

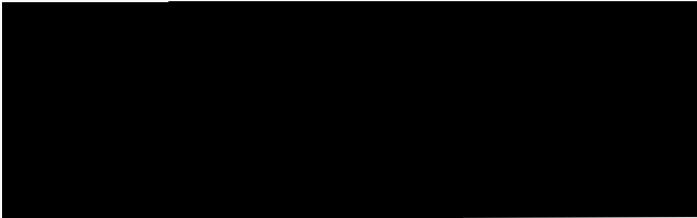
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 07-031-50411

Office: VERMONT SERVICE CENTER

Date: **MAR 17 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 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 classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as having been battered or subjected to extreme cruelty by his U.S. citizen spouse. The director denied the petition finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 regulation at 8 C.F.R. § 204.2(c)(1) provides guidance regarding relevant eligibility requirements:

(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.

*Procedural History and Pertinent Facts*

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ukraine who was admitted to the United States on February 10, 2001 as a B-1 nonimmigrant visitor. On February 6, 2002 the petitioner married V-L,<sup>1</sup> a U.S. citizen, in Chicago. On August 21, 2002, V-L- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. Both the I-130 Petition and the I-485 Application were subsequently denied on April 26, 2006 based on a determination by U.S. Citizenship and Immigration Services (USCIS) that the couple had failed to submit sufficient evidence of a married couple in a joint marital union maintaining a household.

The petitioner filed the instant I-360 Petition on November 9, 2006. On November 24, 2006 the director issued a Request for Evidence (RFE) of good moral character and that the petitioner married his spouse in good faith. In response, the petitioner submitted the required clearance letter from the Chicago Police Department and numerous documents to establish that the petitioner married V-L- in good faith, including copies of relevant bank statements, credit cards, lease agreements, utility bills and tax returns. USCIS issued a second RFE on May 21, 2007 asking for (1) proof of the dissolution of the petitioner's prior marriage; (2) clarification of the

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

couple's joint residences, noting perceived discrepancies in addresses on tax returns and other documents submitted; and (3) evidence that the petitioner had been battered or subjected to extreme cruelty by his U.S. citizen spouse. The petitioner responded on June 18, 2007 by submitting (1) a copy of the 1993 divorce certificate terminating his previous marriage; (2) copies of lease agreements confirming the time periods of joint residency, noting that there was no variance with the information provided on the tax returns, which report the address at the time of filing, not the address of the prior tax year; and (3) the petitioner's statement describing the abuse he had suffered. The director found that the petitioner had established all of the eligibility requirements except the requirement to show that he had been battered or subjected to extreme cruelty by his U.S. citizen spouse. Accordingly, on August 10, 2007, the director denied the petition on that basis.<sup>2</sup>

The petitioner, through counsel, submits a timely appeal, his own statement and additional affidavits. As will be discussed, the AAO concurs with the finding of the director that the petitioner failed to establish that he had been battered or subjected to extreme cruelty by his U.S. citizen spouse.

#### *Evidence of Battery or Extreme Cruelty*

The evidence of battery or extreme cruelty in this case is comprised solely of affidavits and the petitioner's statements. At the time of filing, the petitioner did not submit any evidence relevant to this issue. In response to the second RFE, noted above, the petitioner provided his first statement regarding abuse by his spouse. It is not dated but was submitted to USCIS on June 22, 2007. In his statement, the petitioner described how he met V-L-, how they had mutual interests and began dating, and that they were married a few months later. He explained that he became a taxi driver and that the couple had financial difficulties that caused them to move in with V-L's father and the father's girlfriend. He claimed that problems with his father-in-law and his girlfriend, who demanded money for expenses, created tension in his relationship with V-L- and caused them to move out. He states that after they moved to their own place he had to find a new job to cover the growing cost of living and he got a job as a truck driver. His job entailed driving long distances, which brought additional difficulties to his marriage, as V-L- did not like his long trips out of state and told him that she could not stay married to a person who spent a lot of time on the road. They began arguing and eventually V-L- told him that he was like all other

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<sup>2</sup> The director denied the petition without first issuing a Notice of Intent to Deny (NOID). A NOID is a regulatory requirement for petitions filed before June 18, 2007, as in this case. *See* former 8 C.F.R. § 204.2(c)(3)(ii)(2006). However, the director issued two RFEs, which gave the petitioner two opportunities to submit additional evidence to establish his eligibility. The RFEs informed the petitioner of the deficiency of the evidence he submitted for the ground on which we deny the petition. On appeal, the petitioner was afforded a third opportunity to submit additional evidence. As the petitioner was given notice of the need to submit additional evidence, and in the interest of administrative economy, we find that no purpose would be served by now remanding the case to the director for issuance of a NOID, over two years after the petition was filed.

immigrants, that he was using her and called him a “no good Russian.” He claims that he became very depressed over the way she spoke to him and was not able to work; that many times V-L- told him not to come back home; she told him she had no use for a Russian like him and that she could get herself a “real man”; and she made constant fun of him and made him feel bad. He stated, “When I came home, she was not there and came only late at night, telling me that she went out with [a] ‘good man’ and not ‘nobody’ like me. I was upset and depressed. I have no family or close friends in the U.S. and was not able even to share my grief. The only person I loved and was close to betrayed me.”

