



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 17018589

Date: April 26, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), and the matter is before us on appeal. The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 204(a)(1)(A)(iii)(I)(bb) of the Act provides that an individual who is the spouse of a U.S. citizen may self-petition for immigrant classification if they demonstrate, among other requirements, that they were “battered or subjected to extreme cruelty” perpetrated by the spouse during the marriage. This term 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.

8 C.F.R. § 204.2(c)(1)(iv).

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Although U.S. Citizenship and Immigration Services (USCIS) must consider “any credible evidence” relevant to a VAWA petition, we determine, in our sole discretion, the credibility of and weight given to that evidence. See section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

## II. ANALYSIS

The Petitioner, a native and citizen of Nigeria, married G-O-,<sup>1</sup> a U.S. citizen, in [ ] 2013. They divorced in [ ] 2018. In May 2018, the Petitioner filed the instant VAWA petition based on this marriage.<sup>2</sup>

The Director denied the VAWA petition, determining that the Petitioner had not established that she was subjected to battery or extreme cruelty by G-O- during the marriage. The Director explained that the record contained insufficient evidence that G-O-'s behavior and the effects of the alleged incidents satisfied the regulatory standard for this requirement. The Petitioner has not overcome this determination on appeal.

### A. Relevant Facts and Procedural History

In her initial written statement before the Director, the Petitioner explained that in April 2014, several months after they wed, she moved to [ ] for work while G-O- remained in [ ] so that he could finish school. The Petitioner stated that during that same year, G-O- started engaging in "irresponsible behaviors." She explained that he purchased a car and asked her to register it, but that she never saw the car because he owed money on storage fees and the car was not released. In addition, she stated that due to his "lack of seriousness," she was unable to adequately prepare her immigration case as he would not assist her in gathering the documents they needed. She stated that in December 2014, she traveled to [ ] for the holidays and although it was a difficult period in their marriage, he promised to take school seriously and work on improving his financial behavior. She explained that they decided to refile her immigration case and talked about G-O- finding a job.

The Petitioner stated that in 2015, she learned that G-O- owed money to the U.S. Department of Education when the tax return money she had expected to receive was confiscated. During this time, the Petitioner was upset with G-O-'s inability to focus on his studies and find at least part-time work. The Petitioner stated that she felt that she was not getting any "reasonable response as to why [G-O- was] letting [their] dreams die."

In the middle of 2015, G-O- stopped responding to the Petitioner's calls and text messages. When she was finally able to reach him, G-O- said that he was going through a lot and needed time to himself. The Petitioner stated that in August 2015, during a visit to [ ] G-O- became defensive and argumentative. She explained that G-O- was "extremely verbally abusive," and that he insulted her and called her names, including that he hoped she "could be sent back African [sic] to live in the jungle." The Petitioner stated that he later apologized and she forgave him, because she loved him and hoped he would change.

The Petitioner explained that in 2016, G-O- suddenly cut off communication with her. In October 2016, she learned that G-O- had been arrested and was in jail. The Petitioner stated that G-O- was released after spending more than one month in jail and that after his release, he refused to provide an

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<sup>1</sup> We use initials to protect the privacy of individuals.

<sup>2</sup> The record reflects that the Petitioner filed a second VAWA petition in June 2019 and that the petition was denied in December 2020. The second VAWA petition is not currently before us on appeal.

explanation. The Petitioner, through her own research, learned that G-O- had been charged with tampering with government records, failure or refusal to pay tolls, and illegal use of buyer's tag. The Petitioner stated that when they started to communicate again, G-O- continued to insult her about her weight and looks. The Petitioner explained that G-O- was arrested again during the months that followed his release due to new evidence related to his prior charges, and that upon the advice of his lawyer, G-O- would not disclose any information to her. The Petitioner explained that after "months of suffering from the lies, insults, [and] offensive behavior," upon the advice of friends and family, she decided to leave the relationship.

The Petitioner provided an additional written statement in response to the Director's request for evidence (RFE). She stated that she was still recovering from G-O-'s "mental and emotional abuse," which led to "self-blaming, sleepless nights, insecurities, [and] many weeks and month of depression." She explained that it was difficult to get over things G-O- had said to her, like "bitch, fat, [and] ugly," and that she should be grateful that he married her. She expressed feeling emotionally abandoned by G-O-, unworthy of his love, and shame for being a failure to her family due to her divorce and for having been married to a man who was in and out of jail. The Petitioner stated that since the breakdown of her marriage, she had lost her job and apartment, experienced financial hardship, and relied on help from others to get by.

