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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



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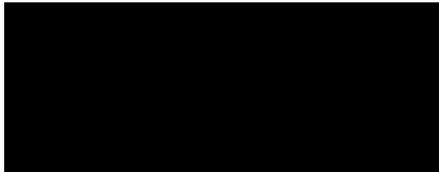
DATE: Office: VERMONT SERVICE CENTER FILE: 

**MAY 23 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 October 1, 2010, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by her 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.

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).

*Pertinent Facts and Procedural History*

The petitioner is a native and citizen of the Republic of Georgia. She entered the United States on or about July 23, 2003 on a B-2 visa. On January 7, 2005, the petitioner married R-A-<sup>1</sup>, a United States citizen. On September 9, 2008, a divorce judgment terminating the marriage was filed in Kings County, New York. On September 22, 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 she began residing with R-A- in January 2005 but did not indicate when her residence with R-A- ended. 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

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

the petition on October 1, 2010, determining that the petitioner had not established that she 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*

In the petitioner's initial undated statement, she indicated that when she started dating R-A- she continued to go to her own church and R-A- went to his synagogue, but after a few months of marriage, R-A- became a completely different person and told her that as his wife, she would have to obey his rules. She noted that he controlled her personal budget and the money she was sending to her children and he told her she had to pay him back for all he had done for her. She noted that he also forbade her to talk to her friends and relatives. She stated that in the summer of 2005 at a dinner party with his friends she indicated that she was not Jewish and the atmosphere became tense and R-A- told her on the way home that he had told everyone she was Jewish. The petitioner noted that one day R-A- invited a rabbi to come over and the petitioner learned that R-A- had told the rabbi that she wanted to convert to Judaism and so she told the rabbi that she did not want to convert. The petitioner reported that in August 2006, when R-A- returned from visiting a rabbi in Queens, he yelled at her, cursed her because of her religion, and "grabbed [her] in the shoulders and shook [her]" and threatened her that she should mind him or she would be punished. The petitioner indicated that every day he "cursed" and "assaulted" her because of her religion. The petitioner also stated that when she said she wanted a divorce, R-A- pushed her towards a wall, which led to her falling down and hurting her elbow, and the next morning, R-A- had removed all her clothes, jewelry, and fur coat, leaving her only a few skirts and tops. She stated that she was afraid to go to the police. The petitioner noted that on August 2, 2006, R-A- started a big fight, kicked her with his foot, grabbed her and tried to suffocate her and then pushed her away. The petitioner indicated that after R-A- left, she called the police and police officers responded and she made a police report. The petitioner indicated that after that incident, R-A- asked for her forgiveness but in the winter of 2007 he left for Israel and called her and told her that he had married someone else. The petitioner also indicated that at some point R-A- had stopped sleeping with her and moved to another room "because he said [she] was crying and jerking in [her] sleep." The petitioner noted that R-A- falsified her signature on a summons for divorce but later the divorce he obtained without proper service was vacated.

The record included a police report regarding an incident occurring on August 2, 2006. The report indicated that R-A- was at the home when the officers arrived and that it involved a verbal dispute, that there were no injuries and no arrest. The officer's narrative indicated that the petitioner stated that her husband argued every day and that he threatened to kick her out of the house.

The initial record also included a March 29, 2008 report prepared by [REDACTED] clinical social worker.<sup>2</sup> [REDACTED] indicated that the petitioner had been under his supervision

[REDACTED] does not provide his credentials or his New York State license. The letter provided contains spelling errors and the letterhead does not indicate that [REDACTED] is part of

since March 2008 and that the main issue of the petitioner's marital difficulties involved religion. [REDACTED] noted that the petitioner wanted to keep the marriage so agreed to change her religion. [REDACTED] indicated that despite the petitioner's acquiescence in changing her religion, R-A- said it was useless. [REDACTED] noted that the petitioner was not beaten, but was pushed, shoved, and threatened, that R-A- called her derogatory names, that she was not allowed to see her friends, and she was threatened that she would be reported to the "IRS." [REDACTED] indicated that the petitioner suffered from major depressive disorder caused by an inappropriate marital relationship.

