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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

**PUBLIC COPY**

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DATE: **MAR 05 2012**

Office: VERMONT SERVICE CENTER

File: 

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:

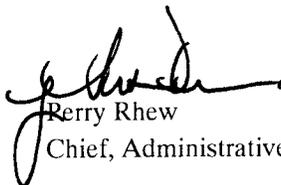
SELF-REPRESENTED

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 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,



Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The AAO subsequently reopened the matter and affirmed its previous decision. The matter is now before the AAO on a second motion to reopen. The motion to reopen will be granted. The AAO's previous decisions will be affirmed and the petition will remain 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.

*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 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 regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

*Facts and Procedural History*

The petitioner is a citizen of Brazil who entered the United States as a nonimmigrant visitor on or about March 27, 2004. He married K-M-<sup>1</sup> the claimed abusive United States citizen, on May 11, 2007. He filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on June 18, 2008. Upon review of the record, including the petitioner's response to the RFE, the director denied the petition after determining that the petitioner had failed to establish that he had been subjected to battery and/or extreme cruelty by his United States citizen (USC) spouse. The AAO dismissed the appeal, concurring with the director's decision that the petitioner had not established that he had been subjected to battery and/or extreme cruelty and also finding that the record lacked evidence of the petitioner's good moral character. Prior counsel for the petitioner submitted a Form I-290B, checking the box indicating that he was filing a motion to reopen the matter and submitted a police clearance letter as evidence of the petitioner's good moral character and a psychological evaluation in support of the petitioner's claim regarding abuse. The director, without jurisdiction over the matter, granted the motion to reopen, considered the evidence submitted, and found that the petitioner had submitted evidence establishing that he is a person of good moral character. The

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

director again determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse. The petitioner submitted a second Form I-290B appealing the director's decision on the motion. The AAO withdrew the director's decision on the motion, and granted the initial motion to reopen to consider all the evidence provided subsequent to its August 3, 2010 decision. Upon review of the additional evidence submitted, the AAO affirmed its previous decision.

On this second motion to reopen now before the AAO, the petitioner provides his personal statement and a statement from his friend, [REDACTED]. The matter is reopened to consider the petitioner's additional statement and the affidavit of his friend.

### *Battery or Extreme Cruelty*

The AAO previously discussed and set out the deficiencies and inconsistencies of the statements submitted by the petitioner as well as the affidavits of the individuals who submitted statements on his behalf. On motion, the petitioner repeats his previous testimony but does not address the inconsistencies in the record regarding his statements of the alleged battery perpetrated by his USC spouse. The petitioner adds that on one occasion when a friend was visiting and they tried to leave in his car, K-M- threw a rock which hit the car window and K-M- then went back inside and his friend got in the car and they left. The petitioner indicates that he talked to his friend for a few hours and decided to return home and when he did so K-M- was still yelling and so his friend decided to return to his home in San Diego. [REDACTED] declares in an undated statement that while visiting the petitioner and K-M-, he witnessed K-M- getting drunk, cursing the petitioner, and calling him derogatory names. [REDACTED] also states that the third day of his visit when he and the petitioner were in the car trying to leave the garage, K-M- grabbed a rock from the sidewalk and threw it at the car breaking the window causing cuts to the petitioner's arm. [REDACTED] notes that the petitioner did not want to go the hospital because the cut was not very big and the petitioner also did not want to go the police. [REDACTED] indicates that after returning to the petitioner's home where K-M- was still yelling, he decided to leave.

In our previous decision, the AAO observed that the petitioner had provided inconsistent statements regarding the alleged battery, stating that K-M- "sometimes" pushed and punched him and also stating that she "never" punched or hit him and that he was not physically abused. The AAO determined that given the contradictory statements, the petitioner had not established that he had been subjected to battery. The petitioner did not provide explanations for the contradictory information in the testimony submitted in support of the first motion to reopen and similarly does not provide explanations in the instant motion but further contradicts his initial statement indicating that he was not physically abused. The petitioner's statement on this second motion to reopen does not include probative, consistent testimony establishing that he was subjected to battery. The petitioner's friend's statement also fails to assist in clarifying or explaining the petitioner's previous inconsistent testimony. Also as previously determined, the petitioner's testimony and the testimony of the individuals submitting statements on his behalf regarding K-M-'s non-physical actions did not demonstrate that her behavior was accompanied by coercive actions or threats of physical or psychological violence, or that her behavior was part of an overall pattern of violence. Neither the petitioner's statement nor that of [REDACTED] submitted on this second motion to reopen

provides probative detail of K-M-'s non-physical actions sufficient to establish that the petitioner was a victim of actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Their statements are deficient in this regard. The record on motion does not include testimony or other evidence detailing specific events that include extremely cruel behavior or conduct comparable to the conduct set out in the definition of extreme cruelty in the statute, regulation, and pertinent case law.

*Conclusion*

Upon review of the petitioner's statement and the statement of [REDACTED] submitted on motion, the record remains deficient in establishing that the petitioner was subjected to battery or extreme cruelty perpetrated by his spouse. The record on motion does not include sufficient evidence to overcome the AAO's prior decisions. 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 motion is granted. The AAO's August 3, 2010 and July 12, 2011 decisions are affirmed and the petition remains denied.