

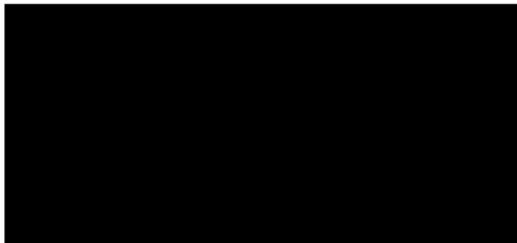
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



B9

DATE:

Office: VERMONT SERVICE CENTER FILE:

JUN 07 2011

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

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 determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse. The director also determined that section 204(g) of the Act barred the approval of the petition. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, and additional documentation.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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 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 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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared

residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Facts and Procedural History

The petitioner is a native and citizen of Georgia. He entered the United States on December 6, 1998 on an F-1 student visa. On March 20, 2000 he was placed in removal proceedings. On September 7, 2003, he married M-A-¹ the claimed abusive United States citizen. On or about October 9, 2003, M-A- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On July 21, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On January 11, 2011, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by M-A- and that the petitioner was subject to section 204(g) of the Act and had not demonstrated with clear and convincing evidence that his marriage was entered into in good faith and not for the purpose of procuring an immigration benefit. The petitioner timely submits a Form I-290B, and supplements the record with additional documentation.

Battery and Extreme Cruelty

In the petitioner's July 6, 2009 personal statement he declared that M-A- started complaining about her commute in 2005 and started staying at her sister's house. He noted that he also found out that M-A- had purchased two houses in her own name and when he confronted her with this information, she told him she had purchased the houses for her sister and brother. The petitioner indicated that M-A-'s behavior changed and "she cancelled all the joint bank accounts that [they] had as well as the credit cards that [they] had together." The petitioner stated that M-A- was registered at multiple addresses and when he talked to her about this, she became irritated and upset and left. The petitioner noted that with a lot of "discussion and interference of mutual friends, [the couple] got back together" and "[they] went to the interview regarding the Form I-130 on January 4, 2006." The petitioner declared that in 2007 the problems began again and the economic situation affected both of their businesses. He indicated that the couple often argued about money and M-A-started harassing him verbally about not making enough money. The petitioner noted that at Christmas in 2007, M-A- did not attend their Christmas party and he later found out she had dinner with her ex-boyfriend. When he confronted her with his

¹ Name withheld to protect the individual's identity.

knowledge, she yelled and insulted him and their neighbor knocked on the door and asked her to keep quiet and she left the house without explanation. The petitioner indicated that a couple of days later when he came home from work the apartment was in disarray and he called M-A- and she told him she had taken all of her belongings. The petitioner stated that he tried talking to M-A- on several occasions but she refused to listen.

The petitioner also included a June 17, 2009 statement from his neighbor, [REDACTED], who indicated that as the couple's neighbor he overheard their fights. [REDACTED] indicated that he last saw M-A- in approximately February 2008 when he heard yelling and glass crashing and he knocked on their door and asked M-A- to be quiet. In a June 15, 2009 statement from [REDACTED] the couple indicated that the petitioner and M-A- had confided to them about their financial difficulties and they witnessed the impact of the financial challenges on the petitioner's marriage. In a June 21, 2009 statement from [REDACTED], the couple indicated that in 2007 the petitioner and M-A- had financial problems and argued a lot and that at Christmas in 2007, M-A- did not show up for the petitioner's Christmas celebration.

In response to the director's RFE, the petitioner provided a second statement in which he again indicated that the couple argued over M-A-'s separate life and their financial problems and in which he described the effect the breakdown of the marriage had on him. The petitioner also provided a copy of the divorce M-A- obtained that had dissolved their marriage in December 2008. He further provided a February 15, 2010 letter signed by [REDACTED] indicating that the petitioner had participated in mental health treatment at her offices on March 7, 2007, April 18, 2007, July 12, 2007, October 4, 2007, July 10, 2008, and November 13, 2008 and that a psychiatric evaluation had been conducted on July 10, 2008. The petitioner did not provide a copy of the psychiatric evaluation. In a March 15, 2010 letter prepared by the petitioner's employer, the employer indicated that the petitioner's attitude began to change in 2005 and by 2007 his personal problems and marital strife had begun to impact his work.

Based on the information in the record, the director determined that the petitioner had not established that he had been battered or subjected to extreme cruelty perpetrated by his United States citizen spouse.

On appeal, the petitioner provides a third personal statement. He states that he found out from a friend that M-A- had divorced him without his knowledge and refers to a second statement provided by [REDACTED] on appeal as evidence that M-A- was cruel to him. In the August 4, 2010 statement provided by [REDACTED] [REDACTED] indicates that she visited the petitioner's 17-year-old daughter who lives in Georgia with the petitioner's friends in the summer of 2007. She noted that although M-A- petitioned for the daughter to come to the United States, the United States Consulate denied the daughter's visa. [REDACTED] notes that the petitioner's daughter told her that M-A- had called her and told her the petitioner was a bad person and that he would be kicked out of the United States soon. [REDACTED] indicates that the petitioner's daughter told her that she then told the United States Consulate that she did not want to go to the United States and that is why the visa was denied. [REDACTED] indicates that she tried to confirm this information but was unable to and had not told the petitioner this information because his daughter had asked her not to tell. The record includes a translated

statement indicating that the petitioner's daughter was examined by a psychiatric doctor who diagnosed her with depression and indicated that the child's parents should take care of her.

