

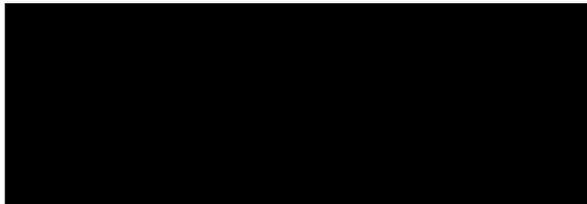
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: JAN 14 2011

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, 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 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 his United States citizen spouse.

On January 4, 2010, the director denied the petition, determining that the petitioner had not established 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, a statement in support of the appeal, and a psychological evaluation.

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.

\* \* \*

(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 Ecuador. He entered the United States in or about January 1991 without inspection. On March 14, 2001, the petitioner married R-R<sup>1</sup>, the claimed abusive United States citizen. On April 25, 2001, R-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The Form I-130 was approved on or about February 13, 2002. On May 12, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On August 28, 2008, United States Citizenship and Immigration Services (USCIS) issued a Notice of Intent to Revoke (NOIR) approval of the Form I-130. The record does not include a final decision on the Form I-130. On August 14, 2009, the director issued a request for evidence (RFE) to obtain further information regarding the Form I-360. Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by R-R-. Counsel for the petitioner submits a timely appeal.

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

*Abuse*

The petitioner does not claim that he was subjected to battery perpetrated by R-R-; rather he bases his claim on the alleged extreme cruelty perpetrated by R-R-. In a statement dated February 11, 2008, the petitioner reported that the results of a DNA test showed that he was not the father of the child born of his wife on November 22, 2006. The petitioner noted his hurt at his wife's betrayal. In an undated statement, R-R- acknowledged that she was unfaithful and indicates that the petitioner should not be blamed for her deceitfulness. R-R- also expresses her wish that they will be able to work things out. The record also included statements signed by [REDACTED] declared that the petitioner told her that it hurt him a lot that the child born [REDACTED] was not his child and that he could not forgive his wife. [REDACTED] declared that she noticed that the petitioner was sad and distressed and learned that a paternity test had shown that the petitioner was not the father of the child born to his wife on [REDACTED]. The record further included an October 20, 2009 letter signed by [REDACTED] the petitioner's previous employer. [REDACTED] indicated that the petitioner had worked for him for approximately two years and had been an excellent worker but suddenly the petitioner decreased his workload and when he asked the petitioner about his behavior, the petitioner noted that he had family problems.

The record also contains a psychiatric evaluation dated March 10, 2008, prepared by [REDACTED] [REDACTED] noted that: in 2005, after the petitioner suffered a heart attack he developed symptoms of depression; the petitioner suffered from post traumatic stress disorder due to sexual abuse by his older brother when he was ten years old; and in approximately February 2008 after learning that the child of his wife was not his biological child, he became despondent and depressed. [REDACTED] provided a follow-up letter dated October 14, 2009, in which she reported that the petitioner continued to be under her psychiatric care and that he continued to suffer from severe depression and anxiety symptoms triggered from his marital difficulties with R-R- and his discovery that he was not the biological father of their daughter. [REDACTED] noted that the petitioner's treatment consisted of verbal therapy and medications.

On appeal, counsel for the petitioner submits a second psychological evaluation prepared by [REDACTED] [REDACTED] noted that the petitioner was tested on January 8, 2010. [REDACTED] reported that the petitioner informed him of the sexual abuse he had suffered as a child and that the petitioner indicated he had confided this traumatic experience to his wife. [REDACTED] reported further that the petitioner indicated that after his heart attack R-R- became cold and distant and verbally and emotionally abusive and humiliated the petitioner in front of other people including their children. [REDACTED] noted the petitioner's indication that R-R- became dissatisfied with their sexual relationship and yelled obscenities at the petitioner as well as derogatorily referring to the petitioner's sexual abuse as a child. The petitioner indicated further at this time that R-R- moved to Pennsylvania with her sister to help her "cool off." The petitioner reported further that while R-R- lived in Pennsylvania, he visited her and the couple was intimate and R-R- gave birth to two children. R-R-, however, did not list the petitioner as the father on the second child's birth certificate and the petitioner later learned that he was not the biological father of the second child. [REDACTED] notes the petitioner's abuse as a child, his mental condition after suffering a heart attack, as well

as the petitioner's depression when learning that he was not the biological father of his wife's child. [REDACTED] offers his diagnostic impression that the petitioner developed adjustment disorder mixed with anxiety and depressed mood as a result of being the victim of domestic violence, including emotional, physical, and sexual abuse.

Counsel, on appeal, notes that the petitioner is being treated with medications for a number of ailments and asserts that the petitioner's symptoms result from the extreme psychological abuse of the petitioner's spouse. Counsel references specifically the petitioner's report to [REDACTED] that R-R- yelled obscenities at the petitioner and derogatorily referred to the petitioner's sexual abuse as a child in front of others including his children and the petitioner's hurt at the betrayal of R-R- as evidenced by her having a child with another man during the marriage.

Upon review of the record, the petitioner's statements do not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner has not demonstrated that he was the victim of any act or threatened act of physical violence or extreme cruelty, that R-R-'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's statement focuses on his wife's betrayal; however, infidelity is not an act, in and of itself, that constitutes extreme cruelty as defined in the statute and regulation. The record on appeal that includes the petitioner's report to [REDACTED] that R-R- expressed dissatisfaction with the couple's intimate relations, yelled obscenities, and derogatorily referred to the petitioner's sexual abuse as a child, is insufficiently detailed to conclude that R-R-'s actions constituted extreme cruelty. The petitioner has not provided a personal statement indicating the number of or circumstances of R-R-'s resort to unkind name calling. In *Herandez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2004) the Court noted that "every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence" and further that Congress required a showing of extreme cruelty in order to ensure that section 244(a)(3) of the Act protected against the extreme concept of domestic violence, rather than mere unkindness.

The behavior of the petitioner's former spouse as described does not constitute extreme cruelty as set out in the statute and regulation. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to result in a conclusion that the petitioner was subjected to such abuse. In this matter, the petitioner provided a general statement indicating that he had been betrayed by his spouse and he later told a psychologist that his spouse had embarrassed and humiliated him in front of his children; however the petitioner fails to establish that his spouse's actions rose 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 statements submitted on the petitioner's behalf also fail to include sufficient probative information regarding specific incidents of battery or extreme cruelty.

Upon review of the opinions of [REDACTED] neither individual provides examples of specific incidents or events that are causally connected to their diagnostic impressions. Both [REDACTED] refer to the petitioner's past medical history that included symptoms of depression and post traumatic stress disorder related to the petitioner's heart attack and sexual abuse as a child. Although [REDACTED] refers to the

petitioner's severe depression and anxiety symptoms triggered from his marital difficulties and discovery he was not the biological father of his wife's child, she does not include any information regarding the marital difficulties that evidence R-R-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Similarly, [REDACTED] while adding that R-R- derogatorily referred to the petitioner's past sexual abuse, fails to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that R-R-'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. Moreover, [REDACTED] concludes generally that the petitioner was a victim of domestic violence which included emotional, physical, and sexual abuse but does not identify any particular incident or event that includes the actions of R-R-.

Upon review of the record, the petitioner has not established that he was subjected to battery or extreme cruelty as set forth in the statute and regulation. For this reason, the petition will not be approved.

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.