



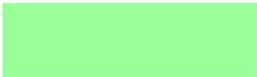
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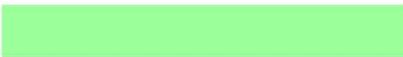
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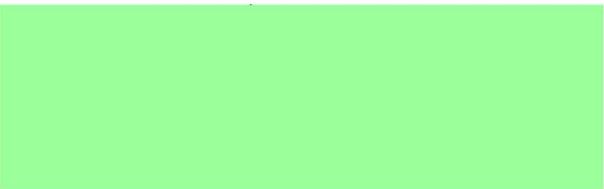
Office: VERMONT SERVICE CENTER

File: 

IN RE: Self-Petitioner: 

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 (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 petition will remain denied.

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 his lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner’s former wife subjected him to battery or extreme cruelty during their marriage. On motion, the director reaffirmed her prior decision. Now on appeal, counsel submits a brief and additional affidavits.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii)(I) 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). An alien who has divorced an abusive lawful permanent resident 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 lawful permanent resident spouse.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under . . . 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 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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Bangladesh who entered the United States as a student visitor on February 22, 1999. The petitioner married his former spouse, R-I<sup>1</sup>, on February 2, 2004 in ██████████ New York. R-I- became a lawful permanent resident on April 12, 2005. The couple divorced in New York on October 27, 2010. The petitioner filed the instant Form I-360 self-petition on April 11, 2011. The director subsequently issued Requests for Evidence (RFEs) of the petitioner's former wife's battery or extreme cruelty, among other issues. Counsel responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel submitted a combined motion to reopen and reconsider the director's decision with additional evidence. The director reviewed the evidence and reaffirmed her decision to deny the self-petition. Counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional evidence submitted on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

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

*Battery or Extreme Cruelty*

The petitioner has not established that his former wife subjected him to battery or extreme cruelty during their marriage. In the petitioner's first affidavit, dated April 6, 2011, the petitioner recounted that the difficulties in his marriage began after R-I- became a lawful permanent resident in 2005. He asserted that R-I- was disrespectful to his parents during telephone calls, and insisted that the petitioner cease attending community functions, such as religious services. The petitioner described an incident in October 2007 when he called his family, and his father declined to speak with him on account of R-I-'s lack of respect. The petitioner stated that he was in a deep depression and attempted suicide by ingesting several acetaminophen pills while in his apartment. His friend [REDACTED] became concerned after contacting the petitioner by telephone, and broke into the petitioner's apartment to retrieve him and take him to the hospital. The petitioner indicated that he was hospitalized for three days.

In his April 6, 2011 affidavit, the petitioner described a subsequent incident. The petitioner asserted that after his suicide attempt, R-I- frequently made negative comments to the petitioner about his habits of daily living, and declined to engage in intimate relations. The petitioner stated on one occasion when he began to weep from this treatment, R-I- became physically aggressive and he fell backward in his chair, hitting his head on the ground. The petitioner asserted that he was knocked unconscious, and R-I- called the paramedics, who performed cardiopulmonary resuscitation (CPR) to revive him. The petitioner indicated that he was too embarrassed to tell the paramedic how he had fallen.

The petitioner stated that in 2008, R-I- went to Bangladesh and humiliated him by staying with the petitioner's family for only one night. In 2009, R-I- told the petitioner that she was not going to help the petitioner obtain lawful permanent resident status, and that she was leaving him for another man. The petitioner asserted that he subsequently learned that R-I- had engaged in an extramarital affair in beginning in 2008. The petitioner concluded that he would be unable to face his family due to the humiliation that R-I- caused him.

In support of the self-petition, the petitioner provided an affidavit from his friend, [REDACTED] dated December 14, 2010. In the affidavit, Mr. [REDACTED] recounted the incident in October 2007 when he took the petitioner to the hospital. He stated that he called the petitioner several times and when the petitioner finally answered he "sounded like he was on drugs or drunk." Mr. [REDACTED] asserted that he ran to the petitioner's house, and broke down the door when the petitioner did not answer. Mr. [REDACTED] stated that he called 911 and the petitioner was transported to the hospital. This account differs from the petitioner's assertion that Mr. [REDACTED] took him to the hospital.

In response to the director's second RFE, the petitioner submitted hospital records from his October 2007 hospitalization. The hospital records, dated October 29, 2007, indicate that the petitioner was observed to have a psychiatric problem related to stress and anxiety, and an alcohol abuse problem. The petitioner was placed under observation for suicide. According to the hospital records, the petitioner informed the nurse that he was parked in front of his wife's friend's apartment, took a couple of over-the-counter pills to help him sleep, became frightened, and called his wife's friend who transported him to the hospital. The records state that the petitioner reported "that his stressor is marital problems with

his wife" and that he "denie[d] suicidal or homicidal ideations." The records also show that the petitioner reported that he had never been physically abused.

