

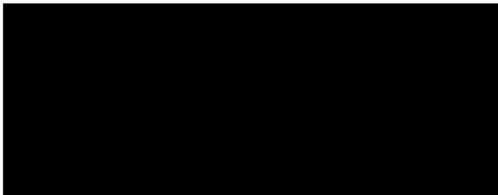
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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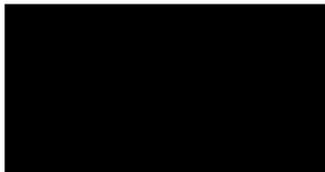
Office: VERMONT SERVICE CENTER Date: **DEC 27 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen. Thank you.

Jerry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by his United States citizen spouse.

On April 14, 2010, the director denied the petition, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and brief in support of the appeal.

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 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 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 under section 204(a)(1)(A)(iii) of the Act are further explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Egypt. He entered the United States on or about December 10, 2005 on a B-2 visa with authorization to remain in the United States until December 9, 2006. On November 7, 2007, the petitioner married M-D-<sup>1</sup>, the claimed abusive U.S. citizen spouse. On November 18, 2007 M-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On August 5, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The Forms I-130 and I-485 were denied on June 15, 2009. On June 24, 2009, a Final Default Judgment of Divorce was entered in the Superior Court of New Jersey, Chancery Division – Family Part, terminating the marriage. On October 27, 2009, the director issued a request for evidence (RFE) seeking additional documentation relating to the eligibility criteria for the Form I-360 petition. Upon review of the record, including the petitioner's response to the RFE, the director denied the Form I-360 petition on April 14, 2010, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by his former spouse. Counsel for the petitioner submitted a timely appeal.

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

*Abuse*

In the petitioner's initial statement in support of the Form I-360, dated July 22, 2008, the petitioner indicated that: on his wedding night he learned that M-D- had a colostomy and he was not happy that she had not told him about it; M-D- had six children from a prior marriage who were all around his age and that he was unaware prior to the marriage that he would be supporting the entire family; in December 2007 he learned that M-D- had multiple sclerosis; he was disappointed that M-D- had not been totally honest with him from the beginning; overtime M-D- started acting differently, once after spending the night with her son – she brought home marijuana; M-D- expected him to pay her bills; M-D- did not appreciate the things he did for her and her family, but rather took advantage of him; and M-D- abandoned him on April 8, 2008, one day before the couple's immigration interview. The petitioner noted that he was able to talk with M-D-'s mother, who told him that M-D- was demanding more money to go the immigration interview or she would let him be deported.

The initial record also included a May 27, 2008 letter prepared by [REDACTED] licensed clinical social worker. [REDACTED] noted that she interviewed the petitioner for 90 minutes on May 10, 2008 and she provided the same information as the petitioner had set forth in his initial statement, almost verbatim. [REDACTED] concluded that based on the petitioner's statements, M-D- was mentally, emotionally, and financially abusive to the petitioner and that she engaged in a pattern of deception, extortion, and exploitation of the petitioner throughout their marriage and committed psychological terrorism and blackmail by threatening to have the petitioner deported and demanding money to attend an immigration interview. [REDACTED] noted further that a formal diagnosis could not be made based on one interview.

In a supplemental statement dated March 25, 2009, [REDACTED] indicated that she had seen the petitioner every two weeks from October 4, 2008 to February 21, 2009 and the petitioner's clinical diagnoses was major depression, single episode, moderate and post traumatic stress disorder, chronic.

The petitioner also provided three affidavits from [REDACTED] the petitioner's employer, noted that the petitioner looked depressed after his wife left him. [REDACTED] a friend, stated that the petitioner's wife had taken advantage of the petitioner, exploited him for money, threatened him with deportation, and entered into the marriage for money and financial gain, not love. [REDACTED] declared his belief that M-D-'s strong ties with her mother and her sons and her irresponsible practices of spending money and not paying bills was not something the petitioner was prepared for and her constant use of cell phone minutes and needing money for her sons was an infliction of mental abuse and excess stress on the petitioner.

The petitioner also supplied a copy of his June 24, 2009 default judgment of divorce noting that the petitioner's divorce was based on "extreme cruelty."

