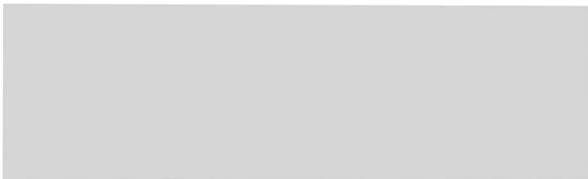


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



Date: **MAR 25 2015** Office: VERMONT SERVICE CENTER

File:



IN RE: 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

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, the petitioner outlines the basis for the appeal and indicates that she would submit a brief and/or additional evidence in support of the appeal within 30 days. No brief or additional evidence has been received. The record is complete.

#### *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 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 are further explained 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 explained 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 the Democratic Republic of the Congo (DRC) who claims that she entered the United States without inspection, admission or parole on or about August 11, 2001. The petitioner was placed into removal proceedings on December 3, 2001 and was ordered removed from the United States on November 22, 2002.<sup>1</sup> The petitioner married M-B-<sup>2</sup>, a United States citizen, on [REDACTED], in [REDACTED] Texas. The petitioner filed the instant Form I-360 self-petition on January 23, 2012. The director subsequently issued a Request for Evidence (RFE) of, in part, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record the petitioner has overcome the director's ground for denial. The appeal will be sustained for the following reasons.

<sup>1</sup> The Board of Immigration Appeals summarily affirmed the order of removal on March 11, 2004, and dismissed a motion to reopen.

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

*Battery or Extreme Cruelty*

The director incorrectly determined that the petitioner's testimony was not credible in the instant proceeding based on an adverse credibility determination by the Immigration Court in a different proceeding. The petitioner's statements in this case are consistent, detailed and supported by letters from her friends, psychotherapist and church pastor. The director erred in finding that this evidence did not reliably establish that the petitioner's husband subjected her to battery or extreme cruelty.

In her first personal statement the petitioner indicated that M-B- was domineering and controlling, and insulted and beat her often. She stated that after their son was born, M-B- neglected her, cheated on her, and forced himself on her. In her subsequent statement, the petitioner provided substantive information about specific incidents in support of her claim that she was battered by M-B-. She credibly described an incident in the summer of 2004 when M-B- became angry and broke her cellular telephone by throwing it on the floor and called her names. She also described another incident when M-B- came home smelling of beer and attempted to rape her. She recounted that he slapped her face several times, called her demeaning names, and left when she crawled under their bed to get away from him. The petitioner also stated that on one occasion, he became very angry with her for trying to help him find a job and when they had an argument about money, he insulted her, squeezed her nose, pushed her and threw water on her. She stated that soon after their son was born he called her an idiot, did not help her when she was recovering from a caesarian section, and once threw a chair at her. She described that it was difficult for her to live with a man like M-B- who refused to change from bad to good, even considering all the help they had from their church and community.

The letters submitted below corroborate the petitioner's claim of abuse. [REDACTED] who worked with the petitioner and carpooled to work with her, stated that she went to visit the petitioner after work on a day that the petitioner had called in sick, and that the petitioner's face was swollen and she was crying. [REDACTED] stated that she knew without asking that the petitioner had been beaten, and that the petitioner was afraid to call the police because M-B- would report her to immigration. [REDACTED] statement is based on her personal observations and frequent interactions with the petitioner during her marriage to M-B-. [REDACTED] the pastor of the church where the petitioner and M-B- attended services, indicated that he lived in the same building as the petitioner and M-B-, and several times the petitioner sought refuge at his home. He indicated that when the petitioner sought counseling for sexual abuse, he referred her to his wife to be counseled. The petitioner's therapist, [REDACTED] M.A., L.P.C., indicated that from December 12, 2011, until April 21, 2014, the petitioner attended 26 therapy sessions and discussed specific physical, emotional, sexual, verbal and financial abuse she suffered in her marriage with M-B-.<sup>3</sup> This evidence provides sufficient probative detail to establish that M-B- subjected the petitioner to battery or extreme cruelty as those terms are defined in the regulations.

Upon a full review of all the relevant and credible evidence submitted below, the petitioner has overcome the basis of the director's denial. The petitioner's statements describe in probative detail that the petitioner's husband subjected her to physical harm, threats and psychological cruelty over the course of their five-year marriage. The preponderance of the evidence demonstrates that the

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<sup>3</sup> Notes from his sessions with the petitioner were included.



petitioner's husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has been met. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.