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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**



B9

DATE: Office: VERMONT SERVICE CENTER FILE: 

**JUN 03 2011**

IN RE: Petitioner: 

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:

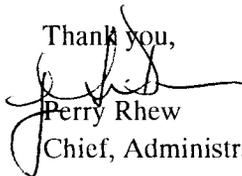


INSTRUCTIONS:

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 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 spouse.

The director denied the petition on August 24, 2010, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse. On appeal, counsel submits a brief and documents 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 further explained 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.

*Pertinent Facts and Procedural History*

The petitioner is a native and citizen of the Ukraine. He entered the United States on or about June 27, 1996 on a B-2 visa. On August 26, 1999, the petitioner married E-K-,<sup>1</sup> a United States citizen.<sup>2</sup> On July 23, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that he resided with E-K- beginning in January 1997 until November 2002. On February 26, 2010, a divorce judgment terminating the marriage was filed in New York County, New York. The director issued a request for evidence (RFE) on April 26, 2010. Upon consideration of the evidence in the record, including the response to the RFE, the director denied the petition on August 24, 2010, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty by a United States citizen spouse. Counsel timely submits a Form I-290B, Notice of Appeal or Motion, a supplemental brief, and documents in support of the appeal.

*Battery or Extreme Cruelty*

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

<sup>2</sup> E-K- naturalized on March 15, 2002, subsequent to the marriage.

In the petitioner's initial undated statement, he indicated that he and E-K- opened a restaurant together prior to their marriage and business was very good. The petitioner stated that in 1999 his mother came to the United States as a result of the green card lottery and his mother and E-K- got along very well and on August 26, 1999, he and E-K- married at City Hall. The petitioner indicated that he and E-K- and her relatives spent a lot of time together and that as the place they lived in was not enough for a big family, they moved to a nice private house and when the house was put up sale, "it was [a] very good idea to get that house." The petitioner noted that they purchased the house in 2001 and as E-K- was a green card holder, the house was put in her name. The petitioner declared: "[a]ll I remember from our marriage was only happy days," "[n]othing had bothered me at all," and "[m]y wife seemed to be happy next to me." The petitioner next described an incident on November 18, 2002 when he was waiting for E-K- to come to the restaurant prior to opening and when she appeared she was accompanied by two police officers who told him that E-K- had divorced him and had an obtained an order of protection against him. The petitioner then described his distress at the breakdown of his marriage. The petitioner noted that E-K- continued to call him, threatening him and his father. The petitioner stated that one day a police officer told him to come to the police station to sign some papers but once there he was arrested for violating the restraining order; however, his attorney later had the order of protection dismissed. The petitioner noted that on May 22, 2003, the judgment of divorce obtained by E-K- was vacated as it had not been properly served. The petitioner indicated that E-K- sold their business and distributed the proceeds to her family and friends. The petitioner also stated that in the beginning of 2006 he ran into E-K- at a party and she laughed at him and called him names in front of other guests and so he left but after that day, she started to call him again and leave horrible messages on the answering machine. The petitioner noted that from 2000 until 2006 during his marriage to E-K- he has been constantly depressed and has been treated with a combination of medication.

The petitioner also indicated that he was involved in a serious automobile accident in 2003 and the record included a Neurobehavioral & Psychophysiological Assessment Report prepared by [REDACTED], based on services rendered on April 11, 2003. [REDACTED] reported that the petitioner had presented himself for the assessment because of deterioration in adaptive, cognitive, and general functioning, persistent physical pain, and distress experienced subsequent to being injured on April 2, 2003, in a car accident. In subsequent evaluations regarding the petitioner's treatment, [REDACTED] reported: "[p]atient acknowledges having no changes in interpersonal relationships. Patient's family/spouse reaction and attitude to patient's disability characterized by patient as supportive."

The petitioner also provided a psychological evaluation dated June 8, 2008, based on a May 18, 2008 assessment prepared by [REDACTED] reported that the petitioner indicated that his marriage was "typical with many good times as well as usual spousal disputes" and that there was "no overt abuse in either direction," but that E-K- was controlling when it came to business and finances. [REDACTED] noted that the petitioner was served with both divorce and protection order papers on October 21, 2003, not November 18, 2002 as the petitioner initially stated in his affidavit. [REDACTED] also noted that the protection order was based on three prior police visits to the petitioner's home but that the petitioner recalled that the police visits were not in response to domestic disputes and the divorce and protection order were

rescinded in 2004. [REDACTED] found that the petitioner's current emotional and thought problems were likely a consequence of emotional abuse incurred by the dissolution of his relationship and the manner by which it was dissolved in 2003.

