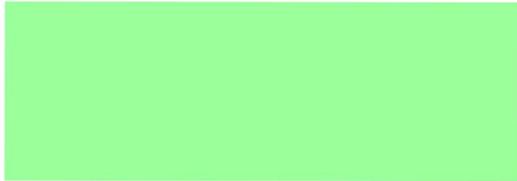




U.S. Citizenship
and Immigration
Services

(b)(6)



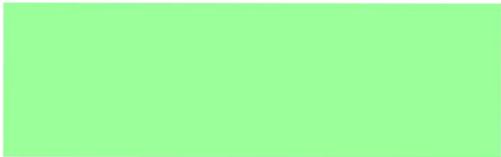
Date: **MAR 10 2015** Office: VERMONT SERVICE CENTER

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 sustained and the petition will be approved.

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 her U.S. citizen spouse battered her or subjected her to extreme cruelty.

On appeal, the petitioner submits a brief and additional evidence.

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, 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 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 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.

Relevant Facts and Procedural History

The petitioner, a citizen of Peru, entered the United States on May [REDACTED] as a B-2 nonimmigrant visitor. The petitioner married J-O-¹, a U.S. citizen, on September [REDACTED] New Jersey, over a year after the birth of the couple's son on [REDACTED] and the petitioner filed the instant Form I-360 self-petition on November 14, 2011. The director issued a Request for Evidence (RFE) of battery or extreme cruelty, among other issues. The petitioner responded with additional evidence, which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. We agree with the director that the evidence presented below did not demonstrate the petitioner's eligibility for the benefit sought. However, on appeal, the petitioner presents additional evidence that establishes that her spouse subjected her to extreme cruelty. The appeal will, therefore, be sustained.

Battery or Extreme Cruelty

With her initial Form I-360 submission, the petitioner provided a brief letter from clinical psychotherapist [REDACTED] dated September 1, 2011. In the letter, Ms. [REDACTED] stated that the

¹ Name withheld to protect the individual's identity.

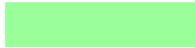
petitioner was attending individual therapy sessions for major depression, and issues related to the petitioner's custody of her son; however, the letter did not provide further information regarding the petitioner's relationship with J-O-. In response to the RFE, the petitioner submitted an affidavit from her friend, [REDACTED] in which Ms. [REDACTED] attested that the petitioner and J-O- began having problems in 2008, but did not further discuss the couple's marital problems or otherwise describe any abusive behavior by J-O- towards the petitioner. The petitioner did not submit a personal affidavit and the director correctly determined that the relevant evidence failed to establish that J-O- battered the petitioner or subjected her to extreme cruelty as defined by the regulations.

On appeal, the petitioner submits a personal affidavit dated March 28, 2014, in which she credibly describes J-O-'s abusive behavior. The petitioner recounts how beginning early in the couple's relationship, J-O- would not allow the petitioner to leave their home without him and that the two were never apart. She states that when J-O- drank, he became aggressive and she feared for their son's safety. The petitioner recounts that when J-O- was drunk, he became aggressive, screamed at her, and called her demeaning names. He also frequently threatened to have her deported. The petitioner describes one incident at the end of 2009 when J-O- yelled at her and called her demeaning names in front of his family who did nothing to protect her, causing her to feel vulnerable about her situation. The petitioner states that fearing that J-O- would hurt her or her son due to his post-traumatic stress from his military deployments, she left him in 2010. She provides probative details about J-O-'s subsequent threats to take their child away from her and recounts that she lost physical custody of her son on two separate occasions due to J-O-'s abusive behavior towards her. The first time occurred when J-O- told the family court judge presiding over their child custody hearing that the petitioner was being deported and the judge awarded him temporary custody which took approximately one month to resolve. The second time occurred when J-O- made false claims of the petitioner's drug use and accused her of child endangerment to the New Jersey Division of Youth and Family Services (DYFS). The petitioner states that DYFS took her son away for two weeks until an investigation demonstrated that J-O-'s claims were not true. The petitioner also submits an affidavit from her cousin, [REDACTED] in which Ms. [REDACTED] recounts hearing numerous voicemails that J-O- left for the petitioner containing threats to have her deported and to take custody of their son. She further states that she took the petitioner to the police to seek intervention when J-O-'s family refused to bring the petitioner's son back from Peru after two weeks as planned, and instead kept him in Peru without any contact with the petitioner for three months. Accordingly, the affidavits from the petitioner and her cousin submitted on appeal demonstrates that J-O- engaged in a pattern of abusive behavior constituting extreme cruelty term as defined 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

The director correctly determined that the petitioner met the requirements to establish her eligibility under section 204(a)(1)(A)(iii) of the Act, except to show that she had been battered or subjected to extreme cruelty by her U.S. citizen spouse. On appeal, the petitioner has submitted sufficient relevant evidence to overcome the director's sole ground for denial. In these proceedings, the petitioner bears the burden of proof to establish eligibility. 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 been met. Accordingly, the appeal will be sustained.

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NON-PRECEDENT DECISION

ORDER: The appeal is sustained and the petition is approved.