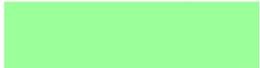
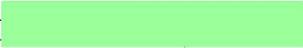




U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **JAN 22 2013** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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:

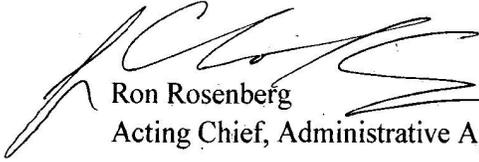


INSTRUCTIONS:

Enclosed 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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (the 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 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's ex-wife subjected him to battery or extreme cruelty during their marriage and that he is qualified for immigrant classification based on a qualifying relationship with his former spouse.

On appeal, counsel submits a brief.

#### *Relevant 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, 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision 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).

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:

*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.

*Facts and Procedural History*

The petitioner is a citizen of Senegal who entered the United States on April 7, 1993, as a nonimmigrant visitor. The petitioner married a U.S. citizen on November 11, 2008 in Rhode Island, and they were divorced on March 30, 2011.

On May 13, 2011, the petitioner filed the instant Form I-360. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's former wife's alleged battery or extreme cruelty and the requisite qualifying relationship. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief in which he asserts that the director erroneously determined that the petitioner failed to show he was the victim of battery or extreme cruelty, and that because the petitioner stated in divorce proceedings that he thought he was the victim of spousal abuse, it is

established that there is a causal connection between the divorce and the alleged abuse. No further evidence was submitted on appeal.

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. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

#### *Battery or Extreme Cruelty*

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty and the argument made on appeal fails to overcome this ground for denial. In his affidavit, the petitioner stated that his ex-wife once tried to close his laptop on his fingers and that she slammed a door which caused an injury to his elbow. The petitioner also reported that his ex-wife threatened to beat him. He described how his ex-wife asked him to stop sleeping in the same bed as her, and essentially that she tried to get him to move out of their apartment. The petitioner's brief reference to his ex-wife's threat does not indicate that any such threats were part of an overall pattern of violence or otherwise constituted psychological abuse. The petitioner's statements do not indicate that his former wife's behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also failed to describe in probative detail any of the claimed incidents of battery. The petitioner's brief affirmative response when asked in divorce proceedings if he believed he was the victim of spousal abuse is insufficient to meet his burden as he did not describe any particular incident of battery or extreme cruelty, and the divorce was granted on the ground of irreconcilable differences.

The petitioner claimed to have visited a doctor who prescribed medication for his sleeping difficulties and gave him a shot for the injury to his elbow. The letter from [REDACTED] however, specifically references treating the petitioner for insomnia and anxiety, but makes no mention of the purported elbow injury and treatment. The police report indicates that the petitioner's wife wanted a divorce and felt uncomfortable with the petitioner in their home, but does not describe any allegations of battery or extreme cruelty against the petitioner. The director correctly found the relevant evidence submitted below insufficient to support the petitioner's claims of abuse. On appeal, counsel's bare assertion that the petitioner "easily met" the battery or extreme cruelty requirement is insufficient to overturn the director's determination. The petitioner has not established that his ex-wife subjected him to either battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

*Conclusion*

On appeal, the petitioner has failed to establish that his former wife subjected him to battery or extreme cruelty during the marriage, that he had a qualifying relationship with his former wife, and that he was eligible for immediate relative classification based on that relationship. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.