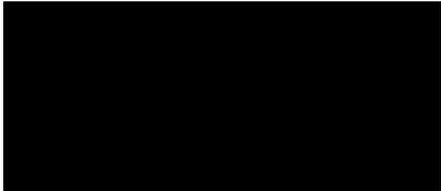


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



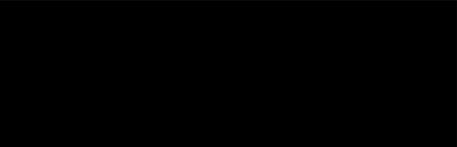
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DATE: **APR 12 2011** Office: [Redacted] FILE: [Redacted]

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:**

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 a fee of \$630. 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, [REDACTED], denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains 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 her United States citizen spouse.

The director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by a United States citizen.<sup>1</sup>

#### *Applicable Law and Regulations*

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 based on his or her relationship to the abusive spouse, 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

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<sup>1</sup> The director, in the January 28, 2010 decision, references the petitioner's failure to establish that she had been subjected to battery or extreme cruelty and that she had entered into the marriage in good faith. In the body of the decision, however, the director only addresses the deficiencies in the record as the deficiencies pertain to the abuse issue. The director notes at the end of the decision that the petitioner had submitted sufficient evidence in response to the request for evidence to demonstrate that she had entered into the marriage in good faith.

(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 set forth 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.

*Facts and Procedural History*

The petitioner is a native and citizen of [REDACTED]. On January 31, 2003, the petitioner married [REDACTED]<sup>2</sup>, the claimed abusive United States citizen. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on April 11, 2008. On September 22, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by [REDACTED]. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

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<sup>2</sup> Name withheld to protect the individual's identity.

*Battery or Extreme Cruelty*

The petitioner initially did not submit any information regarding her claim that she was subjected to battery or extreme cruelty perpetrated by a United States citizen. In response to the director's RFE, the petitioner submitted a personal statement. In her statement, the petitioner noted that the first five years of marriage were happy and the couple lived within their means, but that in 2007, she noticed that [REDACTED] started to change. The petitioner indicated that she noticed a distance between them, that [REDACTED] began to lose weight, and he started not coming home. The petitioner stated that the couple argued because [REDACTED] did not work as his routine with his new friends interfered with work. The petitioner stated that one morning she woke up to a smell and laughter and realized that [REDACTED] had a party that included smoking drugs. The petitioner indicated that at this point she left the house taking only her personal belongings and her children. The remainder of the petitioner's statement is devoted to the petitioner's devastation at the break up of the marriage, [REDACTED] attempt to reconcile, and his arrest for a problem with his mother. The petitioner stated that she and her children suffered mental abuse because they were exposed to the wrongdoings of a person in their lives.

The record also included a domestic abuse assessment prepared by [REDACTED] licensed psychologist, that was based on assessment reports taken on May 7, May 9, and May 12, 2008, as well as a clinical interview of the petitioner of unspecified length on April 30, 2008. [REDACTED] indicated that the petitioner reported that she suspected her husband was using drugs in October 2007 but learned for sure in December 2007. The petitioner reported that [REDACTED] was emotionally cruel by promising to do things and not following through, that he was jealous and did not want her to go out with people, and that he wanted to control everything. The petitioner also reported to [REDACTED] that [REDACTED] was moody, sarcastic in a mean way, and depressed. The petitioner further reported to [REDACTED] that [REDACTED] did not work and would take money from her or steal her stuff and sell it. The petitioner noted that she felt intimidated by [REDACTED] and was afraid of what he might do when they argued. The petitioner stated to [REDACTED] that in December when she found her husband partying with friends and using drugs, she kicked his friends out and [REDACTED] became violent and angry. She noted that there was a big argument and [REDACTED] screamed at her. The petitioner indicated that [REDACTED] left in December and the couple has lived separately since then and she moved to a new apartment in March so he would not know where she and the children were located. Based on this information, [REDACTED] found that the petitioner suffered from post traumatic stress disorder – battery woman's syndrome and recommended individual and group supportive psychological counseling.

