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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 20 2012 OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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 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 a United States citizen.

The director denied the petition on the basis of his determination that the petitioner failed to establish his wife subjected him to battery or extreme cruelty during their marriage. On appeal, the petitioner submits a brief.

#### *Applicable Law*

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, 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, the following:

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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and 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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of India who entered the United States on April 9, 2007. He married [REDACTED] a citizen of the United States, on September 18, 2009. The petitioner filed the instant Form I-360 on September 21, 2010. The director issued a subsequent request for additional evidence (RFE) and the petitioner, through prior counsel, filed a timely response. After considering the evidence of record, including counsel's response to the RFE, the director denied the petition on February 2, 2012.<sup>2</sup>

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

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

<sup>2</sup> The petitioner was placed into removal proceedings in September 2010 and remains in proceedings before the Immigration Court in Los Angeles, California. His next hearing is scheduled for June 27, 2012.

*Battery or Extreme Cruelty*

The director determined properly that the relevant evidence submitted below does not establish that R-K- abused the petitioner during their marriage. In his August 31, 2011 letter, the petitioner briefly described an incident during which R-K- allegedly pushed him, yelled at him, and called him names after the petitioner explained that he could not buy her a new car. He also claimed that on another occasion R-K- pushed him to the ground after he refused to give her money. The petitioner also alleged that R-K- hit his children, squeezed their ears, pinched their cheeks, threw lit cigarette butts at them, screamed at them, and smoked marijuana in front of them. He also briefly described an incident during which his son was burned after R-K- allegedly placed him in a shower and failed to check the water temperature. The petitioner also alleged that R-K- was financially abusive, threatened his immigration status, sold drugs, and was unfaithful.

Although the petitioner described several incidents of allegedly abusive behavior by R-K- against him and his children during their marriage, his account of her conduct during that period was general, and made in very broad terms. The petitioner did not describe any specific incidents of abuse in probative detail. Absent such detail, we cannot ascertain whether R-K-'s behavior constituted battery or extreme cruelty. Also, certain behaviors alleged by the petitioner, such as marital infidelity, are not comparable to any of the behaviors described at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. Nor did [REDACTED] describe any specific incidents of abusive behavior perpetrated by R-K- against the petitioner or his children in probative detail. Although [REDACTED] claimed that he assisted the petitioner in his home after R-K- pushed him, he did so in very general terms. Although [REDACTED] recounted observing R-K- insult the petitioner, he did not provide specific examples of such behavior. Although [REDACTED] claimed she was told by the petitioner's son that R-K- had pinched him for no reason, and recounted observing R-K- push the petitioner's son to the ground, she made her allegations in very broad terms and did not provide any probative information in support of her claims.

Nor did the September 14, 2010 letter from [REDACTED] submitted below establish that R-K- subjected the petitioner to battery or extreme cruelty during their marriage. Although [REDACTED] diagnosed the petitioner with Major Depressive Disorder, she did not describe any specific incidents of abuse in probative detail in her letter. As such, while we do not question [REDACTED] professional expertise, her letter does not establish the petitioner's claim of abuse.

The petitioner claims on the Form I-290B that the testimony submitted below was not vague and generalized as determined by the director, and that it in fact included descriptions of specific instances of abuse perpetrated by R-K-. We disagree. As determined properly by the director, the petitioner and his affiants made general allegations of abuse and failed to provide probative details regarding specific incidents of R-K-'s alleged abuse. In response to the director's finding that [REDACTED] did not describe any specific incidents of abuse in probative detail, the petitioner cites [REDACTED] professional expertise. However, the director did not question [REDACTED] expertise, and neither do we. [REDACTED] letter fails to establish the petitioner's claim of abuse because it lacks detailed accounts of specific incidents of abuse, not because we doubt her

qualifications to make diagnoses. Nor does the petitioner describe any specific incidents of abuse perpetrated by R-K- in his undated brief submitted on appeal. Instead, he repeats his claims of abuse in the same generalized manner as he did below. For all of these reasons, the petitioner's submission made on appeal does not establish that R-K- subjected him or his children to battery or extreme cruelty during their marriage, and it demonstrates no error in the director's decision denying the petition.

When considered in the aggregate, the relevant evidence does not establish that R-K- subjected the petitioner to battery or extreme cruelty during their marriage as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

The petitioner has failed to overcome the director's ground for denial of the petition and has not established that R-K- subjected him to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish his 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, 375 (AAO 2010). He has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.