



**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 a United States citizen.

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. Counsel for the petitioner submits a brief and documentation in support of the appeal.

#### *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 (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.

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(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]. She entered the United States on January 20, 1999 on a B-2 visa. On November 16, 2007, the petitioner married [REDACTED]<sup>1</sup>, the claimed abusive United States citizen. On or about December 26, 2007, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was withdrawn in February 2008. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on May 9, 2008. The petitioner indicated on the Form I-360 that she resided with [REDACTED] from May 2007 to January 11, 2008. On April 23, 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, a brief, and documentation in support of the appeal.

*Battery or Extreme Cruelty*

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

In the petitioner's initial statement, she indicated that the couple married on November 17, 2007 and that they started a company together. The petitioner noted that she worked for free but did not mind because [REDACTED] offered to sponsor her for citizenship. The petitioner stated that at some point, she and [REDACTED] visited his accountant and she was shocked when [REDACTED] wanted her to sign a Separation of Goods Agreement prepared by the accountant. The petitioner noted that when she wanted to speak to a lawyer about the document, [REDACTED] accountant was bothered but agreed that this was right. The petitioner indicated that when they left the accountant's office, [REDACTED] told her that he did not like her response and he thought a divorce would be better. The petitioner indicated further that in January/February, the appointment for an immigration interview arrived and [REDACTED] told her on February 7, 2008 that he wanted to get a divorce. In March 2008, the petitioner indicated that she discovered that [REDACTED] had closed their joint bank account.

The petitioner provided an April 30, 2008 letter signed by [REDACTED] who noted that the petitioner had changed and that the petitioner told her the man she had married was the cause of the difference in her. The petitioner also provided a May 2, 2008 statement signed by [REDACTED] who declared that on May 2, 2008, the petitioner came to see her and she noticed the petitioner was distracted and the petitioner indicated she had problems with her husband which was causing her instability and depression.

The record also included a police report made on April 13, 2008 by the petitioner. The police officer noted the petitioner's report that [REDACTED] was verbally abusive and that she was afraid that it might escalate to physical abuse.

The petitioner also submitted a note signed by [REDACTED] on April 28, 2008, who stated that the petitioner was under his care for treatment of depression. The record further included a May 1, 2008 note signed by [REDACTED] psychiatrist, who stated that the petitioner had a psychiatric evaluation and that she takes medication. The record also included photocopies of the petitioner's prescriptions. The record further included a July 28, 2008 report prepared by [REDACTED] who indicated that the petitioner reported: that the couple mutually agreed to put money in their joint account, but she later learned she was the only one depositing money into the couple's account; that [REDACTED] took all the money from the account; that [REDACTED] did not show up for the immigration interview on April 28, 2008; and that she believed she had been deceived by [REDACTED]. [REDACTED] found that the petitioner "is presently acutely depressed, secondary to her accusation of her husband's deceitfulness and afraid of deportation or losing her chance of residency." The record also included an October 23, 2008 letter signed by [REDACTED] indicating that the petitioner had been under her care since May 1, 2008 and had been seen as recently as October 23, 2008.

The record further included a September 6, 2008 letter written on the letterhead of "Safe Horizon," signed by [REDACTED] Case Manager and [REDACTED] Senior Counselor. The writers indicated that the petitioner had contacted the office on June 11, 2008 requesting assistance related to issues as a victim of domestic violence and that during counseling, the petitioner reported that [REDACTED] had subjected her to emotional, verbal, and financial abuse. The writers related an incident occurring when "the perpetrator and his lawyer tried to coerce [the petitioner] into signing unknown documents" and when she refused "the perpetrator became

enraged and pushed her and verbally abused her.” The writers further noted the petitioner’s report that after this incident the perpetrator became more aggressive and threatened to hit her.

