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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Administrative Appeals Office (AAO)*  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Date: **FEB 05 2015** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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)

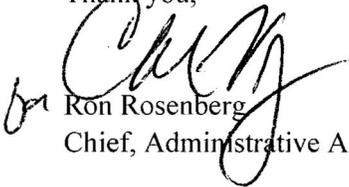
ON BEHALF OF THE PETITIONER:

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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s spouse subjected her to battery or extreme cruelty. The petitioner submits a brief on appeal.

*Relevant Law and Regulations*

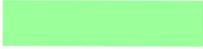
Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that 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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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) 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 Peru who claims that she first entered the United States in 1998. On [REDACTED] the petitioner married V-G-<sup>1</sup>, a U.S. citizen, in New York. She departed the United States and returned to Peru in August of 2006. The petitioner last entered the United States on January 5, 2013, without inspection, admission or parole. She filed the instant Form I-360 self-petition on June 4, 2013. The director subsequently issued an RFE of, among other things, the requisite battery or extreme cruelty. The petitioner timely responded with evidence which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director’s sole ground for denial. The appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

The director correctly determined that the petitioner’s husband did not subject her to battery or extreme cruelty. In her initial affidavit, the petitioner recalled that she and V-G- met at a party in December of 2002, began dating, fell in love, moved in together in January of 2003 and were married on [REDACTED]. The petitioner stated that during the time she lived apart from V-G-, he made very few telephone calls to her and often neglected her calls to him. The petitioner indicated that when she

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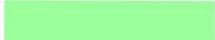
<sup>1</sup> Name withheld to protect the individual’s identity.

returned to the United States, she wanted to surprise her husband but that he did not “show any excitement” when he saw her and did not invite her in. She recalled that instead, they walked to a nearby café, sat in silence, and he asked her to live with one of her friends. The petitioner recounted that she accused him of infidelity and he denied it but that she later learned from a friend that V-G- was in a lengthy relationship with another woman and that they had a child together. The petitioner stated that her boss found photographs of V-G-’s son on a social media website and when she finally confronted him, V-G- admitted to the relationship and to having a son with his girlfriend. The petitioner recalled that when she pressed him for more information about them, V-G- became annoyed, yelled at her, and became insulting. The petitioner stated that V-G- refused to reconcile with her and they had many arguments after which the petitioner would cry. The petitioner further stated that V-G- did not act like a caring and responsible husband but instead scolded her, told her he was not sexually attracted to her anymore, and called her names. The petitioner described feeling deeply hurt but did not describe any specific incidents of abuse or demonstrate that V-G-’s behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted an affidavit from friend, [REDACTED] who recalled that she witnessed the petitioner’s and V-G-’s wedding. She stated that she knew things changed while the petitioner was in Peru because V-G- was in a relationship with another woman and they had a child together. [REDACTED] stated that she shared this news with the petitioner who cried and had difficulty sleeping. [REDACTED] further stated that the petitioner relayed to her how V-G- said nasty words to the petitioner. [REDACTED] did not provide probative details about any specific incidents of abuse or describe witnessing any abusive behavior by V-G- towards the petitioner.

In response to the RFE, the petitioner submitted a supplemental affidavit in which she stated that after marrying, V-G- filed an immigrant petition on her behalf which required that she depart the United States and later re-enter with a proper visa. She recalled that V-G- became increasingly distant while they were apart and though she continued calling him on the telephone, he seemed indifferent. The petitioner stated that when she returned to the United States in January of 2013, she went to the home they previously shared, ran toward V-G- and hugged him, but he did not hug her back. She repeated her earlier statements that V-G- was distant, insulting, and lied about not having an affair. She stated that she moved in with a friend, became depressed and could not sleep at night, but that she later found a job through her friend’s encouragement. The petitioner stated that when she later learned of V-G-’s affair and child with another woman, she confronted him and he told her it was her fault he was with someone else. The petitioner recalled that when she continued to ask questions V-G- became angry and insulting. She stated that she continued to call V-G- on the telephone and beg him to take her back but he expressed no interest in doing so. The petitioner did not add any substantive information that indicated that she was battered, threatened with violence, psychological or sexual abuse, or subjected to other conduct constituting extreme cruelty as defined in the regulation.

On appeal, the petitioner briefly asserts that the director’s decision is “absurd” as V-G- “inflicted cruelty on her” by engaging in an extramarital relationship and fathering a child with the other woman while the petitioner remained loyal to him and wanted him to take her back. She did not, however, provide any probative details describing V-G-’s behavior toward her that constitutes the requisite battery or extreme cruelty and the petitioner has not submitted any additional evidence on appeal.



Accordingly, the preponderance of the relevant evidence does not demonstrate that V-G- battered the petitioner or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in 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*

On appeal, the petitioner has failed to demonstrate that her husband subjected her 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.

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. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.