

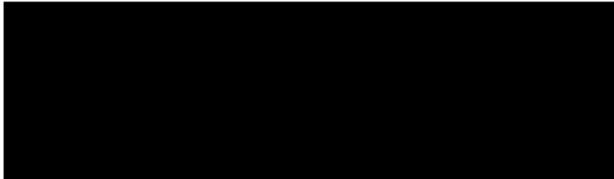
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B9

DATE **APR 12 2012** Office: VERMONT SERVICE CENTER

FILE:



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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain 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 (USC) spouse. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief.

*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 pursuant to Section 204(a)(1)(A)(iii) of the Act are further set out 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.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*Facts and Procedural History*

The petitioner is a native and citizen of Jamaica.<sup>1</sup> He entered the United States on or about October 19, 1991 from Canada. On March 19, 2006,<sup>2</sup> he married M-D-<sup>3</sup> the claimed abusive United States citizen (USC). On August 18, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. Upon review of the insufficiency of the record, the director issued a request for evidence (RFE) and a Notice of Intent to Deny (NOID) the petition and ultimately denied the petition based on the reasons set out in the NOID.

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<sup>1</sup> The record shows that the petitioner had a Canadian social insurance card and the petitioner claims that he was a resident in Canada for 11 years prior to entering the United States in 1991, but subsequently lost the Canadian resident status.

<sup>2</sup> The petitioner states that he married the claimed abusive United States citizen spouse on March 27, 2006; however, a review of the marriage certificate shows the date of the marriage as March 19, 2006 and that the marriage certificate was filed as an official record on March 27, 2006.

<sup>3</sup> Name withheld to protect the individual's identity.

On appeal, counsel for the petitioner asserts that the petitioner has established that he was subjected to extreme cruelty perpetrated by his USC spouse. Counsel provides a brief in support of the appeal.

*Battery and/or Extreme Cruelty*

The director considered the documentation previously submitted, including the petitioner's testimony, the affidavits submitted on his behalf, and the psychological report prepared by [REDACTED] dated March 21, 2011. The director determined based on the evidence in the record that the petitioner had not established that he had been subjected to battery during the marriage and that he had not established that he had been subjected to extreme cruelty as that term is set out in the statute and regulation. The director found that the petitioner may have been subjected to "marital tensions," "severe strains" in the marriage, or "common marital difficulties" but that the petitioner's testimony and the testimony of declarants on his behalf did not establish his eligibility for Form I-360 relief.

On appeal, counsel for the petitioner cites *Lopez-Birrueta v. Holder*, 633 F. 3d 1211 (9<sup>th</sup> Cir. 2011) and *Hernandez v. Ashcroft*, 345 F. 3d 824 (9<sup>th</sup> Cir. 2003) and asserts that these cases instruct the United States government to take a less restrictive view of battery and extreme cruelty. Counsel contends that as United States Citizenship and Immigration Services (USCIS) did not allege that the petitioner was untruthful or presented testimony that was not credible, the only legal issue that remains is whether the petitioner's testimony describes battery or extreme cruelty. Counsel avers that in this matter, the cumulative effects of the actions of the petitioner's USC spouse indicate an overall pattern of violence. Counsel also references the mental health evaluation provided by [REDACTED] diagnosis of the petitioner's Major Depression – Single Episode. Counsel claims that the petitioner's medical symptoms demonstrate that the petitioner suffered more than just a broken marriage.

