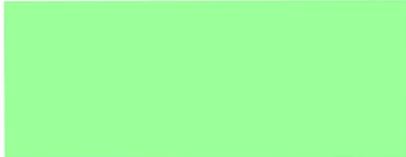




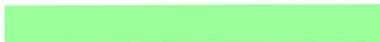
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **APR 09 2013**

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:

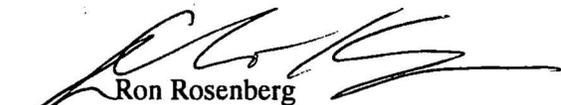
SELF-REPRESENTED

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 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,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“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 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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s wife subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits additional evidence.

*Relevant 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, 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 further 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 further explicated 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 explicated 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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Guyana who claims that he last entered the United States from Mexico on June 13, 2006. The petitioner married J-S-, a U.S. citizen, on November 12, 2010 in [REDACTED] New York.<sup>1</sup> The petitioner filed the instant Form I-360 on April 26, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's wife's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

We find no error in the director's determination that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his initial statement, the petitioner recounted that he and J-S- resided together for over three

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

years prior to their marriage. He recalled that during those three years they went on vacations, went out to dinner, watched movies, attended holiday parties, played sports and had a child together. The petitioner stated that on the date of their marriage his wife “made a drastic change” and she would not allow him to leave their house or contact his friends. He also stated that his wife threatened him with deportation, hit him, sexually assaulted him, and forced him to engage in sexual acts with her friends. The petitioner’s brief statements fail to provide probative details of the alleged abuse. The petitioner’s statements are also in conflict with other documentation in the record. As noted by the director, the record reveals that the petitioner filed a prior Form I-360 for immigrant classification as an alien battered or subjected to extreme cruelty on May 11, 2010. The alleged abusive U.S. citizen who was the subject of that petition was J-S-, who at the time of the filing was his fiancé, indicating that he planned to file a Form I-360 even before his marriage.<sup>2</sup> The petitioner’s claim of having a healthy relationship with J-S- and then suffering marital abuse immediately after their marriage is in conflict with his decision to file a Form I-360 while they were engaged. On appeal, the petitioner does not explain this contradiction, which undermines his credibility.

The petitioner submitted letters from three of his friends, [REDACTED] and [REDACTED] who attested to the alleged abuse. [REDACTED] stated that the petitioner stayed at his home on several occasions when the petitioner’s wife forced the petitioner and his son out of their home. The director correctly noted that the petitioner did not mention these incidents in his statement. [REDACTED] recounted that the petitioner’s wife was controlling, jealous of his contact with other women, and threatened deportation. [REDACTED] stated that he witnessed the petitioner’s wife hit the petitioner. [REDACTED] similarly recounted that the petitioner’s wife was jealous of his contact with other women, called him names, isolated him, and had a “drinking problem.” [REDACTED] also stated that he witnessed the petitioner’s wife physically assault the petitioner. The director correctly noted that these statements are inconsistent with the petitioner’s claims. The petitioner alleged that his wife would not allow him to have contact with his friends. However, both [REDACTED] and [REDACTED] claim that they were present while the petitioner’s wife was physically abusive. The petitioner also alleged that his wife forced him to engage in sexual acts with other women. However, [REDACTED] and [REDACTED] claim that the petitioner’s wife was jealous of his contact with other women. The director correctly determined that these contradictions diminish the evidentiary value of the provided testimony.

The petitioner submitted a psychological evaluation from [REDACTED] a licensed psychotherapist. [REDACTED] diagnosed the petitioner with major depressive disorder and stated that he was suffering from “threat of deportation; inadequate finances/insufficient welfare support.” [REDACTED] also stated that the petitioner testified that his wife sexually and physically assaulted him. The incidents briefly described in the psychological evaluation are not mentioned in the petitioner’s self-statement.

On appeal, the petitioner fails to discuss the director’s determination that he did not establish that J-S- abused him during their marriage. The petitioner submits letters from his friends, [REDACTED] and [REDACTED]. However, none of the letters provide probative details of the alleged abuse. [REDACTED] only reiterated the statements from his previous letter. [REDACTED] attested to the petitioner’s good moral character, but failed to address the alleged abuse in the petitioner’s marriage. Although [REDACTED]

<sup>2</sup> The prior petition (receipt number [REDACTED]) was denied on June 9, 2011.

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stated that he thinks the petitioner is in an abusive marriage and he has witnessed arguments between the petitioner and his wife, he does not discuss his knowledge of any particular incidents of alleged abuse. Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.