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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: **JUN 14 2011** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

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:

SELF-REPRESENTED

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 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 United States citizen.

The director determined that the petitioner had not established that he had been battered or subjected to extreme cruelty perpetrated by his United States citizen spouse. On appeal, the petitioner submits two additional affidavits.

### *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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

\* \* \*

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

\* \* \*

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

#### *Facts and Procedural History*

The petitioner is a native and citizen of Jamaica. He entered the United States on August 1, 2003 on a B-2 visa with authorization to remain in the United States for a temporary period not to exceed January 30, 2004. He married A-R-,<sup>1</sup> the claimed abusive United States citizen on [REDACTED]. On May 3, 2006, A-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The petitioner and J-C- attended an immigration interview on November 7, 2006 and on June 18, 2007. The Form I-130 and the Form I-485 were denied on July 15, 2009. The petitioner was placed in removal proceedings on August 4, 2009. A Final Judgment of Divorce was entered and filed on [REDACTED] terminating the petitioner's marriage to A-R-. On August 5, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 10, 2010, 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 he had been subjected to battery or extreme cruelty perpetrated by A-R-. The petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and two additional affidavits in support of the appeal.

#### *Battery or Extreme Cruelty*

The petitioner initially provided a May 4, 2009 affidavit signed by his daughter who described her stepmother as very controlling and who called her and her father derogatory names. She

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

described an incident in October of 2008 when her stepmother and father argued about his paycheck and when she came to her father's defense, her stepmother told her stay out of their business and called her a derogatory name. The petitioner also provided a May 11, 2009 statement signed by his brother. His brother declared that he visited the petitioner and A-R- in November 2007 and when he and the petitioner decided to visit a friend in New York, the day before Thanksgiving, A-R- objected. His brother also indicated that A-R- was controlling and that the petitioner told him that A-R- threatened him regarding his green card application. The petitioner also provided a May 15, 2009 statement signed by [REDACTED] who declared that she visited the couple on three different occasions and it was not a friendly environment during her last two visits. [REDACTED] indicated that A-R- was controlling and disrespectful and that the petitioner's personality changed when he was around her. [REDACTED] remarked that on more than one occasion during their quarrels, A-R- tried to get physical and would tell the petitioner that she was going to withdraw the immigration papers she had filed on his behalf.

In response to the director's RFE, the petitioner provided a personal statement. He noted that A-R- became angry with him when he opened a piece of her mail by mistake, she made a list of things she wanted him to do daily, she had an altercation with his brother in July 2006, when his brother visited and told her off for mistreating the petitioner, and once he obtained a job, she demanded that he turn over all the money he was paid. The petitioner also noted that when he refused she would threaten to withdraw his immigration papers. The petitioner indicated that when his older daughter came to live with them, A-R- demanded money for her room and board. The petitioner stated that just before the first immigration interview, November 7, 2006, the couple had an argument, she threatened to call the police, and he got a headache and went outside the apartment and sat down in the hall and a neighbor told him A-R- was a crazy woman and had mistreated another man before. The petitioner indicated that the day of the interview they did not take any documents with them and when the officer started asking for documents, A-R- pretended to be sick and the interview was rescheduled. The petitioner noted that A-R- told him she was in charge and he would never get his papers if he did not do what she said and he believed that she lied at the second interview because she told him she had not gotten enough money out of him yet.

The petitioner's brother submitted a second statement in response to the director's RFE dated May 23, 2010, in which he declared that he had had a previous encounter with A-R- prior to the Thanksgiving event he described in his first affidavit. The petitioner's brother references an event in July 2006 similar to that described by the petitioner in his statement. The petitioner's brother also indicated that A-R- called him after the immigration interview and told him that she was in control and that without her the petitioner would be deported.

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.

On appeal, the petitioner provides his second affidavit in which he claims that A-R- was two different people and that when she was angry or could not have her way, she would break things and act as though she was going to hit him. The petitioner indicates that A-R- isolated him from friends, and that he was given a stipend to travel back and forth to work and that he was given a

curfew. The petitioner states that A-R- called him derogatory names, told him that any money earned was her money and that he loved her so much he did not think that he was being abused but that she was just a difficult woman. The petitioner notes that A-R- slapped him with a newspaper when he was just trying to help a young woman, that she embarrassed him in the presence of his family and friends, and that she controlled and manipulated him emotionally and financially. The petitioner states that he was not physically beaten, but that does not mean that he was not traumatized by living in the same house as A-R-.

The petitioner also provides an affidavit signed by his neighbor, [REDACTED]. [REDACTED] declares that after A-R- moved in with the petitioner, she heard yelling and A-R- calling the petitioner derogatory names. [REDACTED] states that A-R- had another man falsely arrested before. She also describes an incident when the petitioner came to her door telling her that he was going out of his mind in the relationship and that A-R- then accused her of having an affair with the petitioner. [REDACTED] indicates that A-R- never had a good word to say about her children, her family, or anyone with whom she came in contact.

The petitioner does not claim and the record does not reflect that the petitioner was the victim of battery perpetrated by A-R-. Rather, his claim is based on extreme cruelty perpetrated by A-R-. Upon review of the record, the petitioner initially does not provide a statement describing any specific incidents or events of extreme cruelty as defined in the statute and regulation. The affidavits submitted on his behalf from his brother, his daughter, and a friend fail to include descriptive testimony detailing specific incidents of extreme cruelty. The information provided is vague and insufficient to establish that the petitioner was subjected to extreme cruelty as set out in the statute and regulation.