Based on this evidence, the petition was denied, as the petitioner’s statement was determined to be insufficient to establish that his wife had subjected him to battery or extreme cruelty as required under the Act. The director noted that the fact that V-L- may have been involved in an extra-marital relationship, while evidence of marital discord or incompatibility, is not evidence of extreme cruelty.

In response to the director’s denial, on appeal the petitioner submits another statement, dated September 24, 2007. Once again he describes falling in love and claims that he was happily married for a short time. He provides more details about problems in his marriage. He states that after they married V-L’s daughter and her baby lived with them, adding “my wife would not give me much attention and began getting her mood swings. I thought she was just tired and tried to be understanding.” He describes other changes in their marriage, including that his wife would not let him choose a restaurant and accused him of having no taste for what was good; that he did not know how to use silverware properly; that he was an “unmannered Russian” and stupid; that she wouldn’t let him drink when they were out because he had to drive; that he always paid for their entertainment; that he found out that V-L- liked to gamble and would go gambling without letting him know; that she spent her earnings on herself while he paid for their expenses; that she did not want him to stay in touch with his friends or get to know hers; that he had to take stress formulas to keep himself together; and that V-L- became increasingly irritated. He goes on to describe problems with his father-in-law’s girlfriend, financial problems, and how his wife was upset and remained loving and pleasant to others, but mean and insulting to him. He said if he wanted to eat, it was his problem; he couldn’t watch TV when he wanted; and they would fight for no reason and he would always be blamed. He claims he lost his appetite and sometimes could not sleep and would pray that V-L- would be nice to him. After they moved to their own place he was offered a job as a truck driver. Although he did not want to take the job, his wife insisted, threatening to leave and forcing him to take the job if he wanted to save their marriage. He claims that later his wife changed and said she could not tolerate his long trips, and he felt trapped. He concludes by stating,

Things were going down hill. My wife didn’t want me around – sometimes I even slept in the truck. I couldn’t concentrate, felt tired, lost and hopeless. I got unexplained stomach pains, insomnia, I didn’t feel good – I could hardly cope with my work and routine. I almost lost contact with most of the people I knew and could not get support I needed at that time. Finally, I realized that I lost my wife mentally and physically. And it destroyed me completely.

I put my life, my mind, career, home choice, thoughts of future into the hands of person I truly loved. And it destroyed me physically and mentally.

On appeal, the petitioner also submits four affidavits from friends or acquaintances who repeat the problems the petitioner described in his marriage. One affidavit, dated September 12, 2007, is signed by a couple who claim to be [REDACTED]. They state that they met the petitioner at one of their conferences or product presentations about five years ago, and that he described his problems to them and that they later had several meetings with the petitioner to evaluate his health and well-being and revise their recommendations for treatment to reduce stress and gastrointestinal problems. They claim that with each visit they noticed an escalation of personal tension, lack of motivation and self-assurance, and that the petitioner said that “despite his enormous efforts to save the marriage, his wife continued to trigger conflict situations, demanded financial support for her relatives, and admitted to being unfaithful with no remorse. . . . He suffered from loss of sleep, isolation, inability to focus well and prioritize.”

Neither the petitioner nor others indicate that there was any physical abuse in the marriage. The affidavits described above are based on the same claims discussed by the petitioner in his statements regarding how his wife treated him and the financial and other problems the couple had; based on these problems the affiants all conclude that his spouse abused the petitioner and the petitioner has changed in his attitude and behavior because of his wife’s abuse.

On appeal, counsel asserts that the director erred in failing to consider the extreme cruelty of the petitioner’s spouse, referring to her extra-marital affair and her harsh words, including that she told the petitioner that she wanted nothing to do with him, and how his wife’s actions and statements left the petitioner emotionally upset and changed his life. Counsel claims that the petitioner established himself in the United States and left no contact in his home country and has no ability to return. The AAO notes that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Section 204(a)(1)(J) of the Act requires USCIS to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of” USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states that “[a]ll credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his or her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA

1965).

*Conclusion*

In this case, while we find the petitioner's evidence to be credible, we do not find it sufficient to meet the petitioner's burden of proof. The petitioner has failed to allege any threat of or actual physical act of abuse perpetrated against him by V-L-. The petitioner's allegation of extreme cruelty is based upon his claims that his spouse argued with him and blamed him for everything, called him names, did not want to cook for him or spend time with him, made him pay for their expenses, and forced him to take a job as a truck driver and then complained that she could not tolerate his absences, and finally, had an extramarital affair. The petitioner does not indicate that he was threatened or forced to do anything against his will, but rather that he was trying to save his marriage and lived with his wife's relatives and took a job to please her. We acknowledge the petitioner's claim that his wife's behavior caused him distress and that he was genuinely disappointed that his marriage did not work out. As described, V-L-'s actions, while maybe unkind and inconsiderate, do not rise to the level of the acts described in the regulation at § 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 general statements 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 V-L-'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.

The petitioner has failed to establish that he was battered or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

As noted above, in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.