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U.S. Citizenship
and Immigration
Services

Date: **DEC 01 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:

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
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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 under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(I), as an alien battered or subjected to extreme cruelty by his or her lawful permanent resident spouse.

The director denied the petition for failure to establish that the petitioner was battered or subjected to extreme cruelty by his former wife, a lawful permanent resident of the United States. On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) 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). An alien who has divorced an abusive lawful permanent resident 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 lawful permanent resident spouse.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

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 for a self-petition under section 204(a)(1)(B)(ii) of the Act 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 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)(B)(ii) of the Act are further 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.

Facts and Procedural History

The petitioner is a citizen of Mexico who asserts that he last entered the United States in 1995, under unspecified circumstances. On June [REDACTED] the petitioner married G-A-¹, a Mexican citizen and lawful permanent resident of the United States, in California. On July 30, 2004, G-A- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf which was approved on October 24, 2005. The petitioner and G-A- divorced on November [REDACTED]. The petitioner filed the instant Form I-360 self-petition on September 20, 2011. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme cruelty. The petitioner timely responded by resubmitting his personal affidavit which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's ground for denial. Beyond the director's decision, the petitioner has also not established that he had a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for immigrant classification based upon that relationship, as required

¹ Name withheld to protect the individual's identity.

by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.² The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The petitioner did not establish below that his former wife subjected him to battery or extreme cruelty, and counsel's claims on appeal fail to overcome the director's ground for denial. In his personal affidavit, the petitioner stated that his marriage to G-A- was happy and harmonious; they purchased a home he believed he jointly owned despite having not signed any paperwork; and then things inexplicably changed in 2006. He recalls that G-A- began staying out late at night, refused to explain her behavior, called him unspecified names, told him she would withdraw the immigrant petition she filed on his behalf if he "kept on bugging her," and brought home a "tenant" who he later learned was her lover. The petitioner stated that around the time of his and G-A-'s divorce, he reduced his monthly contributions toward the household expenses from \$1,800 to \$500 because he had become "no more than a tenant." He recalled that when he was served with the divorce complaint in August 2007, he learned for the first time that he did not own the house in which he lived, but rather it was owned jointly by G-A- and her son. G-A- later told him that they "lost the real property" during the term of the marriage, a statement the petitioner deemed "a blatant falsehood." However, the Property Order Attachment to Judgment, submitted by the petitioner for the record, indicates that the marital residence was foreclosed in 2009. The petitioner's affidavit does not demonstrate that his former wife battered him or subjected him to threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted the affidavits of G-A-'s son, [REDACTED] and Mr. [REDACTED] wife, [REDACTED]. Mr. [REDACTED] stated that he was sad when his mother divorced the petitioner who had always been a great stepfather to him and a grandfather to his children. Mr. [REDACTED] recalled that when G-A- tried to start arguments, the petitioner would walk away without engaging. Ms. [REDACTED] stated that the petitioner is her friend and like a grandfather to her children, and that his marriage to G-A- was good and they both looked happy. Mr. [REDACTED] and Ms. [REDACTED] provided no probative information concerning the claimed abuse. In response to the second RFE in which the petitioner was notified, through counsel, that the evidence in the record was insufficient to establish battery or extreme cruelty, he resubmitted only his initial affidavit with no additional evidence. The petitioner's affidavit and those of his stepson and his stepson's wife did not demonstrate below that the petitioner's former wife battered him or subjected him to extreme cruelty as defined in the regulation.

On appeal, counsel asserts that the director "did not properly look at the context of the mental cruelty." Counsel submits no new affidavit from the petitioner and no additional evidence. In our *de novo* review of the record we conclude, as did the director, that the petitioner has failed to establish that his former spouse subjected him to battery or extreme cruelty. We acknowledge that G-A- was unfaithful to the petitioner, allowed him to believe he jointly owned a home that was ultimately foreclosed, and suggested that she would withdraw an immigrant petition that had already been approved. However,

² 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. sup. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

the petitioner has not demonstrated that G-A- battered him or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence does not establish that the petitioner's former spouse subjected him to battery or extreme cruelty during their marriage as required by section 204(a)(1)(B)(ii)(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 also has not demonstrated any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not established that he had a qualifying relationship with a lawful permanent resident and was eligible for immigrant classification based upon that relationship, as required by sections 204(a)(1)(B)(ii)(II)(aa), (cc) of the Act.

Conclusion

The petitioner has not overcome the director's ground for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner was subjected to battery or extreme cruelty by his former wife. Beyond the director's decision, the petitioner has also not established he had a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for immigrant classification based upon that relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act on these three grounds.

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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.