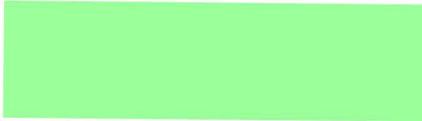




U.S. Citizenship  
and Immigration  
Services

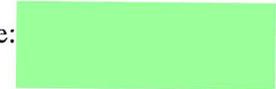
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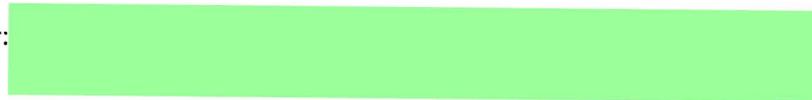
SEP 17 2014

Date:

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:

SELF-REPRESENTED

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 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 a United States citizen.

*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 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 explained further 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 . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 was born in Jamaica and first entered the United States on May 23, 1987, as a conditional lawful permanent resident spouse of his first wife, a lawful permanent resident. He divorced his first wife on January 20, 1993, and married his second spouse, C-P<sup>1</sup>, a U.S. citizen, on October 19, 2005, in [REDACTED] Florida. He filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 26, 2011. The director subsequently issued a Request for Evidence (RFE) that, among other things, the petitioner was subjected to battery or extreme cruelty by his spouse during their marriage. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility on this ground. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reason.

#### *Battery or Extreme Cruelty*

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner was battered or subjected to extreme cruelty by his spouse. The petitioner initially provided an affidavit

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

in which he described his courtship and first few years of his marital relationship with his second wife. He explained that he and his second spouse were initially happy although he found her to be very controlling because she did not like him to make his own decisions or to see his friends. He stated that he worked long hours to pay their bills but that his second wife became upset at the hours he worked. Even as she resented his time at work, the petitioner's second wife demanded more money from him and frequently donated it to her church or other charitable organizations. When the petitioner confronted his second wife about her increased time at church activities, he asserted that she became "verbally abusive, yell [sic] at me and call me nasty names and threatened me," and then "started to withhold sex." The petitioner stated that his second wife became increasingly paranoid, accusing him of having relations with other friends and refusing to pick him up from work, even though he did not drive. Finally, the petitioner indicated that his second wife refused to attend the joint interview required for removal of conditions on his lawful permanent resident status because it was on a Jewish holiday even though she was not Jewish. The petitioner's second wife ultimately ordered him out of the marital home in November of 2010. The petitioner provided a December 15, 2010 Bio-Physical Evaluation from a mental health counselor, who reiterated the statements that the petitioner made in his affidavit and stated that the petitioner was experiencing depression as a result of his second wife's behavior.

In response to the first RFE, the petitioner provided a second affidavit in which he stated that his second wife was verbally, emotionally, and physically abusive to him in front of other people. He again explained that because he did not drive he needed his second wife to take him to work or pick him up from work, although she was deliberately unreliable. As a result of her unreliability, the petitioner claimed he almost lost his job when she made him late, and once had to sleep at the restaurant in which he worked because she never picked him up. When the petitioner was unable to give his second wife money, he stated she locked him out of the house and threatened to call the police, which depressed him. When the petitioner's second wife ordered him out of the house for the last time, he indicated her pastor tried without success to get her to change her mind. The petitioner provided a letter from the pastor who said that he was present when the petitioner's wife told him to leave. The pastor did not give any probative details about the incident or list the day or place that it took place, nor did he indicate that he witnessed any incidents of abuse or extreme cruelty. Therefore, the pastor's letter does not establish that the petitioner's wife subjected him to battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(2)(iv).

The petitioner also provided letters from friends who gave general statements about the petitioner being in an unhappy marriage. [REDACTED] stated the petitioner and C-P- had "good days and bad days" and "at times you could tell [he] wasn't happy and being mistreated." [REDACTED] asserted that he used to give the petitioner a ride to work each day or pick him up from work because the petitioner's second wife refused. He stated that the petitioner told him his second wife locked him out of the bedroom and spent a lot of time at church, which made the petitioner unhappy. Similarly, [REDACTED] stated that he occasionally drove the petitioner home from work because the petitioner's second wife would not pick him up. [REDACTED] stated that the petitioner's second wife's treatment of the petitioner was "not very nice." These individuals did not describe witnessing any specific instances of abuse or provide any probative details to demonstrate

that the petitioner's second wife subjected him to battery or extreme cruelty.

