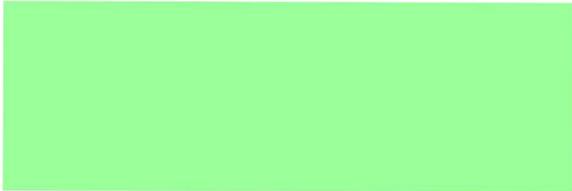




U.S. Citizenship
and Immigration
Services

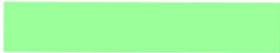
(b)(6)



Date: **AUG 29 2014**

Office: VERMONT SERVICE CENTER

File: 

IN RE: Self-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 Vermont Service Center director (“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 under 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 spouse.

The director denied the petition for failure to establish that the petitioner’s former spouse subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and other evidence.

Relevant Law and Regulations

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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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)(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:

(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.

Facts and Procedural History

The petitioner, a citizen of Ghana, entered the United States on September 24, 1989 as a G-1 nonimmigrant. On March 3, 2007, she married S-H¹, a United States citizen, in Kentucky and they divorced on May 25, 2012. The petitioner filed the instant Form I-360 on September 13, 2012. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner appealed.

We review 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 on appeal, the petitioner has not overcome the director's ground for denial. Beyond the director's decision, the petitioner has also not established that she had a qualifying relationship with her former spouse and is eligible for immediate relative classification based upon that relationship.² The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. sup. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's spouse did not subject her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The petitioner initially submitted a personal affidavit and the affidavits of her former sister-in-law and her supervisor. In her affidavit, the petitioner stated that she and her former spouse began to have problems between June 2007 when S-H- filed an immigrant petition on her behalf and their related June 2008 immigration interview. She recounted how S-H- was often unemployed, leaving her to be the sole provider and because he withdrew money from their joint bank account without her knowledge, she took his bank card and asked him to move out. The petitioner explained that S-H- was angry and lied during their immigration interview and told the officer that she paid him \$3,000 to marry her so she could secure permanent residence in the United States. She recalled that S-H- later recanted to U.S. Citizenship and Immigration Services (USCIS). The petitioner's statements do not demonstrate that her former spouse battered her, or that his behavior involved threatened 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).

In her affidavit, [REDACTED] S-H-'s sister, stated that S-H- has kept a job since the petitioner came into his life and that both are doing very well. This statement is inconsistent with the petitioner's claim that S-H- could not keep a job and that she was their sole provider. Ms. [REDACTED] explained that the petitioner has endured mistreatment from S-H- and should not have had to go through it just because she loved him. Ms. [REDACTED] added that S-H- denies everything, including withdrawing money. In her affidavit, [REDACTED] the petitioner's supervisor, stated that she is aware of the marriage between the petitioner and S-H- as well as their marital problems. Neither affidavit describes any battery or extreme cruelty.

In response to the RFE, the petitioner submitted a supplemental affidavit and a counselor's letter. In her affidavit the petitioner stated that S-H- verbally insulted her when he got stressed, often when he lost a job. She reiterated that S-H- was frequently unemployed and she was their main financial provider. The petitioner recounted how when she began monitoring their joint bank account and found that S-H- made frequent withdrawals without her knowledge. When confronted, S-H- subjected her "to the usual verbal abuse," and he continued to withdraw money knowing she had medical bills to pay. The petitioner repeated that when she took S-H-'s debit card, he punished her by lying to USCIS and withdrawing his immigrant petition on her behalf. She stated that she and S-H- did not receive their 2007 income tax refund check or their government stimulus check because the county attorney's office confiscated them to pay S-H-'s child support arrearages, and later she had to pay a tax liability because S-H- failed to declare all of his 2007 income. The petitioner's statements do not demonstrate that her former spouse battered her, or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation.

In her undated letter, [REDACTED] a licensed clinical social worker, stated that the petitioner was referred by her employer and attended five and a half individual hourly counseling sessions. Dr. [REDACTED] indicated that the petitioner was battling stress related to the loss of her mother, the post-surgery loss of her ability to conceive, and being betrayed by her husband who damaged her reputation. While we do not

question Dr. [REDACTED] professional opinion, her assessment conveys the petitioner's statements to her and provides no further, probative information regarding any battery or extreme cruelty.

On appeal, counsel submits a brief and a copy of a November 16, 2010 sworn affidavit by the petitioner's former spouse in which he recanted his prior sworn testimony given during a July 28, 2008 interview with USCIS. Counsel contends that the director erred by failing to find that S-H-'s misrepresentations at the July 28, 2008 interview amounted to extreme cruelty as psychological abuse because S-H- "clearly set out to control" the petitioner. In the affidavit, S-H- stated that during his July 28, 2008 USCIS interview he falsely claimed that the petitioner paid him \$3,000 to marry her because they had been having financial issues, he kept withdrawing money, she took his bank card and kicked him out of the apartment, and thinking she was having an affair he got mad and decided to get even. S-H-'s affidavit attests to these events, but does not show that his actions otherwise constituted extreme cruelty as defined in the regulation. By S-H-'s own admission, he lied to an immigration officer out of anger because the petitioner took his bank card, kicked him out of their apartment, and he thought she was having an affair. The relevant evidence in the record does not demonstrate that S-H- controlled the petitioner or otherwise engaged in a pattern of coercive or violent behavior. The preponderance of the relevant evidence does not establish that the petitioner's former spouse ever battered or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that her former spouse subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not established that her former spouse subjected her to battery or extreme cruelty during their marriage. Beyond the director's decision, the petitioner has also not established a qualifying relationship with her former spouse and her corresponding eligibility for immediate relative classification based on such a relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three grounds.

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 and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.