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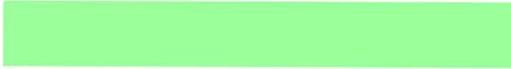
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave. N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

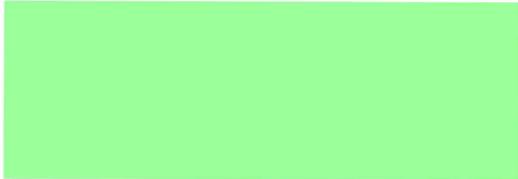


Date: **MAY 22 2014** Office: VERMONT SERVICE CENTER File: 

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:

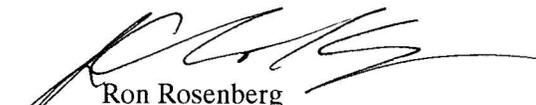


INSTRUCTIONS:

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 Acting 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 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 former spouse subjected him to battery or extreme cruelty during their marriage; he entered into their marriage in good faith; he had a qualifying relationship with his former spouse based on a divorce connected to her battery or extreme cruelty; and that he was eligible for immediate relative classification based on such a relationship.

*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 . . . 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 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.

\* \* \*

(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.

*Pertinent Facts and Procedural History*

The petitioner was born in Brazil, and entered the United States as a nonimmigrant visitor on July 20, 2000. The petitioner married T-D-<sup>1</sup>, a U.S. citizen on September 19, 2009. The petitioner and T-D- divorced on December 7, 2010. The petitioner filed the instant Form I-360 on August 26, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and his former wife's battery or extreme cruelty. The petitioner responded with additional evidence that the director found insufficient and denied the petition.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner submits a brief and additional evidence which do not overcome the grounds for denial.

### *Battery or Extreme Cruelty*

In his personal statement dated June 15, 2011, the petitioner stated that after he married T-D-, they argued about her refusal to limit her work hours. He recounted that his former wife did not contribute financially to their household and was disrespectful and verbally abusive towards him. He stated that he started to take anti-depressants upon learning that she had a violent past and made him feel threatened. The petitioner recalled an incident in which his former wife called him stupid and yelled obscenities at him in front of his friends and family. He stated that his former wife would ignore him and bump him as she walked by. He declared that she did not invite him to a family gathering, deleted photographs from his camera, and told him that he could not leave her because of his immigration status. The petitioner asserted that he felt sad and confused, and would often cry about his marriage. In his letter dated June 15, 2011, the petitioner declared that his former wife did not respect their marriage and slept separately from him. He stated that she refused to talk with him and spoke disparagingly about him to her friends, and made him feel abandoned, undesired, and unhappy. He stated that she would ignore him and bump into him and keep walking, and would keep her food separate from his in the refrigerator. The petitioner declared that he had depression before he met T-D-. While the petitioner stated that his spouse's behavior further depressed him, he did not describe any particular incident of physical abuse in detail or establish that his former wife's behavior was part of an overall pattern of violence or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's friend, [REDACTED] stated that at a party he saw that T-D- was extremely rude towards the petitioner and the guests. Mr. [REDACTED] recalled that once the petitioner cried in front of him and his family, telling them his heart was broken because of T-D-. The petitioner's friend, [REDACTED] briefly described an incident in which the petitioner's former wife screamed obscenities at the petitioner and his mother and sister during an argument. [REDACTED] the petitioner's neighbor, declared that she saw the petitioner's former wife "storm" out of the house on several occasions. The petitioner's neighbor, [REDACTED] stated that the petitioner told her that his former wife was argumentative. She stated that once T-D- was physically aggressive towards the petitioner's parents during an argument. Neither the petitioner's friends nor neighbor described any specific incidents of abuse that they witnessed or were otherwise aware of. Their short statements are not probative in

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

establishing that T-D- ever battered the petitioner, threatened him with harm, or otherwise subjected him to behavior that is equivalent to extreme cruelty.

