

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date: **NOV 19 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (“acting 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 acting director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage. On appeal, the petitioner, through counsel, submits a brief and an article on domestic abuse.

### *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).

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 an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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 explained in 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.

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(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 last entered the United States on September 9, 1997, as a nonimmigrant visitor and claims to have divorced his first wife on May [REDACTED]. The petitioner married J-M-<sup>1</sup>, a U.S. citizen, on March [REDACTED] in Rockville, Maryland. The petitioner filed the instant Form I-360 self-petition on January 14, 2013. The acting director subsequently issued two Requests for Evidence of, among other things, J-M-'s battery or extreme cruelty. Through counsel, the petitioner timely responded to the director's requests with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. A full review of the record 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*

In the petitioner's affidavit, dated January 6, 2013, he recounted that the first few years of his marriage to J-M- went well until he got injured at work in February 2007 and accidentally cut off two of his fingers. He stated that the relationship went "downhill" fast and J-M- did not help him cook or give him food while he was injured. He described that she asked him to pay for her father's funeral even

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

though he was not working. In addition, he claimed that J-M-'s daughter transferred \$30,000 from his bank account into her own account and that one of J-M-'s children stole \$15,000 worth of his jewelry. He also described J-M- locking him out and having him sign over their house into her name in order to help him get his green card.

Licensed psychologist [REDACTED] diagnosed the petitioner with Major Depressive Disorder. Mr. [REDACTED] briefly stated that J-M- stopped being affectionate with the petitioner, yelled, mocked, and humiliated him, and pushed him.

The petitioner's affidavit did not describe in probative detail any actual or threatened violence, psychological or sexual abuse, or other behavior that constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The psychological evaluation by Mr. [REDACTED] also did not describe in probative detail any particular incident or behavior that would constitute extreme cruelty. Although Mr. [REDACTED] stated that J-M- once pushed the petitioner, the petitioner himself did not make any allegation of physical assault or battery. Letters from friends [REDACTED], Evangelist [REDACTED] and Evangelist [REDACTED] similarly failed to allege battery or provide additional information regarding any particular incident of verbal abuse or other behavior that would constitute extreme cruelty.

On appeal, counsel contends the petitioner described a pattern of psychological and verbal abuse, and submits part of an article on domestic violence and abuse. As noted in the article, domestic abuse occurs when one person in an intimate relationship or marriage tries to dominate and control the other person through, among other things, isolation, intimidation, or withholding money or basic necessities. However, in the instant case, according to the petitioner as well as Ms. [REDACTED], J-M- was frequently away on trips and gone for the weekend. As the petitioner described it, J-M- "wanted her freedom" and was "doing her own thing." The record further shows that the petitioner owned his own business, maintained friendships, and was actively involved in his church. To the extent J-M-'s children allegedly stole from him, there is no claim J-M- was responsible for her adult children's actions and, in any event, the petitioner himself voluntarily agreed "out of compassion" to take responsibility for the \$30,000 transfer because he "trusted [they would] work it out as a family problem." The evidence does not demonstrate that the petitioner was isolated or that his spouse abusively controlled him such that her actions constituted extreme cruelty as defined in the regulation. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that J-M- 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 he was subjected to battery or extreme cruelty by J-M-. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

**ORDER:** The appeal is dismissed.