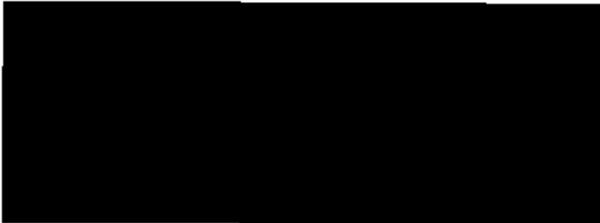


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B9

DATE: **JUL 13 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (the director), 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 (USC).

The director determined that the petitioner had not established she had been subjected to battery or extreme cruelty perpetrated by the USC spouse. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a statement.

#### *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 the Republic of Trinidad and Tobago. She entered the United States on June 20, 1998 with temporary authorization to remain until December 20, 1998. On August 3, 2005, she married M-C-<sup>1</sup>, the claimed abusive USC spouse. On or about November 25, 2005, M-C- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The couple was interviewed on March 24, 2006 and the Form I-130 was subsequently denied on September 30, 2010. On January 21, 2011, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner stated on the Form I-360 that she resided with the USC spouse from August 2005 until July 2010. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established she had been subjected to battery or extreme cruelty by the USC spouse. On appeal, counsel for the petitioner asserts that

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

the petitioner provided two detailed self-affidavits that were supported by objective evidence. Counsel repeats portions of the petitioner's personal statements and contends that the petitioner showed a clear pattern of violence, threats, and extreme cruelty. Counsel avers the petitioner suffered extreme physical and mental abuse from her USC spouse.

*Battery and/or Extreme Cruelty*

Contrary to counsel's assertion, the petitioner in this matter provided two general statements in support of her claim that she had been subjected to battery and/or extreme cruelty. In her initial personal statement, she referenced her spouse's drinking, swearing at her, and breaking things and noted that the couple had financial difficulty after M-C- lost his job in 2006. She indicated that beginning in 2007 M-C- would disappear for a few days and then return to the claimed joint residence. The petitioner stated that she was afraid of M-C- and told him that she did not want to live with him and wanted him to leave her mother's house. The petitioner noted that M-C- left at some point and would return to the house after a few days. The petitioner also indicated that at some point he started taking his clothes and would re-appear about once a month. She noted that about six months prior to her January 5, 2011 statement, M-C- had taken the last of his things from her residence. She stated that the last couple of years, she became afraid that M-C- had AIDS, as she learned he had children from other relationships while married to her. She claimed that he would force intimacy and would not use a condom. She indicated that he kicked her off the bed once and that he kicked her in the rear once. She related that on a couple of occasions he came to her residence when he was drunk and threatened that he could hurt her and once had a friend tell her that if she cheated on him he would kill her.

The two affiants who provided a statement on the petitioner's behalf indicated that they were unaware of the petitioner's marital difficulties until she reported the difficulties to them a couple of months prior to their September 20, 2010 statement.

The petitioner does not provide further information relating to incidents of abuse in response to the director's RFE but rather attempts to clarify inconsistencies between her statement and the statements of the individuals who testified on her behalf regarding when they met M-C- and the landlord's statement that the petitioner and M-C- were good tenants. She declared that she did not tell individuals about her difficulties with M-C- because she was ashamed and did not believe it was anyone else's business. She noted that she only wrote about the important things that she remembered that had occurred over the previous eight years.

The director considered the petitioner's testimony and the affidavits submitted on her behalf and found that the petitioner had not provided sufficient evidence to demonstrate her eligibility for Form I-360 relief.

Upon review of the record and counsel's statement and assertion on appeal, the petitioner has not established that she was subjected to battery. Although the petitioner indicated that on one occasion she was kicked off the bed and on another occasion she was kicked in the rear, she does not provide probative detail regarding the circumstances of these incidents. Her statements lack specific information regarding when these incidents occurred and the particular conditions surrounding these incidents. Her testimony lacks the descriptive detail necessary to assist in

ascertaining the truth of her statements. The petitioner's limited testimony regarding forced intimacy also fails to include sufficient information to ascertain the reality of the claimed behavior. The petitioner's testimony is not probative on the issue of any alleged battery.

The petitioner has also failed to establish that she was subjected to extreme cruelty perpetrated by her spouse as defined in the statute, regulations, and case law. Upon review of the petitioner's statements, she has not provided probative testimony that she was subjected to actions or behavior by M-C- 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)).

The petitioner's testimony and the testimony of others on her behalf do not include detail of specific behavior by M-C- that was part of an overall pattern of violence or coercion. She does not describe specific acts or events in detail that demonstrate she was subjected to ongoing intimidation, coercion, duress, threats, or acts of violence during the marriage. The petitioner's testimony is generic. Further, 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 constitutes battery or extreme cruelty as that term is set out in the statute, regulation, or pertinent case law. The petitioner's testimony and the testimony submitted on her behalf is insufficient to establish that her 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.