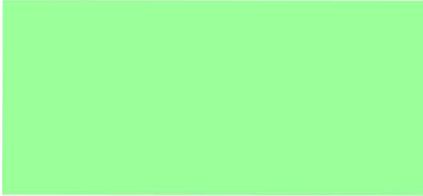


(b)(6)

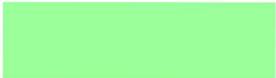


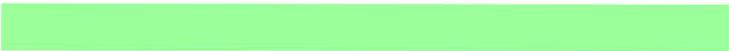
U.S. Citizenship
and Immigration
Services



Date: **SEP 30 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:

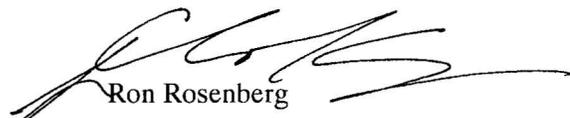


INSTRUCTIONS:

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 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 under 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.

The director denied the petition based on the petitioner's failure to establish that she was battered or subjected to extreme cruelty by her spouse.

On appeal, the petitioner 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 for a self-petition under section 204(a)(1)(A)(iii) of the Act 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 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) 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.

Facts and Procedural History

The petitioner, a citizen of Jamaica, entered the United States on June 11, 1993 as a nonimmigrant visitor. The petitioner married O-D-¹, a U.S. citizen, on April 13, 2009 in Miami, Florida. O-D- filed an immigrant visa petition for the petitioner, which he subsequently withdrew. The petitioner filed the instant Form I-360 self-petition on July 25, 2011. Upon review of the initial submission, the director issued a Request for Evidence (RFE) of battery or extreme cruelty, among other issues. The petitioner responded with additional evidence. Based on a review of the entire record of proceeding, the director found that the evidence did not establish eligibility for the benefit sought and denied the petition. The petitioner timely submitted a Form 1-290B (Notice of Appeal), a brief, and additional evidence.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, as supplemented on appeal, we find that the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reason.

Battery or Extreme Cruelty

The director correctly determined that the petitioner did not establish that her husband battered her or subjected her to extreme cruelty. With her initial Form I-360 submission, the petitioner provided a

¹ Name withheld to protect the individual's identity.

personal statement dated July 18, 2011. In the statement, the petitioner indicated that her husband became increasingly focused on his work, and the romance in the relationship deteriorated. She stated that her husband accepted a three-year overseas work assignment without consulting her. The petitioner described the effects of the stress from the situation. The petitioner provided a letter from [REDACTED] dated June 29, 2011, indicating that the petitioner experienced mild symptoms of depression prompted by recent stressful events, and was referred for a follow-up psychiatric appointment. The record contains brief, illegible notes from the petitioner's follow-up appointment, and prescriptions for medication for sleep and anxiety.

In response to the RFE, the petitioner submitted a letter from clinical psychologist [REDACTED] dated December 20, 2012. In the letter, Dr. [REDACTED] related that the petitioner felt depressed and abandoned after her husband suddenly informed her from his overseas post that he wanted a divorce, and subsequently sought one without prior discussion. The letter does not indicate that the petitioner was either battered or subjected to extreme cruelty by her husband.

In his decision, the director acknowledged the petitioner's feelings of depression and abandonment as a result of her husband's overseas deployment and subsequent desire to terminate the marriage, but noted that such actions do not constitute battery or extreme cruelty.

On appeal, the petitioner submits a psychological evaluation dated March 4, 2013, prepared by licensed psychologist [REDACTED]. The evaluation confirms the prior evaluation's findings that the petitioner felt depressed and abandoned when her husband abruptly ended their relationship, and concludes that the petitioner suffers from adjustment disorder with mixed anxiety and depressed mood. However, it does not describe any instances of battery or extreme cruelty. In addition, in her brief submitted on appeal, the petitioner asserts that her husband made unilateral decisions, and that she was easily taken advantage of and manipulated. She also notes the possibility that mild depression could escalate to more serious symptoms. However, the brief does indicate that the petitioner's depression or other symptoms were caused by battery or extreme cruelty inflicted on the petitioner by her husband.

Neither the March 4, 2013 evaluation, nor the brief submitted on appeal overcome the director's finding that the petitioner was not subjected to battery or extreme cruelty by her husband. The petitioner must demonstrate that her spouse battered or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence submitted below and on appeal, reviewed above, does not so demonstrate.

Accordingly, the petitioner has not shown that her spouse subjected her 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 did not establish that she was battered or subjected to extreme cruelty by her spouse, and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for this reason.

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). 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.