Dr. [REDACTED] a licensed clinical psychologist, stated that the petitioner was on antidepressant medication during his marriage and for a number of years before his marriage. Dr. [REDACTED] stated that the petitioner indicated that his former wife did not physically or sexually abuse him, but had subjected him to mental cruelty. Dr. [REDACTED] stated that the petitioner mentioned that T-D- threatened to divorce him and jeopardize his immigration status, and had refused to contribute to their household and withheld emotional and sexual intimacy. Dr. [REDACTED] stated that the T-D- used controlling behavior (“emotional volatility, pinning [the petitioner’s] car so he could not leave their residence”) to take advantage of the petitioner. While Dr. [REDACTED] describes T-D-’s behavior and how it exacerbated the petitioner’s depression, his evaluation does not establish that she subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted his former wife’s criminal records, which show that T-D- was convicted of assaulting another person two years before their marriage. Qualifying abuse must be perpetrated against the petitioner and occur during the marriage. 8 C.F.R. § 204.2(c)(1)(vi). While T-D-’s conviction evidences her violent past, it does not demonstrate that she battered or subjected the petitioner to extreme cruelty during their marriage.

On appeal, the petitioner submits personal statements from his sister, [REDACTED] his aunt, [REDACTED] and [REDACTED]. Their statements are brief, and describe the petitioner’s former wife as rude, domineering, aggressive, uncommunicative, and loud, but do not support demonstrate that T-D- ever battered the petitioner or subjected him to extreme cruelty.

Counsel on appeal contends that T-D- subjected the petitioner to controlling behavior and a pattern of social and emotional intimidation that was extreme. Counsel argues that the Violence Against Women Act<sup>2</sup> was to prevent an abusive spouse from withholding a visa petition, and that Dr. [REDACTED] attributes the petitioner’s depression to T-D-’s lack of cooperation in filing immigration forms and to his former wife’s acts of social and emotional intimidation. The purpose of the VAWA provisions amending the Act was to permit battered spouses to leave their abusers without fear of deportation or other immigration consequences. H.R. Rep. No. 106-939, at 56, 111-12 (2000). Congress’s intent in allowing a showing of either battery or extreme cruelty was to protect survivors of domestic violence. *See* H.R. Rep. No. 103-395, at 37-38. While the record demonstrates that the petitioner was mistreated by his former wife, the petitioner has not established that his former wife’s actions involved battery, were part of an overall pattern of violence or were otherwise equivalent to extreme cruelty. When the relevant evidence is viewed together, it does not demonstrate that T-D- subjected the petitioner to 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*

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<sup>2</sup> 146 Cong. Rec. S10, 188, S10, 195 (Oct. 2000)

On appeal, the petitioner has also failed to establish a qualifying spousal relationship with his former wife. The petitioner divorced his wife divorced on December 7, 2010. The instant petition was filed on August 26, 2011. An alien who has divorced an abusive U.S. citizen spouse may still file a self-petition if he or she demonstrates that the divorce from the abusive U.S. citizen was connected to the battering or extreme mental cruelty, and the alien files the self-petition within two years of the divorce. 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) of the Act. In the instant case, the petitioner filed the self-petition within two years of his divorce, but the petitioner has not demonstrated a qualifying relationship because he did not establish the requisite battery or extreme cruelty and the connection between his divorce and the battery or extreme cruelty. Accordingly, the petitioner has not demonstrated that he had a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility 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.

#### *Good-Faith Entry into the Marriage*

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). The petitioner briefly recounted in his personal statement dated June 15, 2011 that he met T-D- in July 2009 at a dinner party with their mutual friends. He stated that they dated for two months, going out together and meeting family members. The petitioner stated that T-D- moved in with him before they married in a civil ceremony in September 2009. He stated that they had a reception at a local restaurant for their family members and friends. The petitioner briefly stated that he and T-D- spent time together. The petitioner does not provide a detailed description of his first meeting with T-D-, his engagement and marriage ceremony, his joint residence with T-D- or any of their shared experiences, apart from the claimed abuse.

The petitioner's friend Mr. [REDACTED] stated that the petitioner excitedly told him that T-D- was "the one." Mr. [REDACTED] stated that he was present at the petitioner's wedding and that the couple looked happy. Ms. [REDACTED] stated that she had attended the petitioner and his former wife's engagement party. She briefly stated that the petitioner and his former wife were a sweet and loving couple and that she once saw the petitioner's former wife sitting on the petitioner's lap. Mr. [REDACTED] stated that three weeks after the petitioner excitedly told him about T-D-, she moved in with the petitioner. Mr. [REDACTED] briefly declared that the petitioner told him that he "felt a connection" with T-D- and was going to marry her. The petitioner's friends' letters, taken as a whole, do not discuss the petitioner's relationship with former wife in any probative detail, apart from the claimed abuse.