In an undated letter signed by [REDACTED] indicated that she moved to New Jersey a couple of months after the petitioner married, but that in the fall after the petitioner's marriage, the petitioner told her that she and R-A- were fighting about her religion. [REDACTED] stated that she became concerned and in November 2005, she came to the petitioner's house to speak to R-A- but that R-A- was rude and told her that she was not welcome in his family. She noted that she only met R-A- a couple of times after that and he was mean and aggressive.

In an undated letter signed by [REDACTED] stated that probably in early 2006, she talked to R-A- regarding his behavior about the petitioner's religion and R-A- told her it was none of her business and to leave the house and after that she did not go to their house very often. [REDACTED] noted that in August 2006, the petitioner called her and told her that R-A- had abused her physically and she rushed to the petitioner's house and saw her with scratches and red marks on her arms and face. [REDACTED] indicated that the petitioner did not want to go to the police or the hospital because R-A- harassed her if she called the police. [REDACTED] noted that later the petitioner went to the police department and asked for help, and R-A- left the petitioner and married someone else in Israel, leaving the petitioner in the street without clothes or money.

In an August 15, 2008 letter, [REDACTED] stated that in late fall (year undisclosed) she called the petitioner who was crying, so she went to the petitioner's house and the petitioner had marks of scratches on her hand and her cheek was red. [REDACTED] indicated that the petitioner told her that she had an argument with R-A- who wanted her to convert to Judaism or he would kill her. [REDACTED] indicated that R-A- took all the petitioner's clothes, personal possessions, and passport and identification cards and that he finally kicked the petitioner out of the apartment when the lease expired.

The record included a notice of renewal of lease addressed to R-A- indicating that the lease will expire on October 31, 2006 and a rider signed by R-A- indicating that the lease term commences on November 1, 2006 with a blank ending date.

On April 26, 2010 the director issued an RFE, in which he pointed out inconsistencies in the petitioner's statement to United States Citizenship and Immigration Services (USCIS) and her clinical social worker and with the declarants who submitted statements on her behalf.

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a practice but rather operates out of an apartment. Without adequate information regarding [REDACTED] [REDACTED] professional and educational background, his opinion is not probative in this matter.

In response the petitioner provided a July 10, 2010 affidavit. The petitioner added that R-A-'s son who was studying to be a rabbi moved into their apartment in the summer of 2005 and that is when the problems started in her marriage. The petitioner indicated that R-A- became very controlling regarding her dress, keeping kosher, and talking to her children on the phone. The petitioner added that in the summer of 2005, R-A- returned home after visiting another son and began cursing her and saying she had ruined his life. The petitioner indicated that R-A- grabbed her arms and shook her and he slapped her face and threatened that if she did not convert to Judaism he would kill her. The petitioner stated that this was the first time that R-A- had "physically insulted" her. She indicated that she called her friend [REDACTED] who rushed to her house and tried to comfort her. The petitioner noted that soon after the fall of 2005, R-A- moved out of their bedroom because she "was 'a Christian' and he could not sleep with [her]." The next incident the petitioner reported in her affidavit is in the beginning of August 2006, when she stated that R-A- physically attacked her by trying to suffocate her and pushing her until she fell down. The petitioner reported that she called the police after R-A- left but he soon came back and told her if she said anything to the police he would kill her. She stated that when the police came she made a complaint in the Russian language but did not have the courage to tell the police the truth. The petitioner indicated that a few days later, "it has happened the same," that R-A- physically attacked her, slapped her in the face so hard that she fell down, cursed her, spit in her face, and left. She noted that she called her friend [REDACTED] who came to her house immediately and wanted to call the police but she was too afraid. The petitioner indicated that she made a report to the police a couple of days later indicating that she was afraid of her husband and that the police checked on her a couple of nights after that but that R-A- answered the door and told the police everything was fine. He then cursed her after the police left. The petitioner indicated she does not know why there is no police report of this incident. The petitioner added that she had her own personal checking account and that R-A- had access to the account and R-A- took money out of her account to pay the bills. The petitioner reported that at the end of October 2006, she returned home to find R-A- and his son packing and he told her that he was moving out. She indicated that she tried to talk to him but he kicked her out of his way, told her not to harass him or he would call the police, cursed her, and spit in her face. A few days later, a moving van came to the house and when she said something to R-A-, he called her a name, told her she would not need anything in prison, told her he was going to Israel, and left. The petitioner noted that as she had no place to go, she moved to her friend's house in New Jersey. The petitioner stated that most of the time she has been unable to "get a straight story of what has happened and when" and that was the reason of unspecific details in her affidavit. She states that she was unable to concentrate on the dates and facts.

