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



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 10 2011

IN RE: [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:

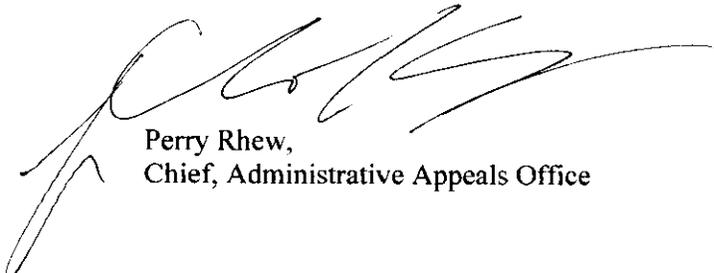
[REDACTED]

**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 service center director 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)(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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. The petitioner, through counsel, filed a timely appeal. On appeal, the petitioner submits a brief argument made on the Form I-290B, Notice of Appeal or Motion.

Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or additional evidence would be sent within 30 days. However, to date, nine months later, we have not received an additional brief or evidence. Accordingly, we deem the record complete and ready for adjudication.

*Applicable Law*

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Guyana, married D-C-<sup>1</sup> a citizen of the United States, on August 11, 2005. He filed the instant Form I-360 on April 3, 2008. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After

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

considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on February 17, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

### *Battery or Extreme Cruelty*

The sole issue on appeal is whether the petitioner has established that D-C- subjected him to battery or extreme cruelty during their marriage. As evidence that he was subjected to abuse perpetrated by D-C- during their marriage, the petitioner submits a self-affidavit, affidavits from friends, a psychological evaluation, and medical documentation.

As a preliminary matter, we agree with counsel's implicit argument on appeal that the petitioner's 1995 false claim to United States citizenship does not render the petitioner incredible on all matters. As noted by the court in *Kadia v. Gonzalez*, 501 F.3d 817, 821 (7<sup>th</sup> Cir. 2007), *falsus in uno, falsus in omnibus* (false in one thing, false in all things) is a discredited doctrine. As the director identified no specific reason to call into question the veracity of the petitioner's testimony regarding the abuse to which he was allegedly subjected, and we find none, we will accordingly consider the assertions made by the petitioner in his March 28, 2008 self-affidavit.

In his self-affidavit, the petitioner stated that although the first few years of his marriage to D-C- were blissful, problems began in October 2007. According to the petitioner, D-C- quit wearing her wedding ring, and had sexual relations with other men in the couple's home. According to the petitioner, D-C- locked him in the basement during these sexual encounters. He also stated that D-C- was controlling and physically abusive; called him names; embarrassed him in front of his family; spent money lavishly and wasted their savings; treated their son poorly; and threatened his immigration status.

In her March 27, 2008 affidavit, [REDACTED] stated that the petitioner told her that D-C- had locked him out of the house because he had worked late; that she had brought another man home to meet her mother; and that she made the petitioner pick up their son from school.

In her March 28, 2008 affidavit, [REDACTED] stated that the petitioner told her that D-C- slapped her; threatened his immigration status; and threw him out of the house. Ms. [REDACTED] also stated that she once heard D-C- verbally abusing the petitioner while speaking to him on the telephone.

The petitioner also submitted a "psychosocial report" from [REDACTED] who interviewed the petitioner on February 14, 2008. According to [REDACTED] the petitioner told him that D-C- physically and emotionally abused him. [REDACTED] stated further that the petitioner told him that D-C- could not hold a consistent job; neglected their son's well-being; was unfaithful and had sexual encounters with another man in the couple's home;; forced him out of the home on several occasions; threatened his

immigration status; isolated and teased him; called him names; spent his money; corrupted his relationship with their son; and that D-C- was dishonest, cruel, controlling, demeaning, manipulative, and coercive. On the basis of his interview with the petitioner, [REDACTED] diagnosed him with Posttraumatic Stress Disorder, Major Depressive Disorder, and panic attacks.

The petitioner also submitted a June 19, 2009 letter from [REDACTED] stating that the petitioner was seen as a patient at the Brooklyn Hospital Center in November 2007 for headaches and other non-specific symptoms relating to extreme stress.

The AAO has reviewed the entire record and finds that when considered in the aggregate, the relevant evidence fails to establish that D-C- subjected the petitioner to battery or extreme cruelty during their marriage. Although the petitioner claims in general terms to have been battered by D-C-, his testimony in his self-affidavit and [REDACTED] report of their interview lacks probative, detailed information regarding specific instances of such battery sufficient to meet his burden of proof.

Nor does the record demonstrate that D-C-'s non-physical behavior constituted extreme cruelty. The testimony of the petitioner and his affiants lacks detailed, probative information regarding specific instances of alleged abuse that would allow the AAO to make a meaningful determination as to whether he had been subjected to extreme cruelty by D-C-. While we do not question the professional expertise of [REDACTED] his description of his interview with the petitioner also lacks such probative, detailed information regarding specific instances of abuse and, for these same reasons, the petitioner has also failed to establish that D-C- abused their son. The record does not establish that D-C-'s behavior, as described by the petitioner and his affiants, was comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Nor has the petitioner demonstrated that D-C-'s behavior was accompanied by other coercive actions or that her behavior was aimed at insuring dominance or control over him. 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)).

On appeal, counsel states that victims of abuse do not have access to the range of evidence available to ordinary visa petitioners. While we do not question that victims of abuse often lack access to documentary evidence, in this particular case, the testimonial evidence, is insufficient to satisfy the petitioner's burden of proof.

The petitioner has failed to establish that D-C- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

The petitioner has failed to establish that D-C- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.