

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

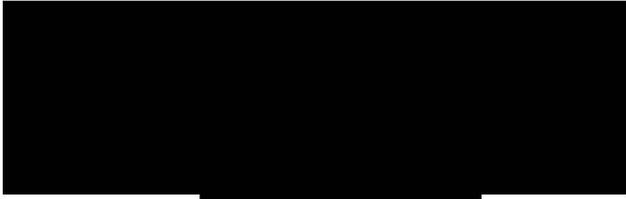
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

B9



FILE: [REDACTED]  
EAC 06 183 50745

Office: VERMONT SERVICE CENTER

Date: JAN 22 2009

IN RE: [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)

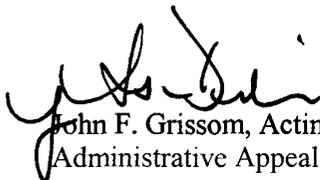
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The service center 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 under section 204(a)(1)(A)(iii) of 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 on the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery and/or extreme cruelty.

Counsel submitted a timely appeal on December 18, 2006.

Section 204(a)(1)(A)(iii) 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 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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*Evidence for a spousal self-petition –*

- (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.

The record of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Colombia who entered the United States with a B-1/B-2 visa on July 18, 2000. He married N-O,<sup>1</sup> a United States citizen, on March 21, 2002 in Riverhead, New York. N-O- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on September 16, 2002. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. Both applications were denied on May 13, 2006 on the basis of the petitioner's failure to appear for a permanent residency interview.

The petitioner filed the instant Form I-360 on May 26, 2006. On July 3, 2006, the director issued a request for additional evidence, and requested additional evidence to clarify whether the petitioner had

---

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

been subjected to battery and/or extreme cruelty by N-O-; and whether the petitioner is a person of good moral character. The petitioner responded on August 28, 2006, and submitted additional evidence.

The director issued a notice of intent to deny (NOID) the petition on October 17, 2006. In his NOID, the director notified the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish that he was subjected to battery and/or extreme cruelty by his wife. The director denied the petition on November 22, 2006. Although the director denied the petition prior to the end of the 60-day period in which to respond to the NOID, the AAO notes that the director did consider the documents submitted by the petitioner in support of his motion to reopen his Form I-485, which was filed during this time period. Further, the AAO notes that the petitioner was again afforded the opportunity to supplement the record on appeal. Accordingly, the AAO finds the director's issuance of the denial prior to the end of the 60-day period to be a harmless error, and will adjudicate the appeal on its merits.

### **Battery and/or Extreme Cruelty**

The sole issue on appeal is whether the petitioner has established that he was subjected to battery and/or extreme cruelty by N-O-. In finding the evidence of record insufficient to establish this criterion, the director stated that while marital tensions and incompatible personalities place strain on a marriage, they do not in and of themselves rise to the level of extreme cruelty; that the marital difficulties experienced by the petitioner do not appear to rise to the level of extreme cruelty; and that, difficult though it may have been, N-O-'s drug addiction and abandonment do not constitute extreme cruelty or abuse.

On appeal, counsel contends that the director erred in denying the petition. Counsel contends that N-O- developed a drug addiction in 2005 and that her behavior became erratic, unstable, unpredictable, and that she experienced mood changes; that N-O- stole money from the petitioner in order to support her addiction, forcing him to hide money and valuables in the house; that N-O- had frequent outbursts of yelling and cursing; that N-O- was absent from the home for days or weeks at a time; that the petitioner sought help from N-O-'s mother to help with the home and children; that the petitioner hid from friends and relatives; that the petitioner had to stop receiving guests to the house, as N-O- would often yell at the petitioner for no reason; that the children stopped inviting friends to the house, as N-O- would yell at the petitioner in front of them, and once broke a doll in front of a guest of the children; that the petitioner's work was affected as he could not concentrate; that the petitioner had to seek psychological help; and that the actions of N-O- were intentional and premeditated with a total disregard for the emotional torture she was causing.

Upon review, the AAO agrees with the director's conclusion that the record does not establish that the petitioner was subjected to battery and/or extreme cruelty by N-O-.

In his January 4, 2006 affidavit, submitted in response to an interview notice regarding his application for permanent residency, the petitioner states that N-O- had been having emotional and drug problems, and is now in recovery.

In his May 6, 2006 affidavit, submitted at the time the Form I-360 was filed, the petitioner states, with regard to battery and/or extreme cruelty, that he and N-O- began having problems in early 2005, as a result of N-O-'s drug addiction. He states that N-O- became erratic, unstable, and unpredictable, and that she had frequent mood changes. He says that N-O- began stealing money and household possessions in order to support her addiction; that N-O- was initially absent from the marital home for days at a time and, later, was absent for weeks at a time. He states that he and N-O-'s mother took N-O- to the hospital several times, but that N-O- was determined to live on the streets and take drugs. He says that he was forced to hide money and valuable objects from N-O-, as she tried to use them to buy drugs. He also stated that, at the time he was preparing the affidavit, he did not know where N-O- was.