The petitioner provided a psychological evaluation dated May 9, 2010, based on a May 9, 2010 assessment prepared by [REDACTED] report mostly mirrors the petitioner's second affidavit. [REDACTED] noted that the petitioner's perception, memory and cognitive functions were grossly within the normal range. [REDACTED] noted that the petitioner first began to experience symptoms during her relationship with R-A- and that her major stressors include her abusive and failed marriage to R-A-, persistent negative emotional consequences, and immigration problems. [REDACTED] surmised, based on the petitioner's

history, her complaints, and records, that her emotional difficulties were likely found on and perpetuated by her history of maltreatment in her marriage to R-A-.<sup>3</sup>

The petitioner also provided several affidavits from friends who indicated that the couple were initially very happy together but that at some point they learned that R-A- wanted the petitioner to convert to Judaism and were told that they were a bad influence on the petitioner. Some affiants indicated generally that R-A- did not want them to visit.

Based on the information in the record, the director found the petitioner's statements unreliable and insufficient to establish that she was subjected to battery or extreme cruelty perpetuated by R-A-.

On appeal, counsel for the petitioner asserts that the petitioner was physically, mentally, and economically humiliated by her former husband. Counsel attaches a translated version of what the petitioner wrote for the August 2, 2006 police report in which the petitioner indicated that R-A- was trying to kick her out of the house, that he harassed her, and that she was afraid of him. She noted that she did not have another house and "he is harassing [her] that his children will do something bad to [her]."

Counsel references the hearing conducted regarding the petitioner and R-A-'s divorce. Counsel notes that R-A-'s action for divorce was vacated and that a divorce was granted to the petitioner based on cruel and inhuman treatment. Counsel provides a transcript from the hearing in which the petitioner responds yes to the following two questions: (1) did [R-A-] on July 15, 2006 hold you, scream at you, call you wild names, including stupid, sick, idiot and other wild names?; and (2) on July 2, 2006 did [R-A-] threaten to withdraw all financial support and forcibly remove you from the marital residence? The petitioner also indicated yes when asked if these were but two instances of continual course of conduct of physical assault and that it was unsafe or improper for her to live or cohabit with R-A-. The transcript also shows that R-A-'s attorney noted that R-A- was consenting to the stipulation but that he was not admitting or denying the allegations. 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 and asserts that the petitioner's divorce based on cruel and inhuman treatment supports the petitioner's claim that she was subjected to battery and extreme cruelty by R-A- for immigration purposes.

Counsel also submits an October 20, 2010 statement from [REDACTED] who indicates that the petitioner experiences emotional difficulties due to memory lapses and also indicates that certain psychotropic medications affect short term memory. In a separate statement, [REDACTED] indicated that the petitioner had been under his care since June 2010, and that she had been treated by [REDACTED] for three years previously. [REDACTED] indicates that the petitioner suffers from major depressive disorder, post traumatic stress disorder and that her major stressors

[REDACTED] does not provide or set out the petitioner's history he reviewed. He does not indicate that he reviewed the circumstances of the petitioner's first marriage which allegedly involved, according to the petitioner's initial statement, years of physical abuse in front of her two children.

are a failed marriage and immigration problems. Counsel asserts that the discrepancies in the petitioner's statements may be because the petitioner is suffering from memory lapses. Counsel notes that the petitioner has also been attending church services and attaches a letter from her pastor acknowledging that she had been discussing her family problems and her former husband's abuse.