In the petitioner's initial October 16, 2009 personal statement, he indicated that he moved in with M-D- sometime in 1992 and during the time of their cohabitation, M-D- had an affair and once threatened him with a machete. The petitioner noted that after he was threatened with the machete, he and M-D- lived apart for two years but maintained their friendship. The petitioner noted that at some point M-D- asked him to move back in with her to be with her children and he did so. The petitioner noted that about a year later, he and M-D- married. The record shows the marriage took place on March 19, 2006. After the marriage, the petitioner noted M-D-'s delays in processing his immigration papers, her infidelity, her humiliating behavior at a Christmas party that included dancing with others, her failure to include him in a trip to Disney World, and her request that he vacate the matrimonial bedroom. The petitioner noted that on one occasion, M-D- refused to take him to the hospital when he was ill so that he had to call friends to take him for treatment. The petitioner indicated M-D- began to harass him with profane notes demanding that he pay rent or vacate the home and at some point she changed the locks and that he now resides on the back porch and does not have access to the bathroom or kitchen in the home.

The petitioner also provided a statement from M-D-'s sister who spoke of M-D-'s selfish behavior, and statements from others who described the petitioner as a good man. The

statements did not include detailed information of specific events of battery or extreme cruelty. The petitioner also provided copies of M-D-'s notes demanding that he pay rent to continue living at the home and that he pay his portion of the utility bills.

In response to the director's RFE, the petitioner noted that on one occasion, M-D- called the police and told them he "smoked weed," had a gun, and was illegal in the United States. The petitioner reported that the police found that M-D- had filed a false police report. The record also included an additional statement signed by [REDACTED]. [REDACTED] repeated the information provided in the petitioner's initial personal statement. As the director observed, the petitioner also provided a mental health evaluation prepared by [REDACTED]. [REDACTED] noted the purpose of the evaluation was to determine the petitioner's stability for immigration purposes. [REDACTED] indicated the petitioner's report that his wife was unfaithful which made him depressed and noted that "[the petitioner] was able to move on." [REDACTED] diagnosed the petitioner with Major Depression – Single Episode but did not attribute the petitioner's mental condition to any acts or behavior perpetrated by M-D-.

The record does not include evidence that the petitioner was subjected to battery perpetrated by his USC spouse. The petitioner does not provide specific detail regarding any act or threatened act of violence during the marriage that constitutes battery. The petitioner's claim relates to the alleged extreme cruelty perpetrated by his spouse. Upon review of the petitioner's statements, he has not provided probative testimony that he has suffered extreme cruelty as that term is set out in the statute, regulation, and case law. The petitioner has not provided probative evidence that he was subjected to actions or behavior by M-D- that are 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. 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)).

Infidelity and demands to contribute to the mutual obligations of the home do not constitute extreme cruelty. The petitioner's testimony does not provide probative information that M-D-'s behavior, even on a cumulative basis, was part of an overall pattern of violence or coercion. The petitioner has not provided the necessary detail regarding his spouse's call to the police or the resulting police report so the circumstances of the actions of his spouse regarding this particular incident may be properly evaluated. He does not describe specific acts or events that demonstrate he was subjected to intimidation, coercion, duress, or threats or acts of violence during the marriage. While the director's use of the terms "marital tensions," "severe strains" in the marriage, or "common marital difficulties" was unnecessary, we find no error in his ultimate determination that the cumulative behavior of the petitioner's spouse did not constitute extreme cruelty.

Similarly, upon review of the statements of others offering testimony on the petitioner's behalf, there is no probative testimony describing specific incidents or events that constitute battery or

extreme cruelty as that term is set out in the statute, regulation, or pertinent case law. The evaluation provided by [REDACTED] does not causally connect the petitioner's symptoms of depression to specific behavior of the petitioner's spouse. [REDACTED] references only the petitioner's spouse's infidelity, an action that does not constitute extreme cruelty under the statute, regulation, or applicable case law. Moreover, [REDACTED] while noting the petitioner's depression, found that the petitioner was able to "move on" and was now stable.

The petitioner's testimony and the testimony submitted on his behalf is insufficient to establish that his spouse's actions constituted battery or extreme cruelty during the marriage as those terms are defined in the statute, regulation, and case law. The petitioner has not provided testimonial or other evidence on appeal sufficient to overcome the director's decision.

*Conclusion*

The petition will be denied and the appeal dismissed for the above stated reason. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.