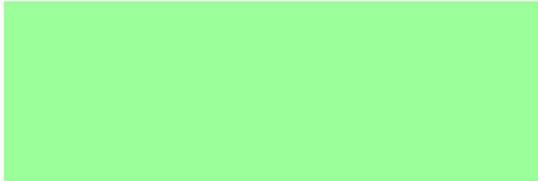


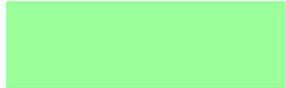
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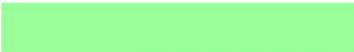


U.S. Citizenship
and Immigration
Services



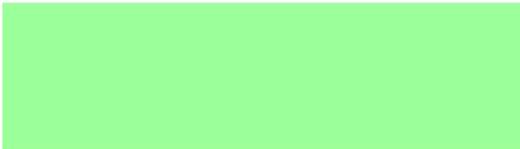
Date: **OCT 16 2014**

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:

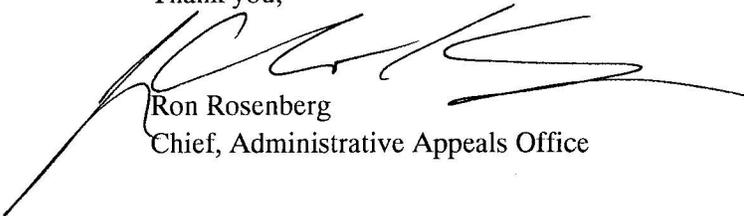


INSTRUCTIONS:

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 acting 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 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 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, counsel submits a brief and additional 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).

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 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)(I) 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.

* * *

(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 Ghana who entered the United States on December 22, 2002, as a nonimmigrant visitor. The petitioner married R-J-¹, a U.S. citizen, on February 14, 2005, in [REDACTED] Maryland. The petitioner filed the instant Form I-360 self-petition on October 12, 2011. The director subsequently issued a Request for Evidence (RFE) of R-J-'s battery or extreme cruelty. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record establishes 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

The director correctly determined that the petitioner's testimony and the previously submitted evidence did not show that the petitioner was subjected to battery or extreme cruelty by R-J- during their marriage. The petitioner submitted a personal affidavit, notarized letters from friends [REDACTED] and [REDACTED] and two letters from his therapist. In his affidavit, the petitioner asserted that he was abused but he did not provide probative details regarding specific incidents of battery or

¹ Name withheld to protect the individual's identity.

extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). [REDACTED] stated that they witnessed R-J- verbally abuse the petitioner but they also did not provide substantive information regarding any specific incidents of abuse. In his first letter, licensed clinical professional counselor [REDACTED] briefly stated that the petitioner reported feeling abused and neglected by his wife. In his second letter, Mr. [REDACTED] concluded that although separated for quite some time, the petitioner had not recovered from R-J-'s mistreatment of him. Mr. [REDACTED] did not explain the basis for this determination nor did he provide any substantive information about the claimed abuse.

On appeal, the petitioner submits a second personal affidavit, a third letter from [REDACTED] and letters from [REDACTED]. In addition, the petitioner submits a psychological evaluation by [REDACTED], Ph.D. and Licensed Clinical Social Worker (LCSW). In his affidavit, the petitioner states that R-J- called him names and sexually attacked him but does not give probative details about any specific incidents of abuse. Ms. [REDACTED] coordinator of a prayer ministry, stated that the petitioner approached her in October of 2011 asking for guidance because he was troubled about his relationship with his wife who did not show him love and deprived him of intimacy. In his letter dated September 9, 2013, Reverend [REDACTED] stated that he has been counseling the petitioner for the past two years in connection with the petitioner's "emotional turmoil and mental agony" he was suffering within his marriage. However, the petitioner stated that he had been separated from R-J- since June of 2011. Neither Ms. [REDACTED] nor Reverend [REDACTED] describe witnessing specific incidents of abuse, observing contemporaneous effects of the abuse on the petitioner, or otherwise establish their knowledge of such abuse. Mr. [REDACTED] the petitioner's therapist, summarizes what the petitioner relayed to him and does not add any substantive information regarding R-J-'s treatment of the petitioner. In his psychological evaluation, Dr. [REDACTED] diagnosed the petitioner with depression, anxiety, and post-traumatic stress, and opined that the petitioner was a victim of spousal abuse. While we do not question Dr. [REDACTED] professional expertise, his assessment conveys the petitioner's statements during his interviews with him and provides no further, probative information regarding the claimed abuse.

On appeal, counsel argues that the director's decision is internally inconsistent. He erroneously states that the director found that the petitioner was abused in the United States, but R-J- did not subject him to battery or extreme cruelty. Section 204(a)(1)(A)(v) of the Act allows self-petitioners residing abroad to retain eligibility if their U.S. citizen spouse subjected them to battery or extreme cruelty in the United States. This provision does not apply to the petitioner because he is residing in the United States.

On appeal counsel also cites the U.S. Ninth Circuit Court of Appeals case, *Hernandez v. Ashcroft*, 345 F.3d. 824, 838 (9th Cir. 2003) arguing that a determination of extreme cruelty is not a discretionary decision but rather "a matter of fact that can be ascertained on an objective basis." *Counsel's Brief* at p. 2. Counsel argues that the petitioner has provided ample evidence of his "abysmal relationship" with R-J- who was blatantly unfaithful. *Counsel's Brief* at p. 4. The record does not support counsel's claims, however, and his reliance on *Hernandez* is misplaced. In *Hernandez*, the Ninth Circuit Court of Appeals held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. *See Hernandez v. Ashcroft*, 345 F3d. at 833-35. As the petitioner's case arose outside of the Ninth Circuit, *Hernandez* is not a binding

precedent. Moreover, the majority of circuits have held that contrary to *Hernandez*, extreme cruelty is a discretionary determination not subject to judicial review. See *Bedoya-Melendez v. U.S. Att’y Gen.*, 680 F.3d 1321 (11th Cir. 2012); see also *Rosario v. Holder*, 627 F.3d 58 (2d Cir. 2010); *Johnson v. U.S. Att’y Gen.*, 602 F.3d 508 (3d Cir. 2010); *Stepanovic v. Filip*, 554 F.3d 673 (7th Cir. 2009); *Wilmore v. Gonzalez*, 455 F.3d 524 (5th Cir. 2006); *Perales-Cumpean v. Gonzalez*, 429 F.3d 977 (10th Cir. 2005).

Finally, even if we were to defer to *Hernandez* as persuasive authority in this case, the facts constituting extreme cruelty in *Hernandez* are in no way analogous to the actions of the petitioner’s wife as described in the record. The plaintiff in *Hernandez* was subject to years of her abusive spouse’s cycle of violence including brutal beatings, a stabbing in Mexico, and constant verbal abuse. In addition, the plaintiff in *Hernandez* was subjected to periods of contrition and emotional manipulation to convince her to return to her abusive spouse after she had sought refuge with a relative in the United States. See *Hernandez v. Ashcroft*, 345 F.3d at 829-32, 840-41. The *Hernandez* court determined that the plaintiff’s husband’s non-physical actions “in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that ‘may not initially appear violent but that are part of an overall pattern of violence.’ 8 C.F.R. § 204.2(c)(1)(vi).” *Id.* at 840. In this case, the record does not demonstrate that R-J’s verbal insults, monetary demands, and infidelity were similarly part of any overall pattern of violence or otherwise constituted battery or extreme cruelty under the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has not established that his wife subjected him to battery or extreme cruelty and 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. See Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.