Upon review of the totality of the record, we concur with the director's assessment of the petitioner's lack of credibility. We acknowledge counsel's assertion that the discrepancies may have arisen because of the petitioner's memory lapses; however, there is insufficient probative evidence to support counsel's theory. [REDACTED] does not note in his March 29, 2008 report that the petitioner suffered from memory lapses. [REDACTED] in his May 9, 2010 assessment, notes that the petitioner's perception, memory and cognitive functions were grossly within the normal range. Only on appeal does the petitioner submit a doctor's letter which indicates that she experiences emotional difficulties due to memory lapses. [REDACTED] does not further explain the memory lapses and he does not explain how the petitioner's emotional difficulties cause her not to remember specific incidents or to describe specific events differently. Although [REDACTED] indicates that certain psychotropic medications affect short term memory and that the petitioner has been under [REDACTED]'s care for three years, the record does not include evidence showing that [REDACTED] administered psychotropic drugs to the petitioner for any length of time.

Similarly, counsel's assertion that the petitioner's divorce based on cruel and inhuman treatment supports her claim that she was subjected to battery and extreme cruelty by R-A- is not persuasive. We note that although the petitioner answered three leading questions in the affirmative, contrary to counsel's claim, R-A- did not admit the allegations; rather R-A-'s attorney specifically noted that R-A- did not admit or deny the allegations, but just wanted the stipulation signed. Further, the two incidents the petitioner's attorney asked her about occurred on July 15, 2006 and July 2, 2006, and are incidents that the petitioner does not mention or describe in either of her two statements submitted to United States Citizenship and Immigration Services (USCIS). The petitioner's sworn testimony that she was forcibly removed from the marital residence on July 2, 2006 contradicts her statements to USCIS, as she indicates that she stayed in the residence until the end of the lease in October 2006 in one statement and that he left in the winter of 2007 in her initial statement.

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 turmoil in the relationship surrounding the couple's different religions. She noted generally that R-A- controlled her personal budget, forbade her to talk to friends and relatives, and wanted her to convert to Judaism. She also indicated that at some point R-A- stopped sleeping with her and moved to another room "because he said [she] was crying and jerking in [her] sleep." She provided a cursory description of three incidents that allegedly occurred in August 2006 that involved a form of pushing, shoving, suffocating, threatening and/or kicking her. The petitioner does not mention or reference being scratched by R-A- and she does not mention being slapped by R-A-. Yet [REDACTED] noted that in August 2006, the petitioner called her and told her that R-A- had abused her physically and she rushed to the

petitioner's house and saw her with scratches and red marks on her arms and face. Similarly, as the director observed, the petitioner's statement to USCIS regarding her report to the police differed from the actual police narrative.

In response to the inconsistencies in the record pointed out by the director, the petitioner adds information regarding her relationship with R-A- but does not adequately explain why the information was not initially provided and her response further confuses the record. For example, she initially makes no mention of R-A-'s son moving into the marital home and that being the beginning of her marital difficulties. She creates further inconsistencies for the record when she states that on one occasion R-A- returned from seeing another son and began to abuse her; as in her initial statement this occurred after R-A- had visited a rabbi. In the petitioner's July 10, 2010 affidavit, the petitioner stated that after this incident she called her friend [REDACTED] who rushed to her house to comfort her; however, [REDACTED] does not mention this incident in her statement and notes that she moved to New Jersey a couple of months after the petitioner's marriage. The petitioner provides different reasons for R-A- moving out of their bedroom; initially it was because she was crying and jerking in her sleep and in response to the director's RFE, it was because she was Christian. The petitioner changes her statement regarding her report to the police in her second statement by indicating that R-A- left and she called the police and then he returned, which was why the police noted that he was in the residence. When describing the physical incidents that occurred she adds that R-A- spit on her and threatened to kill her – behavior that was omitted from her initial description. The petitioner's descriptions of battery are not detailed and include inconsistencies regarding when they occurred, the circumstances surrounding the alleged battery, the physical interactions, and her physical injuries. The petitioner does not describe how she obtained scratches allegedly seen by her friends. The record does not include sufficient probative, credible detail regarding the instances of alleged battery to conclude that the petitioner was actually subjected to battery perpetrated by R-A-.

