

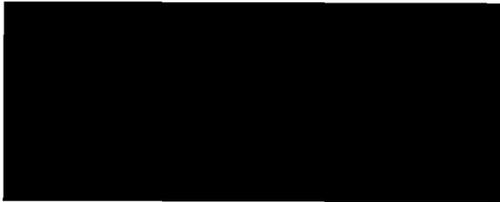
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



B9

DATE:

**JUN 17 2011**

Office: VERMONT SERVICE CENTER FILE:



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 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 subjected to battery or extreme cruelty perpetrated by the United States citizen spouse. On appeal, counsel submits a brief and additional documentation.

#### *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 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.

Preliminarily, counsel for the petitioner asserts that the director failed to properly apply the "any credible evidence" standard when assessing the pertinent evidence and also denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition as required by the regulations.

The AAO acknowledges that section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." 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). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of

relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim, 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 addition, the issuance of a NOID prior to denying a Form I-360 battered spouse petition is not a regulatory requirement for petitions filed on or after June 18, 2007. The regulations in existence when the petition was filed in this matter, February 17, 2009, do not require the issuance of a NOID prior to rendering a final decision to deny the petition.

### *Facts and Procedural History*

The petitioner is a native and citizen of the Republic of Guinea. He entered the United States on August 23, 1997 on a B-2 visitor's visa with authorization to remain in the United States for a temporary period until February 22, 1998. He married T-B-,<sup>1</sup> the claimed abusive United States citizen on May 17, 2001. On or about June 20, 2003, T-B- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the Form I-130 was approved on October 13, 2003. The petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on or about February 6, 2006, which was denied on March 9, 2007 because the petitioner failed to appear for a rescheduled interview on December 7, 2006. On February 17, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On November 25, 2009, 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 T-B-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides additional documentation in support of the appeal.

### *Battery or Extreme Cruelty*

In the petitioner's February 10, 2009 personal statement initially submitted, he declared that in December 2001, six months after the marriage, he noticed that T-B- was secretive with her phone conversations and in the summer of 2002 when he lost his job, her attitude toward him really changed. The petitioner indicated that he tried to withdraw money from their account but could not and when he asked T-B- about the missing money, she cursed at him and called him derogatory names. The petitioner noted that T-B- was disrespectful of him and his culture and laughed at him. The petitioner indicated that in 2003, T-B- spent less and less time at home but one night she told him to get out of the house or she would call immigration and have him deported and threw his clothes out in a trash bag. The petitioner noted that he tried to call her many times with no response and luckily he was able to stay in his old room.<sup>2</sup> The petitioner

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

<sup>2</sup> The petitioner indicated in his February 10, 2009 statement that he and T-B- met because they

indicated that T-B- changed the locks on her apartment and changed her phone numbers and one day a friend told him that T-B- was with another man. The petitioner stated that the next couple of years she would only call him if she needed money and he would give her money but then she would disappear again. The petitioner declared that in the spring of 2006, he met her in the park, they talked and she indicated that she had made a mistake and wanted to get back together again. The petitioner declared that when he had his immigration interview in October 2006, she refused to go with him at the last minute and threatened him with deportation. The petitioner noted that their fights continued and she would throw dishes at him, and in November 2007 she became upset with him for not cleaning her bathroom and she tried to slap him in the face and started throwing clothes at him. The petitioner indicated that he had enough and just left.

The petitioner provided a January 20, 2009 report prepared by [REDACTED], based on an assessment of the petitioner conducted on January 12, 2009 for an unspecified length of time. [REDACTED] provided a similar account of the petitioner's interactions with T-B-, although she does not discuss the petitioner's separation from T-B- from sometime in 2003 until spring in 2006. [REDACTED] recounted the two incidents described by the petitioner as throwing dishes at him and trying to slap him but she indicates the petitioner reported that these two incidents occurred in 2006 or the beginning of 2007, not in November 2007 as the petitioner reported in his statement to USCIS. [REDACTED] also characterized the petitioner's reason for leaving at the end of 2006/beginning of 2007 as being afraid and no longer trusting his wife. [REDACTED] provided her impression that the petitioner "was the victim of spousal abuse as evidenced by his description of his wife's abusive behavior, as well as his related symptoms."

The petitioner also provided a statement signed by [REDACTED] dated December 4, 2008, who declared that he knew the petitioner as a neighbor. [REDACTED] stated that he had seen the couple together, that the petitioner told him of his marital difficulties in 2002, and that the petitioner told him that T-B- had declined to attend the immigration interview with him and refused to communicate with him. The record also included a statement signed by [REDACTED] dated January 20, 2009. [REDACTED] declared that sometimes the petitioner would come to her house to eat and when T-B- found out, T-B- told her that if the petitioner came over again she would call the police and have him deported. [REDACTED] also noted that T-B- threw the petitioner out of the house, changed the locks, and started going out with someone else, but that in 2006, the petitioner told her that he and T-B- were trying to get back together but they finally separated in 2007. In a January 27, 2009 statement, [REDACTED] declared that T-B- became violent and abusive toward the petitioner but she does not describe how she was aware of T-B-'s behavior or when this behavior occurred.

