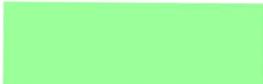


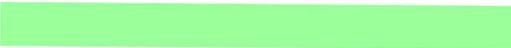


U.S. Citizenship
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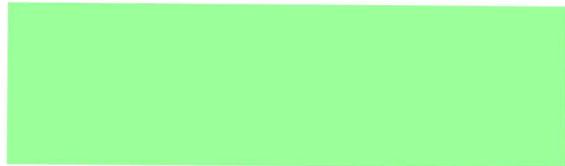


Date: **SEP 18 2014** Office: VERMONT SERVICE CENTER File: 

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:

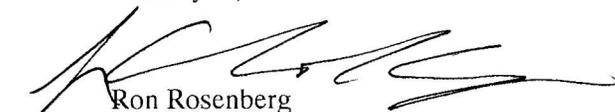


INSTRUCTIONS:

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 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 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage. On appeal, counsel submits a brief.

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 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)(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)(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 Belarus who entered the United States on October 5, 1998, as the K1 fiancée of D-S-¹, a U.S. citizen, who she married on December 31, [REDACTED] New Mexico. The petitioner filed the instant Form I-360 on July 19, 2011. The director subsequently issued a Request for Evidence (RFE) of D-S-'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 fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed.

Battery or Extreme Cruelty

The petitioner stated in her affidavit that D-S- yelled at her and her son often using profanity, laughed in her face, and humiliated and called her names. She recounted that when she twisted her ankle, he would not take her to see a doctor because he refused to pay for it. She also recounted that when she got into a car accident in the winter of 2000, he pushed and yelled at her about insurance rates rising and she had to treat herself with eye drops. The petitioner described how D-S- had an extramarital affair, watched pornographic movies, and acquiesced to his ex-wife's request that the petitioner move out of the house and into her own apartment. She explained that she later moved back into D-S-'s house and thought things had changed for the better, but that the change did not last long. She stated that she filed

¹ Name withheld to protect the individual's identity.

for divorce, but D-S- failed to appear in court and always lied about being sick or busy so they are still legally married.

The petitioner described an incident when she called the police because D-S- was drunk and was walking around the room while holding a kitchen utensil. According to the petitioner, D-S- told the officer that she “was crazy and called 911 by mistake,” and the officers left without speaking to her. She stated that there were a couple of similar incidents, but in those cases, she just kept quiet and went into another room. The petitioner also described how D-S- made disgusting comments about her having an inappropriate relationship with her son. Furthermore, the petitioner stated she got pregnant twice, but the first time, the baby did not have a heart beat so she had an abortion, and the second time, she had a miscarriage. Counsel contends that the petitioner had a miscarriage due to stress and severe emotional abuse by her husband.

In her evaluation of the petitioner, certified psychologist [REDACTED] stated that D-S- threatened the petitioner, pushed her, screamed at her, and played with a kitchen utensil in front of her. Ms. [REDACTED] diagnosed the petitioner with adjustment reaction with features of major depression and anxiety, and acquired attention deficit disorder. Ms. [REDACTED] described the petitioner’s continued depression and anxiety in follow-up visits.

An affidavit from the petitioner’s son, [REDACTED] stated that D-S- yelled at him, called him names, and constantly put him down. According to [REDACTED] D-S- frequently kicked him out of the house and in June of 2003, D-S- threatened the petitioner with a kitchen utensil. [REDACTED] further stated that in April 2008, D-S- waved a knife at his mother, then went outside and screamed at himself on the porch for hours. A health evaluation of [REDACTED] indicated he has symptoms suggestive of a depressive disorder and an anxiety disorder, and recommended further evaluation for a diagnosis.

The record contains documentation establishing that the petitioner’s husband yelled at her and her son, that she once called 9-1-1, and that she has sought counseling. Nonetheless, neither the petitioner’s statement nor her son’s statement described in probative detail any battery or other behavior that would constitute extreme cruelty to either the petitioner or her son as that term is defined under the regulation at 8 C.F.R. 204.2(c)(1)(vi). Letters from the petitioner’s friends and neighbors, [REDACTED] did not describe any personal knowledge regarding D-S-’s mistreatment of the petitioner other than his yelling at her.² Although the petitioner’s son claimed D-S- “kept slapping her around” and attacked the petitioner, he failed to describe any particular incident in which D-S- physically assaulted his mother.

Although the record shows the petitioner once called the police, her statement contradicts the police report in the record. According to the petitioner, D-S- was drunk, was walking around holding a kitchen utensil, and the police left her house without speaking to her. However, the police report, dated May 4, 2008, indicated that there was no intoxication, stated that D-S- had an argument with his wife,

² A letter from [REDACTED] described how [REDACTED] would get kicked out of the house by his step-father. According to Mr. [REDACTED] the longest [REDACTED] stayed with the [REDACTED] family was in early 2006 when he stayed for three to four weeks. Assuming [REDACTED] is the petitioner’s son, [REDACTED] the letter did not describe any incident of battery or extreme cruelty to the petitioner’s son.

but did not mention any kitchen utensil. In addition, the report indicates that when she called the police, the petitioner stated that D-S- owned a shotgun but did not have it with him at the time. However, the petitioner makes no mention of a gun or that D-S- ever threatened her or her son with a gun. The report stated that there were no injuries and no arrest was made.

Regarding counsel's assertion that the petitioner suffered a miscarriage due to her husband's severe emotional abuse, there is no indication that the miscarriage was related to her husband's behavior. The letter from Dr. [REDACTED] did not identify a cause for the petitioner's miscarriage and the petitioner herself did not assert her miscarriage was caused by her husband, stating only that she was surprised she had gotten pregnant because she was in her forties at the time.³

After a careful review of all of the relevant evidence, the record does not establish battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). The record does not establish that the petitioner's husband ever battered her or her son, or that D-S-'s behavior included 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 failed to establish that her husband subjected her or her son to battery or extreme cruelty during their marriage. She 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.

³ To the extent counsel contends the director erred because he failed to consider all of the evidence, we note that the letter from Dr. [REDACTED] and affidavit from neighbor [REDACTED] were not submitted with the instant Form I-360 petition, but rather, were submitted in support of the petitioner's previous Form I-360. See *Form I-360*, filed July 28, 2008 (receipt number [REDACTED]) and denied on March 16, 2010. The letter from Dr. [REDACTED] merely stated that the petitioner's low back and neck pain, which had been exacerbated by stress, had improved since she was no longer living with her husband. Mr. [REDACTED] affidavit is similar to the other affidavits in the record in that he did not describe any personal knowledge regarding D-S-'s mistreatment of the petitioner other than D-S-'s yelling at her.