



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **MAY 09 2013** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-Petitioner: [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)

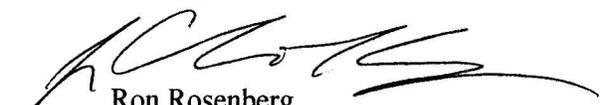
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 service center director denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. Upon remand, the director denied the petition and the matter is now before the AAO on appeal. The appeal will be dismissed.

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 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, 8 U.S.C. § 1154(a)(1)(J), states, in pertinent part:

In acting on petitions filed under clause (ii) 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].

Here, the director initially denied the petition on January 4, 2006, because the petitioner did not establish the requisite qualifying relationship or that he was eligible for immigrant classification based on said relationship, that he was battered or subjected to extreme cruelty by his spouse, or that he was a person of good moral character. In the May 27, 2009 decision on appeal, the AAO concurred with the director's determination but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (as in effect at the time the petition was filed). Upon remand, the director issued a NOID on February 23, 2010, which informed the petitioner that he had not submitted sufficient evidence to meet the requirements of a qualifying relationship, corresponding eligibility for immigrant classification, battery or extreme cruelty, and good moral character. Counsel responded to the NOID with a letter and additional evidence. The director found that the petitioner had still failed to establish the requisite qualifying relationship, eligibility for immigrant classification, and battery or extreme cruelty and denied the petition on October 9, 2012.

In its May 27, 2009 decision, incorporated here by reference, the AAO fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, this decision will only address the evidence submitted after that date. In response to the NOID, counsel submitted a statement from the petitioner asking U.S. Citizenship and Immigration Services (USCIS) to consider his evidence,

an affidavit from the petitioner's former roommate, a new psychological evaluation, records regarding the completion of probation on a prior conviction, a copy of the petitioner's plumbing license, and tax forms.

We find no error in the director's decision that this evidence did not overcome the grounds for denial. The evidence does not provide any additional information to show that the petitioner was subjected to battery or extreme cruelty during his marriage. In his affidavit, [REDACTED] recounts that the petitioner told him he had difficulties in his former marriage, but does not describe any particular incidents of abuse. The petitioner also submitted a psychological evaluation written by [REDACTED] a psychologist, who interviewed the petitioner for two hours on one occasion and determined that the petitioner presented symptoms of depression and post-traumatic stress disorder (PTSD). Ms. [REDACTED] reported that the petitioner told her that his wife abused the petitioner economically, gambled, physically assaulted him, threatened and humiliated him, but did not add sufficient substantive information or provide any probative details demonstrating that the petitioner's wife's actions constituted battery or extreme cruelty. Ms. [REDACTED] also noted that the petitioner's current immigration status and inability to visit his family "compound his emotional devastation" and that he has experienced the symptoms of his depression since his incarceration. As noted in the director's decisions and our prior decision, the record shows that there were various inconsistencies in the evidence submitted by the petitioner. For example, the petitioner claimed he has a scar from his former wife breaking a cup on his head, but submitted medical reports that did not list any injury to his head although they were performed just a few days after the alleged head injury occurred. The petitioner also asserted that his wife's gambling led to his conviction for passing bad checks, but submitted a letter from his uncle that indicated that both the petitioner and his wife were involved in the gambling that led to his conviction. Such inconsistencies greatly detract from the credibility of his claim that his wife subjected him to extreme cruelty.

On appeal, counsel submits a brief in which she recounts the facts as described by the petitioner, summarizes the previously submitted evidence, and contends that there is sufficient evidence to meet the petitioner's standard of proof that he had a qualifying relationship and was subjected to battery or extreme cruelty. Counsel also submits a USCIS memorandum and information regarding CT Scans, neither of which provide any new facts or information specific to the petitioner's case that establish that he was subjected to battery or extreme cruelty by his former wife. The brief and new evidence submitted do not address the inconsistencies in the record or overcome the deficiencies noted in the previous AAO decision and the director's denials. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Furthermore, as the petitioner has failed to establish the requisite battery or extreme cruelty, he has necessarily 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 immigrant relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC) and (cc) of the Act.

Beyond the director's decision,<sup>1</sup> as discussed in the May 27, 2009 AAO decision, the petitioner has been convicted of two crimes involving moral turpitude, assault with force likely to produce great bodily injury in violation of California Penal Code section 245(a)(1) and drawing and passing bad a check without sufficient funds with intent to defraud in violation of Nevada Revised Statutes section 205.130. These convictions preclude a finding of his good moral character pursuant to section 101(f)(3) of the Act.

In his response to the NOID, the petitioner provided evidence that he completed probation for his assault conviction, his plumbing license, and tax forms, but these documents fail to overcome his two convictions for crimes involving moral turpitude and demonstrate his good moral character. Because the petitioner has failed to establish the requisite battery or extreme cruelty, he cannot demonstrate any connection between his criminal convictions and said abuse which would allow a finding of his good moral character despite his convictions under section 204(a)(1)(C) of the Act.

### *Conclusion*

The petitioner has not established the requisite battery or extreme cruelty, qualifying relationship, corresponding eligibility for immediate relative classification, and good moral character. 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. Consequently, the appeal will be dismissed and the petitioner will remain denied.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> 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).