In response to the director's RFE, the petitioner submitted a second personal statement, dated February 12, 2010, in which he added that in 2002 when he tried to talk to T-B- about the missing money from the account, T-B- a correctional officer, put her gun to his head and threatened him. The petitioner indicated that he did not tell anyone about this but does not explain why. The petitioner also added that on one occasion friends came over after an argument

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lived in the same building and that his apartment was on the floor above T-B-'s apartment.

had occurred between him and T-B- and he thought T-B- had calmed down after the argument. However, she began to curse him, punch him on the back and everywhere else until his friends pulled her off of him and then she tried to spit in his face and threw a glass at him. The petitioner noted that he left the apartment for an hour and when he returned and everyone was watching a game, T-B- got her gun from the bedroom and started to clean and reload it in front of everyone and started to yell again. The petitioner indicated that his friends left even though he tried to assure them that she would never harm anyone. The petitioner added that he was used to T-B- having a gun so did not think this was part of the abuse, but now that time has passed, he gets scared thinking what she could do. The petitioner declared that he did not mention this before because it was not unusual for him. The petitioner also added that there were many times T-B- threw dishes and other things at him, punched him, and slapped him and he had to go to the doctor since it hurt a lot. The petitioner added further that in the beginning of 2005 after one of their arguments, T-B- was violent and pushed him and he fell and hurt his shoulder and was taken to the hospital but he did not tell anyone that she had pushed him.

In a December 28, 2009 statement, [REDACTED] repeats the information added by the petitioner in his February 12, 2010 statement regarding T-B- punching the petitioner in front of friends. Ms. [REDACTED] places this incident sometime in 2002. The record also includes a December 27, 2009 statement signed by [REDACTED] who declared that while waiting for his car to be serviced by the petitioner he watched T-B- arrive unexpectedly and verbally abuse the petitioner on two occasions within the last five years.

The petitioner also provided a December 30, 2009 statement on the letterhead of [REDACTED] MD indicating that the petitioner was seen at a clinic on four occasions. The four occasions included: (1) October 19, 2002 for a swelling on the back of his head and a claim that the symptom resulted from his wife pushing him against the wall; (2) August 7, 2003 for a burning sensation in his eyes which he indicated was caused by his wife throwing dish liquid on his face the previous day; (3) September 20, 2006 for swelling on the right side of his face with a visible laceration caused by his wife throwing a dish bowl at him; and (4) November 23, 2007 for extreme stress and insomnia after being slapped the previous day. The petitioner also provided a January 7, 2010 letter noting that the petitioner had been treated at the hospital on January 25, 2005 for a dislocated shoulder.

Upon review of the evidence in the record, the director noted that the record included numerous discrepancies and inconsistencies and determined that the petitioner had not presented sufficient credible evidence to establish that he had been subjected to battery or extreme cruelty perpetrated by T-B-.

On appeal, counsel notes that the director referenced three discrepancies in his decision and asserts that the director's determination regarding the three discrepancies involves erroneous findings of fact. Counsel contends that although the petitioner initially failed to mention the gun incidents, he did so because this was usual for him and he was used to defending T-B- and covering up for her. Counsel asserts that the petitioner's action is typical of the denial, disbelief, and silence exhibited by male victims of abuse. Counsel contends that [REDACTED] letter

referencing several incidents of abuse not mentioned by the petitioner is not inconsistent with the petitioner's testimony. Counsel avers that the incidents of violence happened so often that the petitioner could not list each and every single instance but that he has clearly described a pattern and practice of abuse by his spouse. Counsel claims that the petitioner's testimony that he was pushed by T-B- which caused him to fall and hurt his shoulder is not inconsistent with the medical records that only indicate that the petitioner's injury was the result of a slip and fall. Rather, counsel again avers that the petitioner was simply covering up his wife's actions as is common among male abuse victims. Counsel also asserts that the incidents related in the individuals' statements submitted on the petitioner's behalf should not be viewed as inconsistent or discrepant from the petitioner's testimony. Counsel also submits a number of articles on male victims of abuse.

