 was paroled into the United States on April 3, 2002. On July 22, 1995, the petitioner married I-P-<sup>1</sup>, a U.S. lawful permanent resident, in New York. On November 23, 2005, they were divorced by reason of I-P-'s abandonment of the petitioner.<sup>2</sup>

The petitioner filed this Form I-360 on May 16, 2006. On July 27, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite battery or extreme cruelty. In response, the petitioner submitted additional evidence, which the director found insufficient to establish

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

<sup>2</sup> Matrimonial Part, New York County, New York Supreme Court, Index Number [REDACTED]

the petitioner's eligibility. The director denied the petition on February 23, 2007 on the ground cited in the NOID and the petitioner timely appealed.

On appeal, the petitioner reasserts that his former wife subjected him to extreme cruelty and submits additional statements from friends. The petitioner's claims and the evidence submitted on appeal fail to overcome the ground for denial. Beyond the decision of the director, the petitioner has also failed to establish that he had a qualifying relationship with his former spouse and that he was eligible for preference immigrant classification based on such a relationship.

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 Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990).

#### *Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that his former wife battered or subjected him to extreme cruelty during their marriage:

- The petitioner's August 29, 2006 affidavit submitted below and his March 19, 2007 statement submitted on appeal; and
- Statements of the petitioner's friends, [REDACTED] and [REDACTED] and the petitioner's cousin, [REDACTED]

In his first affidavit, the petitioner stated that his former wife yelled, intimidated, belittled, insulted and threatened him and also destroyed property in their home, which made the petitioner feel afraid and powerless. The petitioner asserted he experienced "verbal violence," but he does not describe any particular incident of abuse in probative detail. The petitioner also expressed that his former wife hurt him by having an extramarital affair. On appeal, he reiterates that his former wife subjected him to extreme cruelty, but he does not discuss any incident of abuse in detail and provides no further, relevant information. The petitioner's brief statements are insufficient to establish the requisite battery or extreme cruelty.

The testimony of the petitioner's friends and cousin also fail to establish his claim. In his first letter, [REDACTED] stated that he was present on one occasion where the petitioner's former wife screamed that she wanted to report the petitioner to have him deported. Mr. [REDACTED] further noted that the petitioner separated from his former wife in November 2004 and she was living with another man. In his statement submitted on appeal, [REDACTED] states that in October 2004, he witnessed the

petitioner's wife ask him for money to go to the beauty parlor and, when the petitioner told her it was not the right time to ask for money, she screamed that she would report the petitioner to have him deported. The petitioner himself does not mention this incident.

In his first statement, the petitioner's cousin reported that the petitioner's marriage ended when he discovered that his former wife had become pregnant with another man's baby. Mr. [REDACTED] also asserted that the petitioner suffered extreme mental cruelty when his former wife screamed and threatened to have him deported. In his second statement submitted on appeal, [REDACTED] describes an incident in October 2003 when the petitioner's former wife was angry because he did not buy a new dress for her to wear to [REDACTED] party. Mr. [REDACTED] states that the petitioner's former wife annoyed the petitioner all evening and slapped him, behavior that [REDACTED] saw repeated at another gathering in July 2004. The petitioner does not discuss either incident related by [REDACTED] and the petitioner never claimed that his former wife slapped him.

In his first statement, [REDACTED] reported that the petitioner's former wife once threatened that she would call the police to have the petitioner deported and that the petitioner discovered that his wife was pregnant from an extramarital affair in November 2004. Mr. [REDACTED] does not indicate that he witnessed the threatening behavior of the petitioner's former wife and he describes no other incident of abuse. In his second statement submitted on appeal, Mr. [REDACTED] states that in July 2004, he went to a barbecue at the petitioner's home and the petitioner's former wife refused to cook, told the petitioner she was not his maid and demanded money to buy clothes. Mr. [REDACTED] reports that the petitioner's former wife also threatened to call the police and have him deported. The petitioner does not mention this incident in either of his statements.

[REDACTED] states that in October 2004 she saw the petitioner's former wife kissing another man and that the petitioner's former wife threatened to beat [REDACTED] if she told the petitioner. Ms. [REDACTED] also reports that the petitioner suffered extreme mental cruelty because his former wife "screamed and threatened him with Immigration," although [REDACTED] does not indicate that she ever witnessed such actions.

The petitioner himself does not discuss any of the incidents of alleged abuse related by his friends and cousin and he does not explain the discrepancy between [REDACTED]'s statement that his former wife slapped him and the fact that he never claimed his former wife physically abused him. The petitioner does not describe any incident of abuse in probative detail. The discrepant testimony of the petitioner, his friends and cousin fails to demonstrate that the petitioner's former wife battered or subjected him or either of his children to extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

#### *Qualifying Relationship and Corresponding Eligibility for Immigrant Classification*

To establish a qualifying relationship, a divorced self-petitioner must demonstrate that the legal termination of his or her marriage was connected to his or her former spouse's battery or extreme

cruelty. Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb). As discussed in the preceding section, the petitioner failed to demonstrate that his former wife subjected him or either of his children to battery or extreme cruelty during their marriage. Accordingly, the petitioner has also failed to establish a connection between such abuse and the legal termination of his marriage. The petitioner has consequently not established that he had a qualifying relationship with his former wife pursuant to section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.

The petitioner has also not shown that he was eligible for preference immigrant classification based on a qualifying relationship with his former wife. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for preference immigrant classification as the spouse of an alien lawfully admitted for permanent residence under section 203(a)(2) of the Act based on his or her relationship to the abusive spouse. Because the petitioner failed to establish a qualifying relationship with his former wife, he has also not demonstrated that he was eligible for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

The petitioner has not demonstrated that he had a qualifying relationship with his former wife, that he was eligible for immigrant classification based on such a relationship and that his former wife subjected him or either of his children to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) 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.