

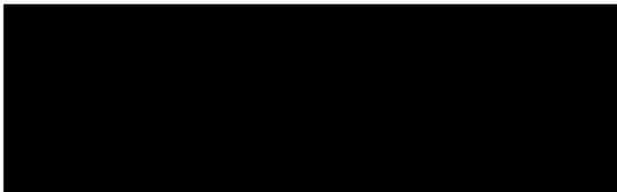
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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B9.

FILE:



Office: VERMONT SERVICE CENTER

Date:

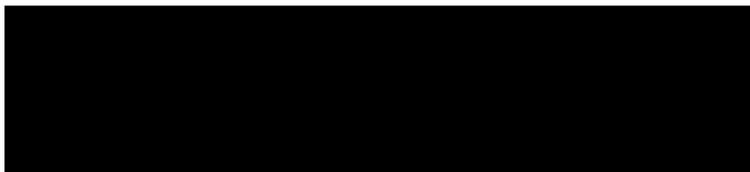
**MAR 14 2011**

IN RE:



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 the \$630 fee. 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,

Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center director (“the 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 her former spouse, a United States citizen.

The director denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, counsel submits a brief and copies of documents previously filed.

### *Applicable Law and Regulations*

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 or the self-petitioner’s child, and must have taken place during the self-petitioner’s marriage to the abuser.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

*Facts and Procedural History*

The petitioner is a citizen of Jamaica who entered the United States as a temporary worker in 1998. On February 17, 2001, she married a U.S. citizen in Connecticut. The petitioner's former husband filed an alien relative immigrant petition on the petitioner's behalf, which was approved in 2002. The petitioner's corresponding application to adjust status was denied on February 26, 2008 and she was subsequently placed into removal proceedings before the Hartford, Connecticut Immigration Court.<sup>1</sup> The petitioner filed the instant Form I-360 self-petition on June 12, 2008. On May 15, 2009, the petitioner and her former husband were divorced. The director subsequently issued a request for additional evidence (RFE) of, *inter alia*, the status of her marriage and battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient to establish the requisite battery or extreme cruelty and denied the petition on that ground.

On appeal, counsel asserts that the director erred in finding that the petitioner's marital difficulties did not constitute extreme cruelty. Counsel claims that the behavior of the petitioner's former husband amounted to extreme cruelty.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and counsel's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

In her affidavit, the petitioner recounted that two years after her marriage, she found out that her husband was having extramarital affairs and that he would call her derogatory names when she questioned his fidelity. The petitioner stated that she later reconciled with her former husband, but

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<sup>1</sup> The petitioner's next hearing before the immigration court is scheduled for March 30, 2011.

she soon began receiving calls at their home from women asking for her former husband and he began staying out late and drinking heavily. The petitioner reported that her former husband twice failed to attend scheduled interviews regarding her application to adjust status because he had traveled out of state. In February 2007, the petitioner stated that she reconciled with her former husband after a second separation in 2006 and she became pregnant. The petitioner explained that during her pregnancy, her former husband "did not change at all. He would stay out late and then [she] sadly miscarried."

In the summer of 2007, the petitioner described an incident where she argued with her former husband after his girlfriend called their home. The petitioner recalled becoming scared because her former husband "reacted in a more aggressive way" and she called the police. The petitioner stated that the police officer did not issue a report, but told her former husband to leave the house if they could not get along. The petitioner recalled another incident when her kitchen window was forced open and she believed it was her former husband because his belongings were taken. During the marriage, the petitioner also stated that her former husband relied on her to pay the rent and bills, cook, clean and take care of the house responsibilities which she found "very stressful and scary." In October 2007, the petitioner explained that she finally realized that her former husband "was not interested in a monogamous relationship" and she asked him to leave. The petitioner concluded that her former husband "never respected" her and was "just using" her.

The petitioner submitted a copy of a police report dated October 13, 2007, which stated that the petitioner's kitchen window was pushed in and she believed it was her former husband who had tried to break in to retrieve his belongings because she had changed the locks. The report notes that the petitioner's son had seen her former husband near the house the previous evening, but that her former husband was not seen at the window or attempting to break in. The petitioner also submitted copies of her medical records, which show that she suffered a miscarriage in May 2007.

The petitioner's friend, [REDACTED], stated that the petitioner confided in her about her former husband's drinking problem and extramarital affairs. Ms. [REDACTED] noted that the petitioner's husband would attend church with them when the petitioner was ready to leave him and convince her that he had changed. The petitioner's other friend, [REDACTED] also confirms that the petitioner's former husband drank heavily, had extramarital affairs, and did not attend the petitioner's immigration-related interviews.

The petitioner submitted no new evidence on appeal and we find no error in the director's determination that the petitioner's former husband did not subject her to battery or extreme cruelty during their marriage. Neither the petitioner nor counsel claims that the petitioner's former husband battered her and the relevant evidence contains no indication of physical violence. On appeal, counsel asserts that the petitioner's former husband's "philandering," verbal mistreatment and failure to support the petitioner financially or care for her after her miscarriage amounted to extreme cruelty. The relevant evidence fails to support counsel's claim.

The petitioner's statements and those of her friends do not demonstrate that the petitioner's former husband ever threatened her with violence, subjected her to psychological or sexual abuse or that his behavior was part of an overall pattern of violence such that it would constitute extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi). The police report does not establish that the petitioner's former husband broke into her home, or even if he did, that his action was aimed at injuring her rather than

retrieving his belongings. Although the medical records show that the petitioner suffered a miscarriage during the marriage, the documents make no reference to her former husband or indicate that any domestic violence was a causative factor in the miscarriage. On the form titled "Episodic Visit to Women's Health" dated May 16, 2007, the medical assessment is stated as "s/p spontaneous miscarriage" and the space following the item "Current Domestic Violence" on the checklist is blank.

We do not discount the harm the petitioner's former husband caused her. However, to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the cruelty be extreme. As one court has explained, "[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 relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner's former husband subjected her to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(1)(bb) of the Act.

### *Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.