In response to the director's RFE, the petitioner provided his personal statement in which he relates incidents of name calling and threats of withdrawing his immigration papers; however, he does not provide a detailed account of specific incidents to demonstrate that her name calling and threats amounted to extreme cruelty. The petitioner states generally that A-R- was controlling and disrespectful and demanded his money. He fails however, to describe acts of violence or other behavior that is or could be considered a part of an overall pattern of violence. The petitioner's brother references a July 2006 confrontation with A-R-, an incident not described in his initial statement, and adds that after the petitioner's immigration interview, A-R- called him to tell him that she was in control of the petitioner. However, the petitioner's brother does not describe specific conduct by A-R- in sufficient detail to allow a conclusion that the petitioner was subjected to extreme cruelty as set out by the statute and regulation.

On appeal, the petitioner adds incidents of A-R- breaking things and acting as if she would hit him as well as isolating him from friends. He adds that she slapped him with a newspaper, embarrassed him in the presence of family and friends, and controlled and manipulated him emotionally and financially. He does not, however, describe particular events with any degree of detail and states generally that he felt that he was controlled by A-R- through psychological means that include emotional abuse, humiliation, degradation, and isolation, just like the director had described in the RFE. The petitioner fails however to provide examples of specific incidents that establish that A-R-'s 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 does the petitioner establish that A-R-'s 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)). The statement submitted by the petitioner's neighbor describes A-R- as a mean individual but she does not provide testimony that demonstrates that actions she observed include behavior of extreme cruelty as defined in the statute and regulation.

Based upon a review of the totality of the evidence in the record, the petitioner has not established that he was subjected to battery perpetrated by his spouse. Neither has the petitioner provided probative evidence that he was subjected to conduct that constituted extreme cruelty. The petitioner's testimony and the testimony of others on his behalf do not provide a credible detailed account of specific incidents or events that constitute battery or extreme cruelty as defined in the statute and regulation.

#### *Qualifying Relationship and Immigrant Classification*

Beyond the director's decision, we find that the petition is also not approvable because the record fails to establish that the petitioner has a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen and is eligible for immediate relative classification based on a qualifying relationship with his former wife. An alien who is divorced from a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien 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)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As previously noted, the petitioner in this matter was divorced from his spouse on February 2, 2009 and he filed the instant petition on August 5, 2009. As the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former spouse, he has also failed to make the causal connection between his divorce and any abuse. Accordingly, the petitioner is also not eligible for the benefit he seeks because he did not establish a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen. He is also ineligible for immediate relative classification based on a qualifying relationship with his former wife.

#### *Residence*

Also beyond the decision of the director, the petitioner has not established that he resided with A-R- during the marriage. The petitioner stated on the Form I-360 that he resided with A-R- between February 2006 and February 2009. The record includes copies of bank statements for a time period between September 2006 and June 2007, addressed to the petitioner and A-R- but with no transactional history, Sprint statements with the initial statement addressed to the petitioner for services in August 2006 and the remaining statements including A-R-'s name for services in

September 2006 to May 2007 with the account becoming past due in May 2007, and a life insurance policy with no evidence that the premium had been paid. The record also includes a month-to-month lease for the claimed marital premises dated August 28, 2006 with the beginning term September 1, 2006, listing the tenants as the petitioner, A-R-, and [REDACTED] and a restriction that the premises were to be used only by the tenants listed.

In the petitioner's statement in response to the director's RFE, the petitioner noted that he moved in with A-R- and that one of his daughters also resided with him and that at some point in time his older daughter also moved into the premises.

The record does not include further detailed information regarding the petitioner's claimed residence with A-R-. The lack of probative testimony regarding the living premises, an explanation of the number of individuals living in the premises, and information regarding an additional roommate raises significant issues with the validity of the claimed joint residence. The petitioner does not indicate where the couple lived prior to September 2006. Receiving mail at a particular address is insufficient to establish that an individual lives at that address, especially when the documentation is for only a limited amount of time during the marriage. In this matter, the current record does not include sufficient evidence to establish that the couple jointly resided together during the marriage.

#### *Good Faith Entry Into Marriage*

Also beyond the decision of the director, the petitioner has failed to establish that he entered into the marriage in good faith. The record includes only the documentation noted above as evidence that the couple began to establish a life together. The petitioner does not relate how he met A-R- and he provides only a cursory description of his initial interactions with A-R-. The information provided is general and lacks detail of specific events that would assist in demonstrating the petitioner's intent when entering into the marriage. Upon review, the petitioner does not provide probative testimony regarding his courtship with A-R- or his interactions with A-R- except as they relate to the claim of abuse. He does not describe the couple's mutual interests, he does not describe A-R-'s family, he does not detail the couple's daily routines, and he fails to provide any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth his intent in probative detail in his statements and the record does not include sufficient probative credible evidence that the couple established a life together. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with A-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. For this additional reason, the petition may not be approved.

*Conclusion*

The petition will be denied and the appeal dismissed for the above stated reasons. 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.