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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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U.S. Citizenship  
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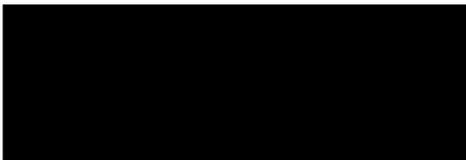
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JAN 26 2011

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:



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 former wife subjected him to battery or extreme cruelty during their marriage. The director also noted a discrepancy in the record between a 1999 divorce decree issued in Wyoming and the petitioner's divorce complaint filed in New York in 2009. The petitioner, through counsel, filed a timely appeal. On appeal, the petitioner submits a brief statement on the Form I-290B, Notice of Appeal or Motion.

*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)(A)(iii)(II)(aa)(CC)(ccc) of the Act states, in pertinent part, that an individual who is no longer married to a citizen of the United States is eligible to self-petition under these provisions if he "was a bona fide spouse of a United States citizen within the past 2 years and . . . demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse."

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:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

\* \* \*

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship [to the U.S. citizen or lawful permanent resident spouse].

\* \* \*

- (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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child 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 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 Trinidad and Tobago, married K-J-<sup>1</sup> a citizen of the United States, on May 15, 1997. As noted by the director, the record contains a copy of the former couple's divorce order, judgment, and decree, Civil Action Number [REDACTED] issued and filed by the Seventh Judicial District Court of Natrona County, Wyoming on July 22, 1999. The petitioner filed the instant Form I-360 on August 17, 2009. The director issued two subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed timely responses. After considering the evidence of record, including the petitioner's responses to the RFEs, the director denied the petition on June 7, 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 grounds for denying this petition.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

As noted, this petition was filed more than two years after the petitioner and K-J- divorced.<sup>2</sup> On appeal, the petitioner does not dispute that the filing of a Form I-360 more than two years after the legal termination of an alien's marriage to his or her U.S. citizen spouse precludes approval of a self-petition. Instead, he argues that "[t]he divorce decree filed in Wyoming was never signed or consented by me." Although the petitioner submitted evidence that he filed for divorce from K-J- in New York, the record lacks any evidence that his subsequent action superseded or otherwise invalidated the Wyoming court's order. A divorce decree is valid for immigration purposes if it is valid in the jurisdiction where it was issued. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). Without evidence that the Wyoming divorce order was invalid, the record shows that the petitioner and K-J- were divorced per that order in 1999, ten years before this petition was filed.

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

<sup>2</sup> Although the petitioner submitted a July 31, 2009 document entitled "Verified Complaint Action for Divorce," which does not appear to have been filed, the record is clear that the marriage was terminated by the Seventh Judicial District Court of Natrona County, Wyoming in 1999.

The petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) (II)(aa)(CC)(ccc) of the Act because the record does not establish that he was the bona fide spouse of a United States citizen within two years of the date he filed this petition and he has demonstrated no connection between his divorce and K-J-'s battery or extreme cruelty.

*Battery or Extreme Cruelty*

The second issue before the AAO on appeal is whether the petitioner has established that K-J- subjected him to battery or extreme cruelty during their marriage. As evidence that he was subjected to abuse perpetrated by K-J- during their marriage, the petitioner submitted a personal statement and a letter from a psychologist.

In his undated personal statement, the petitioner stated that K-J- secretly withdrew funds from their joint bank account and "went bananas" when he confronted her about it; called him names; and had an extramarital affair. The petitioner stated that upon learning of her infidelity, he told K-J- they were "finished" as a couple.

The petitioner also submitted a letter from Dr. [REDACTED] who interviewed the petitioner on March 15, 2010. In his March 16, 2010 letter, Dr. [REDACTED] stated that the petitioner told him that K-J- abused alcohol; stayed out late and refused to tell the petitioner where she had been; spent money earmarked for household expenses on herself; called him names; and had an extramarital affair. According to Dr. [REDACTED] the petitioner told him that as a result of K-J-'s behavior, he eventually became "afraid to say anything." Dr. [REDACTED] stated that, in his opinion, the petitioner suffers from a Major Depressive Disorder as a result of K-J-'s maltreatment during their marriage.

On appeal, the petitioner states that a broken heart is worse than physical abuse.

When considered in the aggregate, the relevant evidence fails to establish that K-J- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner does not claim, and the record does not establish, that K-J- battered him. Nor does the record demonstrate that K-J-'s behavior constituted extreme cruelty. The behavior of K-J- as described by the petitioner is not comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Nor does Dr. [REDACTED] letter establish that the petitioner was subjected to extreme cruelty by K-J-. Although Dr. [REDACTED] states that the petitioner told him that he was abused during his marriage to K-J-, Dr. [REDACTED] account of the petitioner's description of her behavior lacks probative details regarding specific instances of such abuse. As such, although we do not question Dr. [REDACTED] professional qualifications, his letter is of little probative value. 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)).

The petitioner has failed to establish that K-J- 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 his eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States because the record indicates that he and K-J- divorced more than two years before the petition was filed and he demonstrated no connection between their divorce and K-J-'s battery or extreme cruelty. The petitioner also has not established that K-J 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.