In response to the director's RFE, the petitioner provided a second statement dated December 19, 2009. The petitioner repeated his disappointment with M-D-'s lack of honesty and her spending habits. He added that M-D- embarrassed him in public, kicked his cat, sold her prescription drugs to others, and when he told her it was illegal, she threatened if he tried to do anything about it she would call immigration and have him deported. The petitioner also added that M-D- had an intense temper triggered by minor frustrations and arguments besides being extremely possessive and jealous. The petitioner noted his belief that M-D- contacted immigration authorities to investigate him to make him believe that she is capable of causing him trouble. The petitioner repeated his frustration at continuing to have to pay M-D-'s grown children's expenses and that M-D- abandoned him on April 8, 2008. The petitioner also noted that during the divorce process M-D- contacted him and told him that she had found out that her mother had tried to blackmail him, that she does not speak to her mother any more, and that she wanted to get back together. The petitioner indicated that he did not believe M-D- because he knew that she was just trying to take advantage of him again because she was now living in a low income nursing home.

The petitioner also provided nine affidavits in support of the Form I-360 petition. [REDACTED] in his second affidavit again declared that M-D- caused the petitioner a lot of stress by overspending and demanding money for her kids. In [REDACTED] October 26, 2009 affidavit, he indicated that he was aware the couple separated and divorced. In [REDACTED] December 16, 2009 affidavit, he declared that the petitioner told him that M-D- had threatened to end the marriage and cause trouble with immigration if he refused to support her grown children. In [REDACTED] December 17, 2009 affidavit, she declared that her brother [REDACTED] told her that M-D- mistreated the petitioner and was abusive toward the petitioner in many ways. In [REDACTED] December 14, 2009 affidavit, she declared that she noticed a change in the petitioner after his marriage and that the petitioner was in constant fear of his wife's behavior, drug use, and disrespectfulness. In [REDACTED] December 14, 2009 affidavit, he declared that the petitioner's marriage did not work out and that the petitioner was depressed. In [REDACTED] December 14, 2010<sup>2</sup> affidavit he declared that the petitioner complained about his wife's attitude and behavior change, her disrespect of him in public, her abuse, insults, drug use, and destruction of him financially. In [REDACTED] December 7, 2009 affidavit, she declared that the petitioner told her that M-D- was abusive, her behavior changed, that she tried to control the petitioner, that she used drugs, and that she was drowning the petitioner in debt until she abandoned him. In [REDACTED] December 14, 2009 affidavit, she discusses the petitioner's good nature.

The petitioner also submitted an October 11, 2008 diagnostic evaluation prepared by [REDACTED] and [REDACTED] progress notes. [REDACTED] in her third report again finds that the petitioner's clinical diagnoses is major depression, single episode, moderate and post traumatic stress disorder, chronic, and notes that the petitioner's problems relate to the breakup of his marriage, living alone, and inadequate social support and that he continues to experience depression, anxiety and panic symptoms, and flashbacks.

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<sup>2</sup> The notary indicates that the affidavit was sworn to on December 14, 2010 although the affidavit was submitted prior to the director's decision on April 14, 2010.

The petitioner also provided his complaint for divorce wherein he made the same allegations as noted in his initial statement but also added that M-D- did not disclose her mental illness to him.

Based on this information, the director denied the petition. On appeal counsel for the petitioner asserts that the petitioner is credible and that he has provided explanations for his statements made to USICE agents on March 27, 2008. Counsel asserts that the petitioner resided with M-D- and that the marriage was bona fide and the petitioner entered into the marriage in good faith. Counsel also contends that the numerous affidavits submitted and the psychological report provided, demonstrate that M-D- subjected the petitioner to a constant and intensive pattern of emotional abuse and extortion based upon her health condition and the financial demands of her dependents. Counsel avers that the petitioner's report of the many instances in which M-D- threatened to call immigration authorities to have him deported was ignored by United States Citizenship and Immigration Services (USCIS). Counsel claims that the lack of details in the petitioner's divorce decree does not diminish its validity and serves to corroborate the petitioner's account of events.

