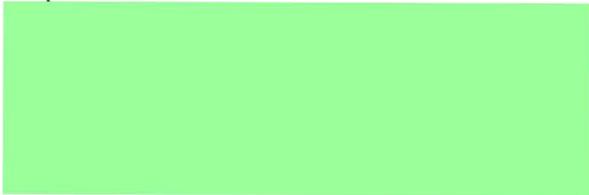




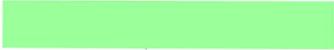
U.S. Citizenship  
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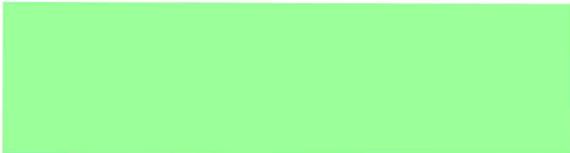
Date: **MAR 09 2013**

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:

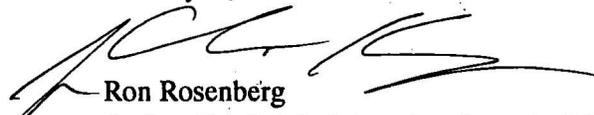


**INSTRUCTIONS:**

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 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 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 request 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 that any motion must 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, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal and affirmed its decision upon granting counsel's subsequent motion to reopen or reconsider. The matter is now before the AAO on a second motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed 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*

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 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 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:

(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 Jamaica who entered the United States on or about January 28, 2007 as a nonimmigrant visitor. On March 8, 2007, he married a U.S. citizen. The petitioner filed his first Form I-360 on June 5, 2008, and it was denied on March 26, 2010. The petitioner then filed the instant Form I-360 on May 4, 2010. The director denied the petition for failure to establish the requisite battery or extreme cruelty and the AAO dismissed the petitioner's subsequent appeal in a decision dated February 21, 2012, incorporated here by reference. In its August 15, 2012 decision on counsel's first motion, incorporated here by reference, the AAO determined that counsel's assertion that the AAO had raised a new issue on appeal was incorrect and that the director and the AAO applied the proper standard of review in this matter considering the totality of the evidence submitted. The AAO reaffirmed that the petitioner had not established that his wife's behavior involved battery, threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On the present motion, counsel contends that the previous AAO decisions were made from an "American perspective without taking into consideration the [petitioner's] culture," within which "the shame and degradation that attaches to homosexuality" rendered his wife's extramarital affair a form of extreme cruelty.

In support of his claim, counsel submits a new letter from a psychologist, a student thesis, and three articles discussing homosexuality in Jamaica. Counsel's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2) and the motion is granted.

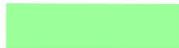
*Analysis*

In its prior decisions, the AAO determined that the petitioner had not established the requisite battery or extreme cruelty. Counsel asserts on motion that the petitioner's wife's actions must be viewed from the petitioner's Jamaican perspective because "[a]buse is a very personal and relative concept."

Counsel claims that the psychological report submitted on motion shows that the petitioner's wife subjected him to "extreme psychological abuse and cruelty" and "[t]here is no doubt that her behavior constitutes extreme cruelty." The record, as supplemented on motion, does not support counsel's claims.

In his September 10, 2012 report, psychologist [REDACTED] states that the petitioner's wife called him names, impugned his masculinity, and humiliated him, particularly in respect to the fact that she was involved in a homosexual relationship. He also cites articles discussing negative views towards homosexuality in Jamaica. Dr. [REDACTED] concludes that the petitioner "was betrayed, humiliated and abandoned by his wife's homosexual affair" and opines that her behavior amounted to "extreme cruelty and emotional abuse." While we do not question Dr. [REDACTED] professional expertise, his report and counsel's claims on motion do not overcome the fact that the relevant evidence in this case does not establish that the petitioner's wife's behavior involved battery, threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The psychologist's report does not offer any new facts or probative descriptions of any particular incidents or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). There is no indication that the petitioner's wife's non-physical behavior was accompanied by coercive actions, threats of harm, or was otherwise part of an overall pattern of violence. Similarly, the articles and student thesis submitted on motion do not provide any specific new facts or information regarding the acts committed against the petitioner by his wife, and do not establish that the petitioner's 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.

On motion, counsel discusses the legislative history of the Violence Against Women Act and repeatedly notes that USCIS must consider "any credible evidence" submitted, which counsel claims is a "broad and flexible standard of evidence." Counsel is correct that for self-petitioning abused spouses, the statute prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). However, this evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence, but "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof. Here, the director and the AAO considered all the relevant evidence submitted by the petitioner below and the AAO has considered the new evidence submitted with the present motion. As explained in the preceding discussion, the relevant evidence is insufficient to meet the



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petitioner's burden of proof that his wife subjected him to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

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. Upon reopening, the prior decisions of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

**ORDER:** The appeal remains dismissed and the petition remains denied.