The utility invoices are addressed to both the petitioner and his former wife at their joint residence. The automobile insurance records reflect that the petitioner's wife was the primary policy holder and the petitioner and was a listed driver for two months and was an excluded driver in the other policies. The holiday card is addressed to the petitioner and his former wife. Without any probative account from the petitioner regarding the petitioner's entry into the marriage, a single holiday card

and documents that reflect a joint address are not sufficient to establish the petitioner's good faith in marrying his wife. When viewed in the whole, the preponderance of the evidence fails to demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

On appeal, the petitioner submits additional evidence of criminal records; photographs; and letters from his mother, [REDACTED] the godmother of T-D-; his sister, [REDACTED] his aunt, [REDACTED] and his cousin, [REDACTED]. The petitioner's mother declares that she socialized with T-D-'s family members. His mother states that it was difficult for the petitioner and T-D- to open a joint bank account and obtain joint auto insurance. The petitioner's mother states that she had given furniture to her son and his former wife, and that the couple lived across the street from her, but the petitioner's mother does not describe any particular visit or social occasion with the petitioner and his former wife or provide any detailed information about the petitioner's relationship with his former wife, apart from the alleged abuse. Although Ms. [REDACTED] states that she socialized with the petitioner and T-D- and with the petitioner's family members, she provided no details about any social visits with the petitioner and T-D-. The petitioner's sister states that her brother was happy with T-D- and that the entire family spent weekends together. His aunt states that the petitioner told her that he was in love with T-D-, and his cousin declares that the petitioner had called her and told her that he was happy and in love. Overall, the letters from the petitioner's sister, aunt, and cousin are short and do not substantively describe the petitioner's relationship with his former wife or provide probative detailed information about his marriage, apart from the claimed abuse. The photographs are of the petitioner and his former wife together and with other people at different social events. However, in the absence of probative statements from the petitioner about his marital intentions, photographs of the petitioner and his former wife together are not enough to demonstrate the petitioner's intentions upon entry into the marriage.

On appeal, counsel argues that the "preponderance of the evidence" standard that normally applies to visa petitions is not applicable here, and that the director did not apply the correct standard of proof of "any credible evidence." Counsel asserts the director failed to consider evidence of the petitioner's relationship with T-D- prior to the marriage, and the evidence of joint financial responsibility and automobile insurance. In these proceedings, the consideration of any relevant, credible evidence is not a burden or standard of proof, but an evidentiary standard. A self-petitioner must demonstrate his or her eligibility by a preponderance of the evidence, the standard that applies to all immigrant visa petitions. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The determination of what evidence is credible and the weight accorded such evidence lies within the sole discretion of U.S. Immigration and Citizenship Services. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). In this case, the record shows that the director considered all the relevant evidence, and concluded that the preponderance of the relevant evidence fails to establish that the petitioner's entry into marriage with his wife was in good faith.

We have discussed the deficiencies in the submitted evidence, and explained that in the absence of a probative description from the petitioner the record does not establish his good faith intent in

marrying his former wife. Thus, when viewed in the totality, the preponderance of the relevant evidence fails to establish that the petitioner's entry into marriage with his former wife was in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Counsel contends that the director erred by relying on a prior finding of marriage fraud. Review of the denial decision reveals that the director stated that the petitioner's initial submission for the self-petition included a copy of the notice of denial of the petitioner's application for permanent residence (Form I-485) that stated that the Petition for Alien Relative (Form I-130) filed by the petitioner's former spouse on his behalf was denied for marriage fraud. The director also referenced the petitioner's corresponding sworn statement, but her decision reflects that she did not improperly consider this evidence, but instead considered all of the relevant evidence in drawing the conclusion that the petitioner failed to demonstrate that he entered into the marriage with his former wife in good faith.

*Conclusion*

The record fails to establish that the petitioner was subjected to battery or extreme cruelty by his former wife during their marriage and that he entered into the marriage with her in good faith. The petitioner has not demonstrated that he had a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on that relationship. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 Otiende*, 26 I&N Dec. at 128; *Matter of Chawathe*, 25 I&N Dec. at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.