As supporting evidence, the Petitioner provided affidavits from her friends, N-A- and E-I-. N-A- stated that the Petitioner confided in her about her unhappiness and disclosed how G-O- had vanished. N-A- stated that G-O- "had also been verbally and psychologically abusive in many ways" and that what "broke" the Petitioner was G-O-'s refusal to work or attend school and his imprisonment. E-I- reiterated the Petitioner's frustration about G-O- not taking school, work, or the marriage seriously and hiding his past debts from her. She stated that the Petitioner became "devastated and worried" when G-O- went to jail and that the Petitioner's marriage to G-O- was a "source of depression, anxiety and stress."

The Petitioner additionally submitted a 2018 psychological evaluation reiterating the Petitioner's account of her relationship with G-O- and explaining that the Petitioner meets the criteria for: Major Depressive Disorder, Recurrent, Severe; Generalized Anxiety Disorder; Post-Traumatic Stress Disorder (PTSD); Insomnia Disorder; and "Other circumstances related to spouse or partner abuse, Psychological, Encounter for mental health services for victim of spouse or partner psychological abuse." The evaluation further states that the Petitioner reported having gained approximately 30 pounds as her appetite increased with her mental health symptoms.

On appeal, the Petitioner resubmits the psychological evaluation, as well as medical records indicating that she has fibroids in her uterus and polycystic ovarian syndrome, for which she has been prescribed medication.

#### **B. The Petitioner Has Not Established That Her Spouse Subjected Her to Battery or Extreme Cruelty**

On appeal, the Petitioner argues that she established that G-O- subjected her to battery or extreme cruelty because she provided ample evidence of her psychological pain and how G-O-'s mistreatment affected her. The Petitioner, through counsel, avers that her polycystic ovary syndrome is due to her eating disorder and excessive weight gain, which is also related to G-O-'s conduct.

We acknowledge evidence in the record that the Petitioner suffers from depression, anxiety, PTSD, and polycystic ovary syndrome, among other conditions, and that the psychological evaluation contains a diagnosis that refers to spousal psychological abuse. The record further reflects that the Petitioner has faced difficult personal circumstances related to the breakdown of her marriage. Upon *de novo* review, however, the Director correctly determined that the Petitioner had not established that G-O- subjected her to battery or extreme cruelty. G-O-'s financial and personal irresponsibility, lack of seriousness about work and school, inconsistent communication, and involvement with the criminal justice system, as described in the record, does not fit within any of the conduct described at 8 C.F.R. § 204.2(c)(1)(iv). Although the Petitioner's written statements and psychological evaluation refer to insulting language by G-O-, the record contains insufficient detail regarding the underlying incidents and use of this language to establish that G-O- inflicted or threatened violence against her, psychologically or sexually abused or exploited her, or engaged in any other abusive actions that were part of an overall pattern of violence, as required. The supporting statements of N-A- and E-I- also lack detail about any specific behaviors by G-O- that are encompassed within the regulatory definition of "subjected to battery or extreme cruelty." As such, even if G-O-'s actions contributed to the Petitioner's diagnoses, the Petitioner has not satisfied her burden to demonstrate that G-O- subjected her to battery or extreme cruelty during their marriage. *See Matter of Chawathe*, 25 I&N Dec. 375-76 (explaining that a petitioner must establish that they meet each eligibility requirement by a preponderance of the evidence and that in determining whether a petitioner has satisfied their burden, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence).

The Petitioner next claims that the Director erroneously subjected her to a heightened standard for "extreme cruelty" because the Black's Law Dictionary defines the term, in part, as "conduct that destroys or severely impairs the other spouse's mental health." This definition is inapplicable to the instant matter because the regulations provide the relevant standard. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954) (explaining that immigration regulations carry the force and effect of law).

The Petitioner additionally argues that the Director improperly exercised discretion in adjudicating this matter by not articulating how the positive factors were weighed against the negative factors. However, the decision to approve or deny a VAWA petition is not discretionary. Section 204(b) of the Act. *See also 3 USCIS Policy Manual D.5(C)(1)*, <https://www.uscis.gov/policy-manual/> (explaining in policy guidance that if USCIS determines that a VAWA self-petitioner has satisfied all eligibility requirements for a VAWA petition, USCIS approves the petition).

For these reasons, the Petitioner has not established that she was subjected to battery or extreme cruelty by her U.S. citizen spouse during the marriage, as required. Consequently, the Petitioner has not demonstrated her eligibility for immigrant classification under VAWA.

**ORDER:** The appeal is dismissed.