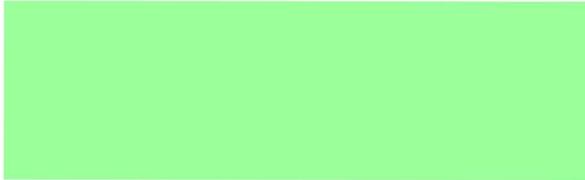


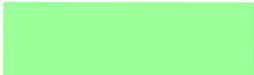


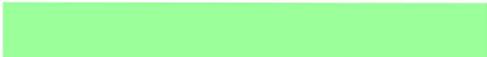
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **MAR 20 2013** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

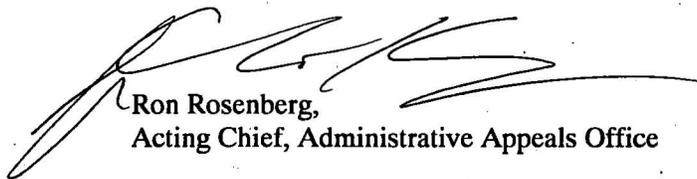
ON BEHALF OF PETITIONER:



**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.

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 sustained and the petition will be approved.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage. On appeal, the petitioner submits additional evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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 . . . lawful permanent resident 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)(B)(ii) of the Act are explicated in the regulation 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 Mexico who states she entered the United States in October of 1986. The petitioner married [REDACTED]<sup>1</sup>, a lawful permanent resident of the United States, on February 17, 1996 in Los Angeles, California. The petitioner filed the instant Form I-360 on April 29, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite abuse inflicted upon her by [REDACTED] during their marriage. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's 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). Upon a full review of the record as supplemented, the petitioner has overcome the director's grounds for denial. The appeal will be sustained for the following reasons.

#### *Battery or Extreme Cruelty*

The relevant evidence submitted below and on appeal demonstrates that [REDACTED] subjected the petitioner to battery and extreme cruelty. In her first affidavit, the petitioner stated that her husband drank a lot and became verbally abusive and aggressive towards her when intoxicated. She recounted that he

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

frequently called her derogatory names, degraded and insulted her. The petitioner reported that her husband threatened to harm her if she called the police and threatened to deport her if she did not obey him. She stated that [REDACTED] did not help out with their children, one of whom has significant health issues, and that she once separated from him because he spent all of their money on drinking and gambling and did not provide her or their daughters with basic life necessities such as food. The petitioner explained that she eventually returned to her husband because she had no other means of support and must care full-time for their daughter with special needs. The petitioner explained that because of her husband's aggression and degrading treatment she suffered from stress, depression and anxiety, for which she took medication and that she constantly thinks of suicide. In the affidavit submitted in response to the RFE, the petitioner reiterated that [REDACTED] frequently insulted and degraded her. She also recounted how he threatened her with physical violence. On one occasion, she stated that he threw a shoe at her and she became terrified that he would further batter her because he frequently threatened to teach her a lesson by hitting her. She stated that his threat of deportation terrified her because she was the primary caretaker of their adult daughter who has the mental capacity of a six-year old child. The director determined that the petitioner had described "an unhealthy relationship" consistent with "marital tensions and incompatibilities," but that the evidence was insufficient to establish that [REDACTED] subjected her to battery or extreme cruelty.

On appeal, the petitioner submits a third affidavit, further describing the abusive treatment she experiences from [REDACTED]. She explains that [REDACTED] blames her for their daughter's many disabilities. She states that on one occasion, her daughter was very ill and had to be admitted into the hospital. The petitioner states that [REDACTED] showed up at the hospital very drunk and began cursing at the petitioner. He only left after the nurses threatened to call the police. She states that her husband has become increasingly more aggressive towards her, throws objects at her, and insults her in front their children. She describes in probative detail two occasions when her husband pushed her and her daughter and was only prevented from further physical violence when other individuals intervened. She states that her other daughter was traumatized by the years of [REDACTED] abusive behavior, once tried to commit suicide, and has been in therapy ever since. The petitioner recounts her separation from her husband in 1997, explains how they reconciled when he appeared contrite, but felt betrayed when the abuse resumed. The petitioner continues to be scared that one day [REDACTED] abuse will escalate but feels trapped because she is her special-needs daughter's full time caretaker and would be unable to get a job to support them without lawful immigrant status.

The petitioner also submitted a psychological evaluation from [REDACTED] a Licensed Marriage and Family Therapist (LMFT) and Doctor of Psychology. Based on the results of two psychological tests and her interview with the petitioner, [REDACTED] diagnosed the petitioner with Major Depressive Disorder, Recurrent and Severe with Psychotic Features; General Anxiety Disorder and Insomnia. [REDACTED] concluded that the petitioner had been domestically abused by her husband for over 20 years and opined that the petitioner's depression and anxiety were triggered by the stress of her husband's abuse resulting in the petitioner's loss of self-confidence and a loss of her sense of self-worth. [REDACTED] also reported that the petitioner had made minimal progress during treatment because of the severity of her symptoms. On appeal, the petitioner submits a second psychological evaluation from [REDACTED] who describes in probative detail the petitioner's "disassociation from her pain" when describing the years of extreme cruelty suffered at the hands of [REDACTED]. [REDACTED] states that the petitioner continues to stay in the relationship out of fear, self-blame, and shame.

[REDACTED] further discusses additional aspects of [REDACTED] abuse and noted that the petitioner has been prescribed and taken an anti-depressant medication for the past 10 years, an anti-anxiety medication for the past six years and a medication for insomnia for the past three years. These detailed and probative psychological evaluations of the petitioner support her claim of being subjected to extreme cruelty by her husband. On appeal, the petitioner also submits an affidavit from her sister, [REDACTED] describes the panic attacks that the petitioner suffers when talking about [REDACTED] abusive treatment. She further recounts that the petitioner is constantly worried about her daughters and feels an enormous amount of stress about potentially being separated from them. [REDACTED] states that [REDACTED] is aware of this fear and uses the petitioner's devotion to their children, particularly to their special-needs daughter, to manipulate her with threats of deportation.

Upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director's denial. The petitioner has submitted affidavits that describe in probative detail the battery and extreme cruelty she suffered by her husband. She has also submitted detailed psychological evaluations, which conclude that she is suffering from severe depression and anxiety due to her husband's abuse. The record indicates that the petitioner's husband has subjected her to physical harm, psychological abuse and a cycle of threatened violence over the course of their 17-year marriage. The preponderance of the evidence demonstrates that the petitioner's husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has established her eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her 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 now been met. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.