In his May 24, 2006 affidavit, submitted in support of his motion to reopen or reconsider the director's denial of his Form I-485, the petitioner reiterates his earlier assertions that N-O- has drug and emotional problems, and states that he is planning to file for divorce in order to remove himself from an unbearable situation.

In his August 10, 2006 affidavit, submitted in response to the director's request for additional evidence, the petitioner states that he met N-O- in 2001, dated for several months, and then married. He says that after two months of happiness, problems began to manifest, as N-O- was lying to him, disappearing for brief periods of time, asking for money and using it to buy drugs, and stealing money. The petitioner states that he sought assistance from N-O-'s mother, but that she was unable to help. With regards to the abuse, the petitioner states that N-O- insulted and embarrassed the petitioner in front of his daughters; rarely cooked or cleaned the house; left for weeks at a time with no explanation; spent all the money in their joint bank account; and responded to the petitioner's threats of calling the police with threats to his immigrant petition. N-O- finally left permanently. The petitioner states that working, taking care of his girls, taking care of the house, and looking for N-O- took a toll on his emotional and physical health. He also states that he consulted with a psychologist who helped him to cope with his situation.

The AAO notes discrepancies between the petitioner's affidavits regarding when the troubles between the couple began. In his May 6, 2006 affidavit, the petitioner states that he and N-O- began having problems in early 2005. However, in his August 10, 2006 affidavit, the petitioner states that he and N-O- had only two months of happiness before the problems began (as noted previously, the couple was married in 2002). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the

remaining evidence offered in support of the visa petition. *Id.* The inconsistencies in the petitioner's testimony undermine the credibility of that testimony.

The record also contains several affidavits from friends and family members. In her January 4, 2006 affidavit, [REDACTED] N-O-'s mother, confirms that N-O- was addicted to drugs; that she tried to make N-O- understand the importance of the stability of the marriage; and that she would leave the marital residence for days at a time, and that the petitioner would search for N-O-.

In his January 4, 2006 affidavit [REDACTED] states that N-O- had emotional problems; that N-O- was addicted to drugs; that N-O- stole money from the petitioner; that N-O- began leaving the residence for days at a time; that the petitioner tried to get medical help for N-O-; and that the petitioner was always very supportive toward N-O- and did his best under the circumstances.

However, the letters from [REDACTED] and [REDACTED] do not describe the battery and/or extreme cruelty that N-O- allegedly inflicted upon the petitioner.

In their August 10, 2006 affidavits, [REDACTED] and [REDACTED] attest to the petitioner's good moral character. [REDACTED] the petitioner's employer, affirms the petitioner's good moral character and strong work ethic in her letters of June 5, 2006 and August 10, 2006. In a July 28, 2006 letter, the Su Casa, Short Stay Methadone Maintenance Program Lower Eastside Service Center states that N-O- entered treatment on February 3, 2006, and that she completed the short stay methadone program on July 28, 2006. None of these letters establish that the petitioner was the victim of battery and/or extreme cruelty at the hands of N-O-. Nor do the pictures contained in the record of proceeding speak to N-O-'s treatment of the petitioner.

Nor does the "Psychoemotional & Marital Dynamics Assessment" from [REDACTED] LMHC, establish that the petitioner's wife subjected him to extreme cruelty. In his evaluation, which was based upon a single interview with the petitioner, [REDACTED] conveys the petitioner's description of his marriage to N-O-, and states that the petitioner suffers from adjustment disorder with anxiety. [REDACTED] does not indicate that he treated, or recommended any treatment for, the petitioner. While the AAO does not question the expertise of [REDACTED], his testimony fails to establish that the behavior of the N-O- rose to the level of battery and/or extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). [REDACTED] opinions are based upon one two-hour interview with the petitioner. His conclusions do not reflect the insight and elaboration commensurate with an established doctor-patient relationship, thereby rendering his findings speculative and diminishing his evaluation's value. Moreover, the factual information relayed by [REDACTED] regarding the couple's marriage introduces another inconsistency into the record. As noted previously, the petitioner's testimony regarding the time period when his wife's drug abuse, and thus her battery and/or extreme cruelty toward the petitioner, is inconsistent. The petitioner has stated, alternatively, that his wife's drug abuse began two months after they were married in 2002, and also that it began in 2005. The petitioner told [REDACTED] that it began shortly after the marriage. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the

petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Section 204(a)(1)(J) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition 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 Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

In a case such as this, where there is little or no physical evidence of battery and/or extreme cruelty, the petitioner's testimony is crucial. As has been noted several times, the petitioner's accounts of when N-O- began abusing drugs, and thus began abusing the petitioner, are inconsistent with each other, thus undermining his credibility, including his testimony to [REDACTED]. Further, while N-O-'s actions as described in the record may have been unkind and inconsiderate, they do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner and the letters submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that N-O-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. Rather, the course of events described in the record of proceeding appears to be the unfortunate consequences of a marriage destroyed by substance addiction and abuse. The petitioner has failed to establish 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 that his wife subjected him to battery or extreme cruelty. He is, therefore, ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.