The initial record also included affidavits signed by [REDACTED] who comment on the happiness they observed between the couple and the shock they experienced when in November 2002, the petitioner was served with an order of protection by E-K-.

In response to the director's RFE, the petitioner provided a second personal statement dated December 23, 2009. The petitioner added that after their marriage, E-K- demanded that he refrain from going to the Russian Bath House on New Year's Eve as had been his habit. The petitioner added further, that E-K- seeing that he was upset loudly accused him of going to see his lover at the bath house and "blew [wine] into [his] face" in front of eight to ten other people. The petitioner noted that in 2001 although he wanted to buy the house that they were living in, he wanted to pay off their debts first, but that E-K- got her way and they purchased the home. The petitioner added an incident occurring in February 2002 when he wanted to celebrate his mother's birthday at their restaurant and E-K- yelled in front of other people that she did not want to give a party for his mother and he felt like a loser so he walked around for a while and then went home. The petitioner reported that E-K- was already at home and when he returned home, she yelled at him, called him derogatory names and when he asked her to calm down, she jumped at him, hit him in the face and told him to learn to talk to her. The petitioner added that she scratched his face deeply with a ring and he started to bleed and went to a friend's house to sleep. The petitioner noted that E-K- called the next morning and said she had made a mistake. The petitioner indicated that he often blamed her cruel and harsh behavior on her hard work and mood swings. The petitioner repeated the incident of the protective order obtained by E-K- in November 2002 and of being stressed after being kicked out of their house. The petitioner added that in September 2009, he again ran into E-K- at a public shop and she called him derogatory names in front of others and she asked the security person to call the police and he was then asked to leave.

The petitioner also submitted a November 1, 2009 letter signed by [REDACTED] indicating that the petitioner continued to be under his care and that he found that the petitioner continued to show significant depression of mood, intense worry about his legal status problems, rumination about his divorce, and difficulty building new personal and work relationships. The record also included results of medical examinations of the petitioner's physical health and an October 20, 2009 note signed by [REDACTED], M.D, indicating that the petitioner had been under his care since January 26, 2006 for a variety of physical ailments.

The petitioner also provided a copy of his divorce judgment that was filed with the clerk's office on February 26, 2010 in the County of New York, which cited the grounds for divorce as cruel and inhuman treatment based on the petitioner's testimony regarding: E-K-'s actions on November 18, 2002; her obtaining a divorce without proper service; and her claiming that he had violated a protection order when he had not.

The petitioner also provided a statement from his mother who indicated that E-K- called her many times after the couple separated and made threats and verbally abused her and the petitioner. In the December 28, 2009 statement of [REDACTED], Mr. [REDACTED] noted that the petitioner did not attend the Russian bath house as had been his custom from 1998 to 2003 and that the petitioner came to his house in February 2002 after an argument with E-K- about his mother's birthday party. Mr. [REDACTED] indicated that the petitioner told him that E-K- had abused him physically but did not indicate that he observed any injuries.

Based on the information in the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by E-K-.

On appeal, counsel for the petitioner asserts that the petitioner was physically, mentally, and economically humiliated by his former spouse. Counsel references the February 2002 incident in support of his assertion. Counsel contends that the petitioner was economically abused when E-K- kicked him out of their house with almost nothing, sold their business, and left him without any money or social or economical support. Counsel contends that the petitioner was a victim of an overall pattern of violence and references the verbal abuse and harassment perpetrated by E-K-. Counsel also notes that E-K-'s action for divorce was vacated and that a divorce was granted to the petitioner based on cruel and inhuman treatment. Counsel also provides partial excerpts of New York State law regarding cruel and inhuman treatment for purposes of obtaining a divorce judgment on this ground. Counsel asserts that the petitioner's divorce based on cruel and inhuman treatment supports the petitioner's claim that he was subjected to battery and extreme cruelty by E-K- for immigration purposes.

Counsel also references the petitioner's continuing treatment by [REDACTED] and includes a September 24, 2010 letter from [REDACTED] indicating that the petitioner continued to be under his care for major depressive disorder which had been amended to include "severe" and "recurrent" attributes. [REDACTED] states in the September 24, 2010 letter that the petitioner was burned out from having to care for his mother, he missed his son, he continued to ruminate on his failed marriage, and he struggled with financial and immigration problems. [REDACTED] also stated that the petitioner continued to suffer negative emotional consequence of the abuse he incurred within his marriage.