In response to the RFE, the petitioner also provided affidavits from acquaintances who attested that they heard the petitioner's second wife verbally abuse him. For example, [REDACTED] stated that she overheard the petitioner's second wife "talking very mean to [the petitioner] and cursing at him" after church, but did not provide any probative details or discuss any other specific incidents of abuse that she observed. [REDACTED] indicated that she heard the petitioner's wife curse and shout at him after church but did not indicate that she witnessed any other incidents between the petitioner and his second wife. Ms. [REDACTED] said that the petitioner told her that he believed his second wife cheated on him because he found used condoms in their bedroom; however, the petitioner did not mention this in his own affidavits. Both Ms. [REDACTED] and Ms. [REDACTED] listed examples of abuse that are related in the petitioner's two affidavits; however, neither Ms. [REDACTED] nor Ms. [REDACTED] stated that they personally witnessed any incidents of extreme cruelty or abuse as that term is defined at defined at 8 C.F.R. § 204.2(c)(2)(iv).

On appeal, the petitioner states that the director failed to fully consider the evidence, misapplied the law, and should have determined that the petitioner's second wife's behavior constituted extreme cruelty. He cites to a Ninth Circuit Court of Appeals ("Ninth Circuit") decision in which the court determined that Congress distinguished between battery and extreme cruelty, but found that the term "[e]xtreme cruelty simply provides a way to evaluate whether an individual has suffered psychological abuse that constitutes domestic violence." *Hernandez v. Ashcroft*, 345 F.3d 824, 834 (9th Cir. 2003). The petitioner asserts that "the focus of an extremely cruel inquiry should be whether it's a form of domestic violence, not whether it is extreme enough." The record does not support the petitioner's claims.

First, in compliance with the statute and regulations, the director addressed all the relevant evidence submitted by the petitioner below, accurately assessed its weight and credibility and explained why it did not establish battery or extreme cruelty. See section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i) (mandating the agency's consideration of "any credible evidence relevant to the petition," but reserving the determination of what evidence is credible and its weight to the agency's "sole discretion"). Even if the director had neglected to consider certain relevant evidence, we have reviewed the record de novo and considered the additional statements of the petitioner and his mother submitted on appeal.

Second, the petitioner's reliance on *Hernandez* is misplaced. In *Hernandez*, the Ninth Circuit held that extreme cruelty can be assessed under objective standards and is a clinical, nondiscretionary determination subject to judicial review. *Hernandez v. Ashcroft*, 345 F.3d at 833-35. As this case arose outside of the Ninth Circuit, *Hernandez* is not a binding precedent. Moreover, the majority of circuits, including the Eleventh Circuit which this case comes under, have held that extreme cruelty is a discretionary determination not subject to judicial review. *Bedoya-Melendez v. U.S. Att'y Gen.*, 680 F.3d 1321 (11th Cir. 2012); *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).

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 and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, periods of contrition and emotional manipulation to convince the petitioner to return to him after she had sought refuge with a relative in the United States. *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.

The record does not establish that the petitioner's second wife subjected him to extreme cruelty as that term is defined by the regulation or that her actions are in any way analogous to the extreme cruelty discussed in *Hernandez*. For instance, there is no evidence that the petitioner fled his home out of fear. Instead, the petitioner stated in his affidavit that he remained with his second wife until she ordered him to move out of their home. In this case, the record does not demonstrate that the petitioner's second wife's verbal insults, behavior, and demands were similarly part of any overall pattern of violence or otherwise constituted extreme cruelty under the regulation.

After a careful review of all of the relevant evidence, including the petitioner's brief submitted on appeal, the petitioner has failed to establish that his second wife subjected him to battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). The record shows that the petitioner's second wife yelled at him in front of friends, demanded money, declined to attend a scheduled interview with USCIS, and on occasion deliberately failed to drive the petitioner to work or pick him up. However, the record does not establish that the petitioner's second wife ever battered him or that her behavior included other actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 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*

On appeal, the petitioner has not demonstrated that his second spouse subjected him to battery or extreme cruelty during the marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

(b)(6)

*NON-PRECEDENT DECISION*

  
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**ORDER:** The appeal is dismissed.