Similarly, the petitioner has not provided credible and probative testimony establishing that she was subjected to economic or social control by R-A-. The petitioner initially did not provide any detail regarding R-A-'s controlling behavior simply indicating that he wanted her to convert to Judaism and that the couple argued over their religious differences. Although the petitioner references R-A-'s actions regarding her dress, keeping kosher, her talking to her children, and taking money from her separate checking account, she does not describe these actions in specific detail. The individuals who submitted statements on her behalf do not indicate that they witnessed any specific incidents of controlling behavior by R-A- but state generally that this is what happened. The declarants fail to provide sufficient detail regarding specific actions by R-A- that demonstrate he controlled the petitioner's social interaction with friends. The record does not support a determination that R-A-'s acts in the aggregate amount to a pattern of abuse and violence, as the petitioner's testimony and the testimony of others on her behalf fail to provide consistent detailed testimony that R-A-'s behavior constituted extreme cruelty as set out in the statute and regulation.

Upon review of the petitioner's testimony, the petitioner has provided inconsistent accounts of her interactions with R-A- and has expanded the nature, type, and severity of abuse over the course of

the proceedings. Her inconsistent accounting regarding specific incidents undermines her credibility; likewise the expansion of the nature and severity of the abuse amounts to inconsistent testimony and undermines her credibility. The petitioner's claim that the inconsistencies are due to her inability to concentrate on dates and facts does not eliminate the necessity of providing a consistent and credible account of her interactions with R-A-. The record lacks sufficient probative, credible testimony to establish that the petitioner has been subjected to battery or extreme cruelty.

The reports submitted by [REDACTED] do not provide assessments of the petitioner's mental health demonstrating that her condition is causally connected to specific behavior by R-A- that constitutes battery or extreme cruelty as defined in the statute and regulation. As footnoted above, [REDACTED] does not provide his credentials and he does not specify the number of sessions he had with the petitioner. In addition, [REDACTED] notes that the petitioner's marital difficulties involved religion and contradicts the petitioner's statement that she refused to convert to Judaism. [REDACTED] conclusion that the petitioner's major depressive disorder was caused by the inappropriate marital relationship is also insufficient to support the petitioner's claims. [REDACTED] appears to have conducted one session with the petitioner of unspecified length and as footnoted above, he does not indicate what records he reviewed regarding the petitioner's history; thus his conclusion that the petitioner's emotional difficulties were likely founded upon her history of maltreatment in her marriage to R-A- lacks probative value. [REDACTED] does not discuss specific behavior on the part of R-A- that is causally connected to the petitioner's mental health. Further, findings based upon a single interview with the petitioner fail to reflect the insight commensurate with an established relationship with a mental health professional and also diminishes the probative value of his evaluation. [REDACTED] indicates that the major stressors in the petitioner's major depressive disorder and post traumatic stress disorder are her failed marriage and immigration problems. He does not provide the necessary causal connection between specific behavior exhibited by R-A- and the petitioner's mental health issues. Without specifics [REDACTED] evaluation also has diminished probative value.

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.

#### *Qualifying Relationship and Eligibility for 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 her former husband. An alien who has divorced 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). The petitioner’s divorce was filed in King’s County, New York on September 9, 2008. The petitioner filed the Form I-360 on September 22, 2008. As the petitioner has failed to establish that she was battered or subjected to extreme cruelty by her former spouse, she has also failed to make the causal connection between her divorce and battery or extreme cruelty as set out in the pertinent statute and regulation. Accordingly, the petitioner is also not eligible for the benefit she seeks because she did not establish 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 her former husband.

*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.