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U.S. Citizenship  
and Immigration  
Services

Date: **JAN 02 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 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 Acting Director, Vermont Service Center (“acting 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 his U.S. citizen spouse.

The acting director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his wife during their marriage. On appeal, the petitioner contends he submitted sufficient evidence to establish battery or extreme cruelty.<sup>1</sup>

*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 an abused spouse 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

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<sup>1</sup> Although counsel for the petitioner stated in her cover letter, dated October 21, 2013, that additional evidence would be submitted within thirty days, as of the date of this decision, we have not received any new evidence or a brief with respect to the appeal.

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 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.

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(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 South Africa who entered the United States on July 28, 2010, as the K1 fiancé of E-A-<sup>2</sup> a U.S. citizen, who he married on October [REDACTED], Maryland. The petitioner filed the instant Form I-360 self-petition on March 1, 2012. The acting director subsequently issued a Request for Evidence (RFE) to which the petitioner timely responded with additional evidence. The acting director found the evidence insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility and the appeal will be dismissed for the following reason.

#### *Battery or Extreme Cruelty*

As evidence of battery or extreme cruelty, the petitioner initially submitted statements from [REDACTED] and a photograph purportedly showing an injury to the petitioner's mouth

<sup>2</sup> Name withheld to protect the individual's identity.

caused by E-A-. In response to the RFE, additional letters were submitted, including a statement from the petitioner asserting that E-A- gave him “attitude” about his immigration papers, that they missed their immigration interview, and that she would not give him a copy of the mailbox key. The petitioner stated that E-A-’s family was not supportive of their marriage, that he visited a friend in New Orleans while her family visited, and that she asked him to return early because she missed him. He briefly recounted that they once got into “an argument and she hit [him] with a stick,” and that she filed a petition in court against him.

The petitioner failed to describe in probative detail any instance of battery or other behavior that would constitute extreme cruelty as that term is defined under the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In addition, the petitioner’s statement is inconsistent with the letters in the record from his friends and family. For instance, letters from Mr. [REDACTED] claimed that E-A- ordered the petitioner to stay home because she did not want him to work, slapped him each time he was out late, and once hit him on the mouth using a wooden spoon. According to Mr. [REDACTED] E-A- sent the petitioner away for two weeks, only to beg him to return, and aborted a pregnancy without telling him. The letter from Ms. [REDACTED] contains similar claims. However, the petitioner made no such assertions. The petitioner himself stated only that he stayed home and cared for E-A-’s son until he got employment authorization and then got a job, and he made no claim that E-A- ever slapped him, hit him with a wooden spoon, or had an abortion. Similarly, letters from [REDACTED] alleged that E-A- verbally abused and degraded the petitioner; however, the petitioner did not describe any incidents of being yelled at, insulted, humiliated, or otherwise verbally or emotionally abused. Considering all of the evidence, the petitioner has failed to establish by a preponderance of the relevant evidence that E-A- subjected him to battery or any other behavior that 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). Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

The petitioner has failed to establish by a preponderance of the relevant evidence that his wife subjected him to battery or extreme cruelty during their marriage. He 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.