In response to the director’s RFE, the petitioner provided a July 15, 2009 statement in which she indicated that [REDACTED] spoke to her in a condescending way and that he controlled all of their money. The petitioner also submitted a July 15, 2009 letter signed by [REDACTED] who indicated that the petitioner continued to receive medication and support therapy and that she had been doing fairly well recently; but that her symptoms became worse after accidentally running into her husband on the street and that her medication had been increased.

Based on the above information, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty.

On appeal, counsel submits the petitioner’s February 18, 2010 statement in which she claims that [REDACTED] pushed her at the meeting with his accountant when she would not sign the Separation of Goods Agreement. The petitioner states that she did not reveal this incident in her initial statement because she was trying to remember so many other things and that as she visited her counselor at [REDACTED] a number of times she was better able to state more specific events with the counselor. Counsel asserts that [REDACTED] is a trained and licensed psychiatrist and that the petitioner was administered psychiatric tests which showed that she experienced trauma due to her husband’s treatment. Counsel contends that the petitioner has submitted sufficient evidence demonstrating that she had been subjected to extreme psychological cruelty perpetrated by her citizen spouse.

Upon review of the record, we find no error in the director’s assessment of the relevant evidence. The petitioner initially provided testimony regarding the couple’s business arrangement and her husband’s request that she sign a Separation of Goods Agreement at his accountant’s office. The petitioner does not indicate that her husband was enraged or bothered by her refusal to sign it. The petitioner, in her statement to the police on April 13, 2008, does not indicate that she was physically pushed but only notes that [REDACTED] was verbally abusive and she was afraid it might escalate into physical abuse. Likewise, the petitioner does not relate this incident to [REDACTED] her psychiatrist. As the director observed, the petitioner’s report to her counselors at [REDACTED] is inconsistent with her initial testimony, as well as her report to the police. We observe further that the petitioner’s statement to counselors at [REDACTED] was not revealed to her psychiatrist. The record does not include consistent information indicating that the petitioner was subjected to any form of battery. Moreover, the petitioner’s testimony does not reveal any specific evidence demonstrating that her spouse’s actions constituted extreme cruelty as defined by the statute and regulation. The petitioner does not provide detailed probative testimony regarding her former’s spouse’s alleged verbal abuse. Likewise, the petitioner’s spouse’s desire to end the marriage is not a behavior that constitutes extreme cruelty under the statute and regulation. The petitioner’s testimony does not reveal other behaviors or actions that constitute extreme cruelty as set out in the statute or regulation.

Upon review of the record regarding the report and statements prepared by the petitioner’s psychiatrist, [REDACTED] does not describe any actions or

behaviors exhibited by [REDACTED] as reported by the petitioner that constitute battery or extreme cruelty as set out in the statute and regulation. Further, [REDACTED] diagnosis appears to relate the petitioner's depression to her husband's deceitfulness and her fear of deportation. She does not causally connect any specific behaviors by [REDACTED] that constitute extreme cruelty as contemplated in the statute and regulation to her diagnosis of the petitioner's depression. We acknowledge [REDACTED] opinion that the petitioner suffered trauma, but the record does not provide sufficient evidence that the petitioner's experience resulted from battery or extreme cruelty perpetrated by [REDACTED]. Similarly, the writers of the letter from [REDACTED] indicate that the petitioner reported that [REDACTED] had subjected her to emotional, verbal, and financial abuse, but do not provide a detailed description of specific acts by [REDACTED] that demonstrate extreme cruelty under the statute and regulation.

The petitioner's friends do not provide any information regarding verbal or physical abuse, but note only that the petitioner seemed distracted and distant.

Upon review of the petitioner's statements and the statements and evaluation submitted on her behalf, the evidence of record lacks the descriptive detail necessary to establish that [REDACTED] subjected the petitioner to battery or that his actions constituted extreme cruelty as defined in the statute and regulations. The petitioner has failed to establish 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 evidence to establish that she was subjected to battery or extreme cruelty perpetrated by J-A-.

### *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.