The record further included statements from two of the petitioner's children, and [REDACTED] and [REDACTED]. Each declarant spoke generally of the emotional break up of the petitioner's marriage, but did not provide information relating to specific instances of battery or extreme cruelty.

The director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty.

On appeal, counsel asserts that the petitioner was subjected to emotional abuse, economic abuse, intimidation, and that the quality of her life had deteriorated. Counsel contends that using the “any credible evidence” standard, the petitioner has met her burden of proof. Counsel avers that the petitioner and her children suffered extreme cruelty and references the petitioner’s statements to [REDACTED] as well as [REDACTED] report.

Upon review of the record, we find no error in the director’s assessment of the relevant evidence. The AAO is mindful of section 204(a)(1)(J) of the Act which requires United States Citizenship and Immigration Services (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). Moreover, the AAO recognizes the difficulty in some cases of obtaining evidence to establish that an individual has been subjected to battery or extreme cruelty. 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). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish 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).

In the petitioner’s statement to USCIS she refers to only one incident of conflict between herself and [REDACTED] the incident occurring in December when [REDACTED] was using drugs in their home. The petitioner does not indicate that any violence occurred, but rather that she gathered up her children and belongings and left the house. Her statement to USCIS does not include any information regarding battery or extreme cruelty as set out in the statute and regulation. In the petitioner’s statements to [REDACTED] she adds that her husband was emotionally cruel, was jealous, wanted to control everything, was sarcastic in a mean way, and took her money and personal things. She does not provide specific detail of any particular incident and does not include probative information establishing that her husband’s actions constituted extreme cruelty as contemplated by Congress when establishing this benefit. Although the petitioner told [REDACTED] that she was afraid of [REDACTED] when they argued and that she was intimidated by him, she does not provide testimony demonstrating that [REDACTED] non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her. The petitioner does provide a more detailed version of the events occurring in December 2007 by indicating that a big argument occurred when she kicked [REDACTED] friends out of the house and that [REDACTED] became violent and angry and screamed at her; however, she does not provide any testimony of physical harm or describe any threats of harm. She also varies the circumstances of the event by indicating that [REDACTED] left the house, not that she and her children left the house. Upon review of the petitioner’s statements to [REDACTED] there again is insufficient testimony to conclude that the petitioner was subjected to battery or extreme cruelty as defined in the statute and regulation. Accordingly, [REDACTED] assessment that the petitioner suffered from post traumatic stress disorder/battery woman’s syndrome is not based on a foundation of testimony depicting extreme cruelty as defined in the statute and regulation.

Upon review of the statements submitted on the petitioner's behalf, the declarants do not indicate that they witnessed any incidents of battery or extreme cruelty perpetrated by [REDACTED]. The declarants speak generally of the difficulties the petitioner faced but do not include probative detail of specific instances of battery or extreme cruelty perpetrated by [REDACTED].

Upon further review of the evaluation provided by [REDACTED] the evaluation was based upon one interview with the petitioner. Conclusions based on a single interview of unspecified length fail to reflect the insight and elaboration commensurate with an established relationship with a mental health professional and thus the conclusions offered are speculative. Moreover, as noted above, [REDACTED] assessment is based on the petitioner's testimony which fails to include specific information of particular events of battery or extreme cruelty as set out in the statute and regulation.

Upon review of the petitioner's statements and the statements and evaluation submitted on her behalf, the evidence of record lacks probative testimony establishing that [REDACTED] subjected the petitioner to battery or that his actions constituted extreme cruelty as defined in the statute and regulations. We do not disagree that the petitioner suffered from the discovery of her husband's drug use and the deterioration of her marriage; however the petitioner has not provided testimony establishing that her suffering was caused by specific behavior on the part of [REDACTED] that constitutes extreme cruelty under the statute and regulations. The petitioner has failed to provide probative testimony establishing that [REDACTED] actions were comparable to the types of 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. Nor has the petitioner established that [REDACTED] behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). In this matter, the petitioner has not provided sufficient probative and credible evidence to establish that she was subjected to battery or extreme cruelty perpetrated by [REDACTED].

#### *Conclusion*

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.