Upon review of the record, the petitioner initially stated that beginning in 2001, T-B- was secretive, in 2002 after he lost his job she cursed him, called him derogatory names, and made fun of his culture, and in 2003 she spent less and less time at home until she kicked him out of the house and changed the locks. The petitioner does not describe any incidents or interactions with T-B- from sometime in 2003 to the spring of 2006, other than T-B- calling and asking for money and the petitioner giving her money. Thus, the petitioner's subsequent testimony regarding his dislocated shoulder in January 2005 due to being abused by T-B- is inconsistent with his initial statement in which he does not mention any problems occurring between 2003 and spring of 2006. Also in his initial statement, the petitioner indicated that the couple got back together in time to attend his Form I-485 immigration interview on October 10, 2006; however, the petitioner does not mention that the October 10, 2006 interview was rescheduled at his counsel's request due to a conflict with his and T-B-'s doctor's appointments, but rather states that T-B- refused to go with him at the last minute and threatened him with deportation. Thus, the petitioner's initial statement is inconsistent with other information in the record. The petitioner's initial statement in this matter ends with the fights continuing after October 2006 until November 2007 when he left. This statement is inconsistent with the information reported by the petitioner to [REDACTED] who notes that T-B- threw dishes at him and tried to slap him 2006 and the beginning of 2007, at which time he left.

The petitioner's second statement in this matter adds two incidents involving T-B-'s gun. The petitioner indicates that in the first incident with the gun, which occurred when he confronted T-B- regarding money missing from their account, T-B- put a gun to his head and threatened him. This is a significant escalation of the nature and type of abuse the petitioner initially described. His initial description indicated that when he confronted her about the missing money, she called him derogatory names and threatened him with deportation. The second incident, which is not referenced in his first account, involves an argument with T-B- cursing and punching him, spitting at him, and throwing a glass at him and then getting her gun and cleaning it in front of their guests. The failure to make reference to the punching, spitting, throwing a glass or cleaning the gun only until after the issuance of an RFE, amounts to inconsistent testimony on the part of the petitioner and undermines his credibility. Counsel's assertion and the petitioner's statement that he was used to covering up for T-B- and excusing her behavior are

not persuasive when evaluating the totality of the record and the timing and circumstances of his recollections.

The petitioner also added in his second statement that there were many times T-B- threw dishes and other things at him, punched him, and slapped him and that he had to go to the doctor since it hurt a lot. The petitioner provides no detail regarding alleged incidents such as the time when the alleged incidents took place, and the surrounding circumstances of the alleged abuse. Counsel's assertion that the abuse was so frequent that the petitioner could not remember specific incidents is not persuasive. The petitioner's failure to initially reference several of T-B-'s behaviors as well as the failure to reference the incidents listed in the December 30, 2009 letter on the letterhead of [REDACTED] MD, casts doubt on the actuality of those incidents. His failure to initially reference these specific incidents and the surrounding circumstances of those incidents in either of his statements to USCIS again constitutes inconsistent testimony and undermines his credibility.

The statements of the petitioner's friends do not provide probative, credible information regarding specific incidents of abuse. [REDACTED] does not provide testimony indicating that he observed particular incidents of battery or extreme cruelty as defined in the statute and regulation. Likewise, [REDACTED] relates one incident when T-B- acted jealously but does not provide the requisite detail to conclude that T-B-'s behavior constituted battery or extreme cruelty. Similarly, Ms. [REDACTED] does not describe specific incidents of abuse and does not indicate that she witnessed battery or extreme cruelty. In response to the director's RFE, [REDACTED] stated generally that he observed two instances during a five-year- period when T-B- verbally abused the petitioner; however, he does not detail the circumstances of the event and he does not describe any actions that constitute battery or extreme cruelty as set out in the statute and regulation. The statement of [REDACTED] provided in response to the director's RFE repeats the petitioner's testimony regarding T-B- punching him and cleaning her gun, but the affiant, like the petitioner, failed to explain why this alleged incident was not discussed in the first affidavit and is thus not probative in establishing battery or extreme cruelty perpetrated by T-B-. Upon review of the statements submitted on the petitioner's behalf, the statements are not detailed, the statement of [REDACTED] is not credible, and the statements do not reflect actual behavior by T-B- that constitutes extreme cruelty under the statute and regulation.

Upon review of [REDACTED] report, her report is based on one session with the petitioner for an unspecified length of time. As observed above, [REDACTED] report includes information provided by the petitioner that is inconsistent with the testimony he provided to USCIS. These inconsistencies highlight [REDACTED] lack of an established relationship with the petitioner and necessarily diminish the value of her evaluation. Moreover, [REDACTED] does not provide her educational and professional history and thus, the AAO is unable to review her background and expertise. Similarly, the record does not include [REDACTED] resume, does not include the medical records regarding the petitioner's treatment, and includes significant discrepancies with the petitioner's own testimony; thus the December 30, 2009 letter has no probative value.

In regard to the articles submitted on appeal regarding male victims of spousal abuse, the AAO

observes that any individual seeking 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, must provide credible, probative testimony or other evidence to establish his or her claim. When evaluating the record as a whole, the AAO finds that the record lacks definitive credible information regarding specific instances of abuse that could be categorized as battery or extreme cruelty as defined in the statute and regulation.

*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.