Upon review of the totality of the record, we find the petitioner's testimony inconsistent and insufficient to establish that he had been subjected to battery or extreme cruelty perpetrated by E-K-. For example, in the petitioner's initial statement to United States Citizenship and Immigration Services (USCIS) he provides no information regarding any disputes. Specifically he failed to mention any physical attack and provided no information regarding the February 2002 dispute with E-K- regarding his mother's birthday party. He also failed to include information regarding his dispute with E-K- regarding his habit of going to the Russian bath house and her accusation that he was cheating on her and spitting wine in face in front of others. The petitioner also failed to discuss any aspects of the difficulties of his marriage in his discussions with [REDACTED] on April 11, 2003. Moreover, in subsequent evaluations regarding the petitioner's treatment, [REDACTED] reported: "[p]atient acknowledges having no changes in interpersonal relationships. Patient's family/spouse reaction and attitude to

patient's disability characterized by patient as supportive." The petitioner's failure to reference his distress or stress to [REDACTED] as the result of any difficulties with his former spouse undermines his credibility.

In the psychological evaluation dated June 8, 2008, based on a May 18, 2008 assessment prepared by [REDACTED] indicated that the petitioner recalled his marriage as "typical with many good times as well as usual spousal disputes" and that there was "no overt abuse in either direction." [REDACTED] referenced the petitioner's comment that E-K- was controlling when it came to business and finances, but did not provide further details regarding this behavior. [REDACTED] does not further expound upon the type of emotional abuse incurred except as it relates to the way the E-K- chose to end the relationship. Similarly, the affidavits submitted by the petitioner's friends fail to discuss any verbal disputes, any physical attacks, or provide any negative information regarding the petitioner's marriage other than the way the marriage ended.

In response to the director's RFE, the petitioner provided a completely different perspective on his relationship with E-K-. He fails, however, to explain why he did not discuss the February 2002 incident regarding the petitioner's mother's birthday party with his doctors or why he did not initially inform USCIS of an incident involving a physical attack. The inclusion of this incident only in response to the director's RFE notifying the petitioner that his testimony was insufficient is not credible. Moreover, the petitioner indicated that he was scratched on the face seriously enough to bleed; however, his friend failed to describe any physical injury to the petitioner when the petitioner arrived at his home that same evening. The escalation of the type of abuse allegedly perpetrated by E-K- and the inherent inconsistency in the testimony of the petitioner and his friend undermine the petitioner's credibility. The record does not include sufficient probative, credible detail demonstrating that the petitioner was actually subjected to battery perpetrated by E-K- in February 2002 or at any other time.

Similarly, the petitioner has not provided credible and probative testimony establishing that he was subjected to economic control by E-K- or that E-K-'s conduct established an overall pattern of violence. The petitioner initially did not provide any detail regarding E-K-'s controlling behavior; he simply indicated that E-K- attempted to terminate the marriage abruptly. He did not provide any probative testimony that her conduct was an attempt to control his behavior. For example, the petitioner's initial statement indicated that he wanted to buy things for E-K- and enjoyed being with her and her family; only in the petitioner's second statement does he indicate that E-K- demanded that the couple buy a house, that she demanded that he stop attending the bath house, and that her actions were harsh and cruel. Upon review of the petitioner's testimony, he does not provide details regarding any episodes of claimed verbal abuse or other conduct that credibly establishes that her actions were part of an overall pattern of violence.

Upon review of the petitioner's statements to USCIS, the petitioner does not provide a consistent probative account of the alleged physical or emotional abuse. The petitioner's initial complaint was based primarily on the way E-K- attempted to terminate the marriage. The petitioner's expansion of the nature of the claimed abuse in response to the director's RFE is not credible. The record does not support a determination that E-K-'s acts in the aggregate amount to a pattern

of abuse and violence, as the petitioner's testimony and the testimony of others on his behalf fail to provide consistent detailed testimony that E-K-'s behavior constituted extreme cruelty as set out in the statute and regulation. The record lacks sufficient probative, credible testimony to establish that the petitioner has been subjected to battery or extreme cruelty.

The 2003 report prepared by [REDACTED] does not include any information regarding the petitioner's mental condition that is related to marital difficulties. [REDACTED] does not discuss specific behavior on the part of E-K- that is causally connected to the petitioner's mental health. Although [REDACTED] notes that he continued to see the petitioner subsequent to his initial 2008 report, he lists multiple factors unrelated to the dissolution of the petitioner's relationship with E-K- as contributing to the petitioner's depression. Again, [REDACTED] letter submitted on appeal does not causally connect the petitioner's continued depression to specific incidents of abuse which constitutes extreme cruelty under the statute and regulation. Likewise, the evaluations of the petitioner's physical health are not causally connected to any behavior or conduct expressed by E-K-.

While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. 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). To require otherwise would render the adjudicatory process meaningless. In this matter, when evaluating the record as a whole, the record lacks consistent credible information regarding specific instances of abuse that should be categorized as battery or extreme cruelty under the statute and regulation. The record is simply deficient in this regard.

### *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.