Also in response to the RFE, the petitioner submitted a judgment of divorce, dated October 27, 2010, which dissolved the petitioner's and R-I's marriage via a default judgment due to the petitioner's "cruel and inhumane treatment" of R-I.

The director correctly determined that the record did not establish that the petitioner's former wife battered the petitioner or subjected him to extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In the decision, the director noted the basis of the petitioner's divorce.

Counsel subsequently submitted a motion to reopen and reconsider. In support of the motion, counsel provided a copy of the divorce complaint, dated June 15, 2010, in which R-I- alleges specific instances of abuse perpetrated by the petitioner. Counsel also provided a copy of a motion to the Supreme Court of the State of New York, to vacate the petitioner's divorce judgment, which is dated over two years after the divorce was finalized. In affidavits submitted in support of the motion to vacate the divorce and the motion to the director, the petitioner denied the veracity of the claims in R-I's complaint. He further provided an affidavit from an individual named in the complaint as a witness to one of the incidents of abuse. In the affidavit, the witness denied that the incident occurred. Upon review of the motion and additional evidence, the director reaffirmed the prior decision. The director observed that the petitioner's claim that R-I- obtained a divorce based on fraudulent accusations did not establish battery or extreme cruelty. The director also noted discrepancies between the petitioner's and Mr. [REDACTED] statements surrounding the October 2007 incident, and the hospital records regarding the petitioner's location when he took the pills and how he was transported to the hospital.

On appeal, counsel asserts that the director gave insufficient consideration to the petitioner's suicide attempt, which he claims was caused by R-I's psychological abuse of the petitioner. Counsel states that R-I's lack of respect for the petitioner's parents amounts to extreme cruelty as the petitioner was forced to choose between his parents and his former wife. In support of the appeal, counsel provides an additional affidavit from the petitioner, dated August 17, 2013. In the affidavit, the petitioner states that the inconsistencies between his version of the October 2007 incident and that which appears in the hospital records is attributed to his "disorganized" thoughts and "psychotic" state when he was admitted to the hospital. The petitioner again recounts the argument with R-I- when he fell off a chair. Also in support of the appeal, counsel provided a second affidavit from Mr. [REDACTED] dated August 17, 2013. On appeal, Mr. [REDACTED] now claims that the petitioner *called him* in October 2007 and told him that he wanted to "say a last good bye." Mr. [REDACTED] repeats that he called 911 and the petitioner was transported to the hospital. Counsel also provides an affidavit from the petitioner's father, who confirms that R-I- was disrespectful to him during telephone conversations.

A preponderance of the evidence submitted below and on appeal does not establish that the petitioner was the subject of battery or extreme cruelty by his lawful permanent resident former spouse. The petitioner provided limited insight into the circumstances surrounding the incident where he fell off a chair and hit his head. The evidence also contains unresolved inconsistencies. In his affidavits, the petitioner claims that Mr. [REDACTED] drove him to the hospital. Mr. [REDACTED] claims that he called 911 and the petitioner was transported. The petitioner provided affidavits from Mr. [REDACTED] with different versions of

how he became aware that the petitioner was in need of assistance, and did not indicate if records of the 911 call and response were available. In his December 7, 2012 affidavit, the petitioner claimed his wife's abuse and extreme cruelty caused him to attempt suicide, but the hospital records state he reported he was never physically abused and identified marital problems with his wife as his stressor. The records report his depression and poor impulse control, and the treatment plan states the goal of increasing the petitioner's awareness of the relationship between his psychiatric and substance abuse problems. The hospital records verify the petitioner's treatment for depression and substance abuse, but do not establish that his former wife's actions involved battery or extreme cruelty that precipitated the hospitalization. When viewed in the aggregate, the preponderance of the relevant evidence does not establish that the R-I- battered the petitioner or that her behavior constituted extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that his former spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(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, he also has not demonstrated any connection between his divorce and such battery or extreme cruelty. Consequently, beyond the director's decision, the petitioner has not established that he had a qualifying relationship with a lawful permanent resident and was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act.<sup>2</sup>

#### *Conclusion*

On appeal, the petitioner has failed to establish his former wife's battery or extreme cruelty, a qualifying relationship with his former wife and his corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> An application or petition that fails to comply with the 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. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).