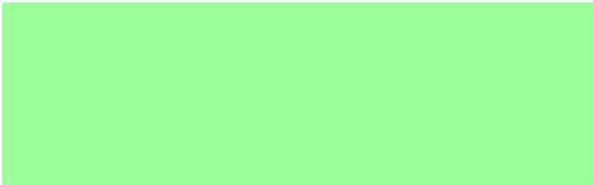


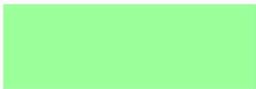


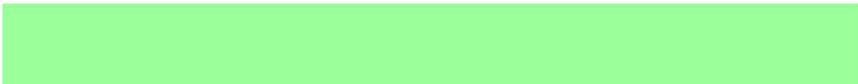
U.S. Citizenship
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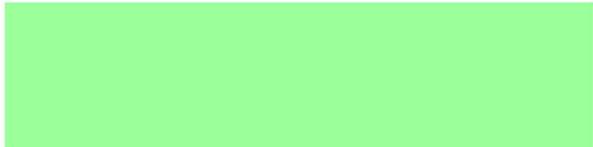
Date **OCT 22 2013** Office: VERMONT SERVICE CENTER

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:

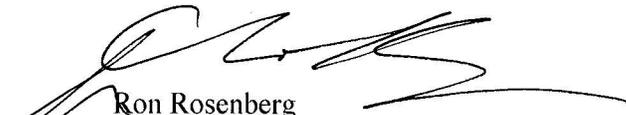


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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 her U.S. citizen 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, through counsel, submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii)(I) 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 or the self-petitioner's child, 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 Colombia who entered the United States as a nonimmigrant visitor on January 28, 2011. The petitioner married D-B-¹, a United States citizen, on February 18, 2011 in O'Fallon, Missouri. The petitioner filed the instant Form I-360 on June 23, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner, through counsel, 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 not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The petitioner submitted below: personal statements; a letter from Dr. [REDACTED] MD; a medical report from [REDACTED] prescriptions for meclizine and trimethobenzamide; a letter from her sister [REDACTED] a letter from her niece [REDACTED] and a letter from her former brother-in-law, [REDACTED] Dr. [REDACTED] briefly stated that he conducted a psychological evaluation of the petitioner on June 24, 2011 and diagnosed her as suffering from Post Traumatic Stress Disorder, Major Depression, and Panic Disorder. Dr. [REDACTED] stated that the petitioner suffered emotional trauma after D-B- abandoned her, but he did not discuss any battery or describe any behavior that would constitute extreme cruelty as that term is defined under the regulation at 8 C.F.R. 204.2(c)(1)(vi). The medical report from [REDACTED] shows that the petitioner was diagnosed with tightness in her chest and dizziness and was prescribed medications to treat these conditions. Although the report and the prescriptions are dated shortly after the petitioner's separation from D-B-, they do not mention any domestic violence or otherwise indicate that D-B- subjected the petitioner to battery or extreme cruelty.

Nonetheless traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In her first declaration, the petitioner stated that she after she came to the United States to visit D-B-, he convinced her to quit her job and give away all of her possessions. She stated that after they got married, they spent their honeymoon at a hotel but upon return from the honeymoon, D-B- said he wanted nothing to do with her. She stated that D-B- slammed the door on her face when she attempted to talk with him. She stated that he told her he never loved her and insulted her. Although she briefly stated that his abuse and neglect caused her to be depressed, she did not give probative details about his treatment of her or describe any specific incidents of abuse. In her second declaration submitted in response to the RFE, the petitioner recounted that after the two were married, D-B- told her that he was feeling pain and was very nervous and scared. She stated that on February 27, 2011, he came home from an event and told her that he did not want to be married to her. She stated that he told her that she does not speak English, does not have a job or a car, and has a daughter to care for. She stated that she began to cry and has been depressed ever since he left her. She stated that he returned and they were intimate but then he decided he still wanted a divorce. She described losing weight, being unable to sleep, and seeking psychiatric help because she felt that D-B- lied to her. Her statements do not demonstrate that D-B-'s behavior constituted battery or extreme cruelty as that term is defined in the regulation.

The petitioner's sister, [REDACTED] stated that D-B- abandoned the petitioner ten days after they married and never told the petitioner why. She stated that D-B-'s brother-in-law offered the petitioner money to divorce D-B- and that as a result, the petitioner sank into a deep depression. The petitioner's niece, [REDACTED] stated that the after the petitioner and D-B- were married, D-B- was worried about all of the things he had to do. She stated that one day, the petitioner came home crying from a walk with D-B- because he wanted to have the marriage annulled. Ms. [REDACTED] stated that after two weeks of marriage, D-B- left the petitioner without any explanation and the petitioner became depressed wondering what she had done wrong. The petitioner's former brother-in-law, [REDACTED]

stated that he believed D-B- deceived the petitioner by not living up to his obligations. None of these individuals described any specific incidents of battery or extreme cruelty, or otherwise established their knowledge of such abuse.

On appeal, counsel asserts that the director failed to properly consider all the credible evidence and failed to recognize the pattern of extreme mental cruelty and emotional abuse suffered by the petitioner. However, counsel fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner's husband constituted battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner submits a third personal statement, a letter from her daughter [REDACTED] a copy of an initial psychiatric assessment from [REDACTED] and medical reports from [REDACTED]. In her personal statement, the petitioner repeats her earlier statements and adds that D-B- treated her with contempt and told her she was no longer beautiful. She recounts finding him at the church where he worked and him looking at her with hate and telling her to go away. The petitioner's daughter, [REDACTED] states that D-B- abandoned her mother because he did not want all of the responsibilities of taking care of the petitioner in his life. She stated that as a result, the petitioner is now chronically depressed. The petitioner's statement and the letter from her daughter do not describe behavior that constitutes battery or extreme cruelty. The initial psychiatric assessment and medical reports from [REDACTED] discuss the petitioner's depression after her husband's abandonment and the breakdown of her marriage, but they also do not describe any instances of battery or extreme cruelty. Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.