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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 1 1 2015

FILE #:
PETITION RECEIPT #:

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, (the director) denied the immigrant visa petition. 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 director denied the petition for failure to establish that the petitioner was battered or subjected to extreme cruelty by her husband. On appeal, the petitioner submits a statement.

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 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.
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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, a citizen of Uganda, entered the United States on August 30, 2006, as a B-1 nonimmigrant visitor. She married D-R-[1], a U.S. citizen, on 2007, in Massachusetts, and filed the instant Form I-360 self-petition on December 17, 2013. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty. The petitioner responded with further 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*. Upon a full review of the record, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The preponderance of the relevant evidence does not establish that D-R- battered the petitioner or subjected her to extreme cruelty. In her initial personal affidavit, the petitioner recounted that two months after the couple began living together in 2007, D-R- began to spend more time away from the home, exhibited mood swings, and became upset when the petitioner attempted to discuss his behavioral changes. The petitioner discovered that D-R- was an alcoholic and suffered from schizoaffective disorder, along with numerous other ailments. The petitioner recounted that D-R- was frequently hospitalized for his various conditions, and that she often visited him in medical facilities. The petitioner indicated that when D-R- came home drunk or high, she would not allow him to enter the home. The petitioner stated that although D-R- never physically harmed her, his drinking and drug use

[1] Name withheld to protect the individual's identity.

strained their relationship, and she feels emotionally abused. The petitioner did not cite to specific examples or incidents of abuse or provide any probative details about D-R-'s treatment of her. Medical records for D-R-, submitted with the self-petition, confirm that D-R- suffered from multiple health problems during the couple's marriage, including alcohol abuse and mood disorder.

In response to the RFE, the petitioner provided an additional personal affidavit, in which she described D-R-'s drinking and drug use. She stated that D-R- would go on drinking binges for weeks at a time, leaving her feeling lonely and depressed. The petitioner discussed incidents when D-R- came home late at night exhibiting erratic behavior. The petitioner stated that D-R- often reminded her that she needed him to help her, which the petitioner understood as a reference to her immigration status. He also insulted her Ugandan food and culture. The petitioner recounted that she visited him in the hospital on numerous occasions, and that during these visits he would blame her for his problems. The petitioner submitted copies of visitor badges from her hospital visits to D-R. The petitioner also indicated that the couple's joint bank account was frozen due to D-R-'s child support arrears, and provided documentation showing that the Massachusetts Child Support Enforcement Division imposed a levy on the couple's account. The petitioner stated that she often felt paranoid when she returned from work because she never knew if D-R- would be home when she arrived. She also stated that she stopped going to places where she and D-R- had gone as a couple to avoid questions about D-R- and their relationship. The petitioner indicated that she became active in her church as a method of dealing with the problems in her marriage. Also in response to the RFE, the petitioner submitted an affidavit from the couple's roommate, who confirmed that D-R- insulted the petitioner's African food, and came home drunk and aggressive on occasion. She stated that the petitioner worked long hours to avoid coming home to her alcoholic husband.

On appeal, the petitioner asserts that the director failed to properly weigh her personal statements, and that D-R-'s behavior amounts to extreme cruelty. Upon *de novo* review of the record, D-R-'s behavior, as described in the relevant evidence submitted below, and as summarized by the petitioner on appeal, does not reflect a pattern of violent behavior consistent with the definition of extreme cruelty at the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner must demonstrate that her spouse battered or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty. The petitioner's credible statements indicated that D-R-'s alcohol addiction and drug use severely impacted the couple's relationship. The petitioner and her roommate attested to D-R-'s drinking and erratic behavior. Neither the petitioner's statements nor the statements of her friend demonstrate that the petitioner's husband ever battered her, or that his behavior involved actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the preponderance of the relevant evidence does not establish that D-R-'s behavior involved battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that her husband battered her or subjected her to extreme cruelty. 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 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 not been met. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.