The petitioner also provides additional statements from his employer and from his neighbor, Itzak Solomon. The petitioner's employer adds to his previous statement that M-A- used to call him and tell him that the petitioner abused her and he should be fired and when he questioned her about her claim she yelled at him. [REDACTED] adds that the day he knocked on the petitioner's door because of the yelling, the petitioner walked outside with a towel to his forehead and his eyebrow had been cut and the petitioner told him that M-A- got angry at him and threw a cup at him. [REDACTED] notes that the petitioner had told him not to share this information because he did not want to talk about his problems with anyone. Mr. Solomon also adds that his tires and the petitioner's tires were flat and he asked the manager to see the camera recordings and M-A- was identified as the culprit and the manager said that he would talk to M-A- about it.

Upon review of the record, the petitioner has not described any particular incident in detail that constitutes battery. The petitioner only describes arguments, financial difficulties, M-A-'s separate life, and her involvement with an ex-boyfriend and abandonment of the marriage two times. The statement of [REDACTED] on appeal is not credible. [REDACTED] did not describe the incident of the petitioner's cut eyebrow in his initial statement and the addition of this information only on appeal constitutes an inconsistent statement and undermines his credibility. Mr. Solomon's excuse that the petitioner did not want to reveal his problems to anyone is not credible when the petitioner is applying for a benefit that necessarily requires the exposure of M-A-'s behavior. The record does not establish that the petitioner was subjected to battery perpetrated by M-A-.

The petitioner has also failed to establish that he was the victim of extreme cruelty perpetrated by M-A-. The petitioner does not describe specific incidents of extreme cruelty in his personal statements. His general description of M-A- complaining about her commute, buying houses without his knowledge, arguing over financial matters, and abandoning the marriage are not acts that constitute extreme cruelty under the statute and regulation. Similarly obtaining a divorce is not an act of extreme cruelty. The submission of [REDACTED]'s opinion on appeal that M-A- somehow coerced the petitioner's daughter to not come to the United States and thus constituted extreme cruelty to the petitioner is not supported with factual data. [REDACTED] notes that she was unable to confirm the information she provided and thus her opinion has no probative value. Moreover, she failed to provide any reference to M-A-'s actions in her initial statement. Her subsequent statement thus is inconsistent with her first statement and significantly undermines her credibility in this matter. Her explanation that the petitioner's daughter did not want her to reveal this information does not eliminate the necessity of supplying consistent, credible information in order to establish the petitioner's eligibility for this benefit.

Upon review of the statements of individuals submitted on the petitioner's behalf, the declarants note the stress the petitioner felt at the breakdown of his marriage and the financial impact of the negative economy on his marriage. The actions of M-A- are not described in detail and arguing over financial matters does not constitute extreme cruelty under the statute and regulation. [REDACTED] statement on appeal that M-A- let the air out of his and the petitioner's tires is not

supported in the record. Although [REDACTED] indicated that M-A- had been observed doing this on camera, he does not provide any evidence that the matter was pursued and he does not explain why he failed to mention this incident in his first affidavit. Upon review of the statements submitted on the petitioner's behalf, the statements are not detailed, the statements on appeal are not credible, and the statements do not reflect actual behavior by M-A- that constitutes extreme cruelty under the statute and regulation.

Upon review of the February 15, 2010 letter signed by [REDACTED] indicating that the petitioner had participated in mental health treatment at her offices on several occasions in 2007 and 2008, the letter does not depict the reasons for the mental treatment. As [REDACTED] does not offer an opinion on the cause of the petitioner's treatment and she does not connect any specific incident of abuse to the petitioner's mental health condition, the letter lacks any probative value in this matter.

The petitioner fails to provide any detailed probative testimony regarding controlling or manipulative behavior perpetrated by M-A-. The petitioner has not provided probative evidence that he was subjected to verbal or mental abuse or that M-A-'s conduct constituted extreme cruelty as defined in the statute and regulation. The petitioner's testimony fails to establish that M-A-'s actions were comparable to the types of 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. Nor has the petitioner established that M-A-'s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). As observed above, the petitioner's statements and the statements of others on his behalf lack detail and include little chronological timeline and inherent inconsistencies. The petitioner has not provided probative testimony or other evidence that he has been subjected to extreme cruelty perpetrated by his spouse.

When evaluating the record as a whole, the AAO finds the record lacks definitive credible information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The petitioner has not established that he was subjected to battery or extreme cruelty perpetrated by M-A-.

