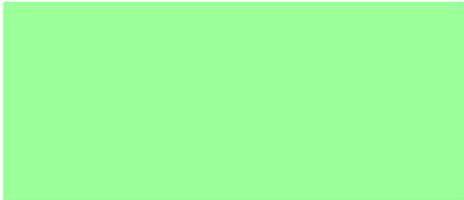


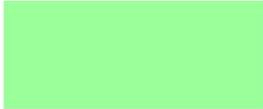


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **AUG 09 2013**

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

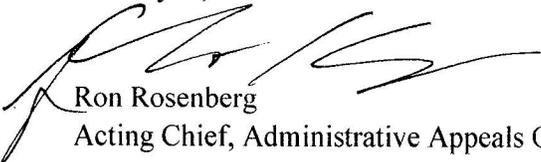
SELF-REPRESENTED

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center, (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by his lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his U.S. lawful permanent resident spouse in good faith and that he was battered or subjected to extreme cruelty by her during their marriage. On March 8, 2013 the AAO determined that the petitioner established that he married his wife in good faith but dismissed the appeal for failure to establish that she subjected him to the requisite abuse.

On motion, the petitioner submits additional evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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 . . . lawful permanent resident 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 under section 204(a)(1)(B)(ii) of the Act are 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.

\* \* \*

(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 Guyana who claims he entered the United States on October 21, 2005 as a visitor. The petitioner married S-G-<sup>1</sup>, a lawful permanent resident of the United States, on May 16, 2011 in Jersey City, New Jersey. The petitioner filed the instant Form I-360 on August 1, 2011. The director denied the petition for failure to establish the petitioner's good-faith entry into the marriage with S-G- and the requisite abuse. The petitioner timely appealed and the AAO dismissed the appeal on March 8, 2013 for failure to establish that he was battered or subjected to extreme cruelty by his wife. The petitioner submitted a timely motion to reopen and reconsider.

The petitioner does not cite to binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). The

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

petitioner's statement also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *See id.* (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

The petitioner's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner asserts that he was subjected to battery and extreme cruelty by S-G during their marriage. On motion, his assertion is supported by a personal letter, a letter from [REDACTED] photographs of himself with a bandaged hand, a police crash incident report, medical documents, and evidence of S-G's recent trip to Guyana. Accordingly, the motion to reopen is granted.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims and the new evidence submitted on motion do not overcome the director's ground for denial. The appeal will remain dismissed for the following reasons.

*Battery or Extreme Cruelty*

In its March 8, 2013 decision on appeal, the AAO discussed the deficiencies of the record with regards to the petitioner's claims of battery or extreme cruelty and this decision is incorporated here. On motion, the petitioner submits a fourth personal letter, a letter from his sister-in-law [REDACTED], photographs of himself with a bandaged hand, a police crash incident report, medical documents, and evidence of S-G's recent trip to Guyana. The police crash incident report shows that the petitioner's stepson was involved in a car accident with the petitioner's car but is not evidence that S-G- subjected him to battery or extreme cruelty. The medical documents show that the petitioner was diagnosed with muscle spasms but do not demonstrate that S-G-'s treatment of him caused his condition. The copies of S-G-'s airline boarding pass demonstrate that she recently traveled to Guyana but also fails to demonstrate that she subjected the petitioner to abuse. The photographs show the petitioner with a bandaged hand, but the photograph of the claimed injury is blurred and indecipherable.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include... other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In his letter, the petitioner reiterates that S-G- always took her sons' sides against him. He states that S-G- allowed one of her sons to drive the petitioner's car without his permission and that her son crashed the car. He states that this led to arguments because S-G- always blamed the petitioner for everything and never held her sons accountable for their actions. He further states that in November of 2012, S-G- slammed the door on his finger causing injury after he came home at 10:00 PM. He states that S-G- complained about the time he spent visiting his parents when they came to the United States and that in March of 2013, S-G- travelled to Guyana without telling him. The petitioner further states that S-G- took all of their tax refund money and ordered him to leave their apartment before she returns. The petitioner does not describe these incidents further nor does

he provide probative details regarding other specific incidents of the alleged abuse. In her letter, [REDACTED] states that she witnessed an incident when S-G- and the petitioner had a loud argument. She states that she saw the petitioner with scratches on his face and a torn shirt. She then states that S-G- approached the petitioner and spit on his face. This alleged incident is not mentioned in any of the petitioner's statements. Ms. [REDACTED] also states that on another occasion, she saw the petitioner with a busted lip but does not provide further probative information about this incident, which the petitioner himself also does not discuss.

On the instant motion, the evidence submitted do not add substantive information regarding the claimed abuse and further fails to demonstrate that S-G- battered the petitioner, or that her behavior involved 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). Additionally, the letters from the petitioner and Ms. [REDACTED] fail to provide details regarding specific incidents of abuse and the record on motion does not include further testimony or evidence establishing that the petitioner was subjected to behavior perpetrated by his wife that constitutes extreme cruelty as set out in the regulation.

*Conclusion*

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not established that he was subjected to battery or extreme cruelty by S-G- during their marriage. The appeal will remain dismissed and the petition will remain denied.

**ORDER:** The motion to reopen is granted. The March 8, 2013 decision of the Administrative Appeals Office is affirmed and the petition remains denied.