Upon review of the record, the petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by his former spouse. The petitioner does not claim that he was subjected to any form of battery but instead bases his claim of eligibility for this benefit on his former spouse's extreme cruelty. In the petitioner's initial statement, he indicated that he was disappointed in his former spouse's failure to disclose her medical illnesses prior to their marriage and that he was unaware prior to their marriage that he would be supporting his former spouse's family. He complained of his former spouse's financial irresponsibility and of being taken advantage of and abandoned the night before their immigration interview. He noted his discussion with his former spouse's mother subsequent to the abandonment and the mother's demand for money. In the petitioner's second statement, he added that M-D- embarrassed him in public, kicked his cat, and sold her prescription drugs to others. The petitioner reported that when he confronted her with the illegality of her actions, she threatened that, if he did anything about it, she would call immigration. The only other reference to his former spouse's threat regarding deportation occurred when his former spouse apologized for his mother's attempt to blackmail him.

Upon review, the petitioner's statements do not support a determination that he was subjected to extreme cruelty as set out in the statute and regulation. His initial statement concerns his unhappiness with his wife's dishonesty and her financial expectations. However, dishonesty and financial irresponsibility are not acts of extreme cruelty. While we acknowledge the petitioner's claim that his former spouse threatened him with deportation during a confrontation about her illegally selling drugs, the petitioner does not indicate that M-D-'s threat was accompanied by violence or threats of physical or mental injury. The petitioner does not provide any probative detail indicating how his spouse used his immigration status to control or dominate him. The petitioner does not provide any probative testimony supporting his claim that his former spouse's mother's threat was instigated by M-D- but rather, he notes that M-D- apologized for her mother's actions at a later time. As generally described, the petitioner has not demonstrated that his former spouse's non-physical actions were tactics of control intertwined with the threat of harm in order to maintain her dominance in the marriage through fear.

The petitioner's testimony is insufficient to establish that his former spouse subjected him to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence. Upon review of the petitioner's statements regarding his interactions with his spouse, her actions 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 petitioner's testimony is insufficient to establish the requisite battery or extreme cruelty.

Similarly, the affidavits submitted by the petitioner's friends and acquaintances are not based on particular incidents or events witnessed by these individuals. The affiants state generally that the petitioner told him of his former spouse's overspending and abuse but the affiants do not provide probative detail of specific events, incidents, or controlling behavior that constitutes extreme cruelty as defined in the regulation.

Upon review of [REDACTED] reports, [REDACTED] provides the same information as set out in the petitioner's initial statement, information that does not include specific acts of battery or extreme cruelty as defined in the regulation. Although [REDACTED] referred to psychological terrorism and blackmail and M-D's threats to have the petitioner deported and demands for money to attend an immigration interview, she does not provide the underlying necessary detail of the circumstances of these events. As [REDACTED] acknowledges, she could not offer a diagnosis based on the 90 minute interview. Moreover, her May 27, 2008 evaluation, which was based upon a single interview with the petitioner, fails to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering her findings speculative and diminishing the value of the initial evaluation. Although [REDACTED] later establishes a relationship with the petitioner, she does not connect her later clinical diagnoses of the petitioner to specific incidents of abuse, noting instead that the petitioner's problems relate to the break up of his marriage. The failure of a marriage, however, is not equivalent to extreme cruelty perpetrated by one party upon the other.

Upon review of the petitioner's divorce complaint and the subsequent divorce decree, the court's finding of extreme cruelty is of little probative value because the judgment states that the petitioner's former spouse did not appear in court and did not file any counterclaims, hence, the divorce was granted in default. Accordingly, the default judgment was based entirely upon the petitioner's own assertions. As set out above, the petitioner's assertions do not establish that he was subjected to extreme cruelty as defined in the statute and regulation. Furthermore, the petitioner has not presented any evidence that the term "extreme cruelty" as cited in the judgment of divorce is equivalent to the definition of battery or extreme cruelty as set out in the regulation at 8 C.F.R § 204.2(c)(1)(vi).

Upon review of the totality of the information in the record, including the petitioner's testimony, the affidavits submitted on his behalf, and [REDACTED] evaluations, the record does not provide sufficient probative evidence to demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that M-D'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 AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter he has failed to do so.

The petition will be denied and the appeal dismissed for the above stated reason. 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. Here that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.