Good Faith Entry Into Marriage

The petitioner initially indicated that he met M-A- at a friend's house on January 1, 2003, that they exchanged phone numbers and started dating. He notes that he shared a lot of interests with M-A- and asked M-A- to marry him. He noted that they moved to a new apartment in May 2003, bought new furniture, started living together, and got married in September 2003. In the petitioner's second statement in response to the director's RFE, the petitioner noted that after his

first marriage ended in divorce² he did not believe he would ever get married again, but that when he met M-A- in January 2003 and spent hours talking with her, he believed he was falling in love. The petitioner noted that the couple spent countless evenings dining at friends' houses, entertaining friends, and talking about being a real family once his daughter moved to America. The petitioner does not provide further detail regarding the couple's courtship or interactions subsequent to the marriage except as they relate to the claims of abuse. The petitioner in his third statement on appeal indicates that he will not repeat his story about how the couple met and married but that he married M-A- with love.

The declarants who submitted statements on the petitioner's behalf do not provide probative detail of specific events they witnessed that would assist in establishing the petitioner's intent when entering into the marriage. The statements submitted on the petitioner's behalf discuss primarily the petitioner's claims of abuse.

The initial record included photocopies of the first page of Internal Revenue Service (IRS) tax returns for the years 2003 to 2008. The first page showed that the petitioner and M-A- filed the tax returns as "married filing separately." The petitioner indicated that they filed their tax returns as "married filing separately" because M-A- ran her own business. The initial record also included letters from the couple's employers indicating that they had identified one another as emergency contacts and utility statements for intermittent periods in 2003 through 2008 in both names. The record also included Wells Fargo Bank statements dated in March 2005 to November 2005, each showing minimal account activity and the first page of a lease agreement for premises in Encino, California. In response to the director's RFE, the petitioner provided a landlord's letter dated February 23, 2010 indicating the couple had lived at the premises since 2003, bank statements for intermittent periods between November 2003 to January 2007, and photocopies of credit cards. The record also includes photographs of the couple on one or more occasions.

Upon review, the petitioner does not provide probative testimony regarding his courtship with M-A- or his interactions with M-A-. He does not describe the couple's mutual interests in detail, he does not describe her family in detail, he does not detail the couple's daily routines, and he fails to provide any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). Simply stating that he married M-A- for love is insufficient to establish his good faith intent in entering into the marriage. The statements from his friends fail to provide probative details regarding their observations of the petitioner's interactions with M-A- or his alleged good faith intent when entering into the marriage.

² The record includes a copy of the petitioner's divorce showing the petitioner's first marriage was dissolved on August 21, 2003 in the Superior Court of California, City of Los Angeles, California.

The documentary evidence submitted also fails to demonstrate that the couple established a life together. The petitioner does not sufficiently address the director's concerns regarding his testimony that M-A- closed all their joint accounts and credit cards in 2005 which appears contradictory with the submission of statements addressed to both individuals dated subsequent to 2005 and even subsequent to 2007 when the relationship allegedly ended. The photocopies of the first page of tax returns which are uncertified are not probative evidence. The tax returns are incomplete, unsigned, and there is no evidence that the tax returns were filed. Similarly, the first page of a lease which does not include signatures is not probative evidence. Moreover, the landlord's February 23, 2010 letter indicating the couple had lived at the premises since 2003 without an end date noted presents an inconsistency with the petitioner's testimony that has not been explained. Intermittent utility bills and bank statements do not establish the petitioner's intent when entering into the marriage. As the director observed, a joint bank account or accounts without evidence of the underlying transactions does not establish that the couple commingled assets and had established a life together. Likewise, photographs of the couple on a few occasions do not assist in establishing the petitioner's intent when entering into the marriage. Upon review, the record in this matter does not include sufficient probative evidence, even when considering the information in the aggregate, to establish that the petitioner entered into marriage with M-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Upon review of the record we also find that section 204(g) of the Act bars approval of this petition. Section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this matter shows that the petitioner married his spouse after being placed in removal proceedings before an immigration judge. The record does not indicate that the petitioner resided outside of the United States for two years after his marriage, a requirement if the petitioner does not qualify for bona fide marriage exemption. The record in this matter does not include sufficient information to determine that the bona fide marriage exception to section 204(g) of the Act applies to this petitioner. Section 245(e) of the Act states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's

status adjusted under subsection (a).

- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

The record in this matter does not include probative testimony or documentation establishing the bona fides of the petitioner's marriage. We note that eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act, imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard"). As the petitioner has failed to establish that he entered into his marriage with his wife in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has also failed to demonstrate that he qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

Qualifying Relationship and Immigrant Classification

Beyond the director's decision, we find that the petition is also not approvable because the record fails to establish that the petitioner has a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen and is eligible for immediate relative classification based on a qualifying relationship with his former wife. An alien who is divorced from a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As previously noted, the petitioner's marriage in this matter was dissolved as of December 23, 2008 and he filed the instant petition on July 21, 2009. As the petitioner failed to establish that he was battered or subjected to extreme cruelty by his former spouse, he has also failed to make the causal connection between his divorce and any abuse. Accordingly, the petitioner is also not eligible for the benefit he seeks because he did not establish a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen. He is also ineligible for immediate relative classification based on a qualifying relationship with his former wife.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.