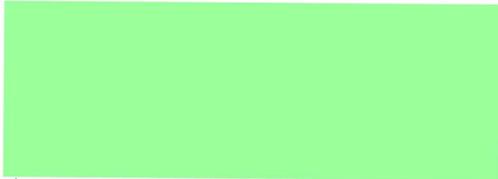
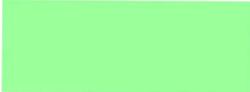




U.S. Citizenship  
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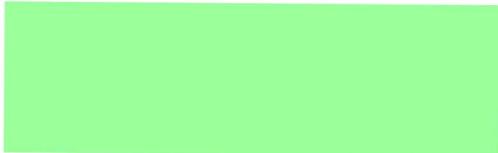


Date: **NOV 25 2014** Office: VERMONT SERVICE CENTER File: 

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 (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 Acting 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 under 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner's former spouse battered him or subjected him to extreme cruelty in the United States.

On appeal, the petitioner, through counsel, submits a brief.

### *Relevant Law and Regulations*

Section 204(a)(1)(A)(iii)(I) 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 U.S. 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 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)(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:

(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, a citizen of Trinidad and Tobago, entered the United States on February 5, 1999, when he was [REDACTED] as a nonimmigrant visitor. In May 2003, the petitioner applied to adjust his status to that of a lawful permanent resident as a derivative beneficiary of his father's approved immigrant visa; however, the petitioner's application was denied on May 15, 2006 based on a conviction for Petit Larceny and as a matter of discretion. On June 12, 2007, the petitioner was placed in removal proceedings for remaining in the United States beyond the authorized period. The petitioner then married K-S-<sup>1</sup>, a U.S. citizen, on December [REDACTED] New York. K-S- filed an immigrant visa petition for the petitioner, which U.S. Citizenship and Immigration Services (USCIS) approved on October 10, 2008. However, the petitioner's application to adjust status to a permanent resident was denied. The petitioner was granted voluntary departure, and returned to Trinidad and Tobago on December 28, 2010. K-S- divorced the petitioner on October [REDACTED]

The petitioner filed the instant Form I-360 self-petition on April 2, 2012. The director issued a Request for Evidence (RFE) of battery or extreme cruelty, among other issues. The petitioner responded with additional evidence, which the director found did not establish eligibility for the

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

benefit sought and denied the petition. The petitioner, through counsel, subsequently appealed the director's decision.

Upon *de novo* review of the entire record the petitioner has not overcome the director's ground for denial. Beyond the director's decision, approval of the instant petition is precluded by section 204(a)(1)(A)(v) of the Act. The appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

The director correctly determined that the petitioner did not establish that K-S- battered him or subjected him to extreme cruelty. The petitioner did not provide a personal affidavit with his initial Form I-360 submission. In response to the RFE, the petitioner submitted a personal affidavit dated December 30, 2013. In the affidavit, the petitioner described K-S-'s marital infidelity, and the couple's subsequent separation. The petitioner indicated that he felt humiliated and depressed by the situation. However, he did not discuss events constituting battery or extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In an affidavit also submitted in response to the RFE, dated December 30, 2013, the petitioner's mother attested to hearing the petitioner's and K-S-'s last fight before their separation. Although she stated that K-S and the petitioner were "arguing and cursing at each other," she did not indicate that K-S- battered the petitioner or subjected him to extreme cruelty.

In her decision, the director found that the circumstances of the petitioner's marriage, as described in relevant evidence, did not constitute battery or extreme cruelty. On appeal, counsel asserts that the director's finding was "arbitrary and capricious" because the director treated K-S-'s infidelity as a "simple affair" and not extreme cruelty. The petitioner must demonstrate that his spouse battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to 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, reviewed above, does not so demonstrate. The petitioner indicated that his wife engaged in an extramarital affair. These acts, as described, do not demonstrate either battery or behavior constituting extreme cruelty.

The preponderance of the relevant evidence does not establish that the petitioner's spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Section 204(a)(1)(A)(v) of the Act*

Beyond the director's decision, the petitioner is not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act based upon section 204(a)(1)(A)(v) of the Act, which states in pertinent part:

Section 204(a)(1)(A)(v) of the Act provides that:

an alien who-

(I) is the spouse. . . living abroad of a citizen who –

- (aa) is an employee of the United States Government;
  - (bb) is a member of the uniformed services. . .; or
  - (cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and
- (II) is eligible to file a petition under clause (iii). . . shall file such a petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii)....

Thus, under section 204(a)(1)(A)(v) of the Act, a self-petitioner living abroad is only eligible to file a petition under clause (iii) if his spouse: is an employee of the United States government; is a member of the uniformed services; or subjected the self-petitioner to battery or extreme cruelty in the United States; and meets the other eligibility requirements under clause (iii). The petitioner filed his Form I-360 self-petition while living abroad in Trinidad and Tobago, and is therefore subject to this provision. The petitioner does not claim that his former spouse is an employee of the United States government or a member of the uniformed services. As the relevant evidence does not establish that K-S- battered or subjected the petitioner to extreme cruelty in the United States, the petitioner does not meet any of the eligibility criteria to file a petition under section 204(a)(1)(A)(iii) of the Act from abroad. The petition will be denied for this additional reason.<sup>2</sup>

*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, beyond the director's decision, the petitioner has not established that he had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc), and (II)(cc) of the Act.

*Conclusion*

On appeal, the petitioner has not established that he was battered or subjected to extreme cruelty by his spouse, and he is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for this reason. He has also failed to establish that he is eligible to file his self-petition from abroad, under section 204(a)(1)(A)(v) of the Act.<sup>3</sup>

<sup>2</sup> An application or petition that fails to comply with the 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).

<sup>3</sup> A review of the petitioner's administrative record indicates that the petitioner may also be ineligible under section 204(a)(1)(A)(iii) of the Act for failure to establish his good moral character. The record reflects that the petitioner has two theft convictions that appear to render him a member of the class of persons described in section 212(a)(2)(A)(ii) of the Act as an individual convicted of two or more crimes involving moral turpitude. Such a finding, in addition to the petitioner's failure to provide an affidavit fully addressing his

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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.

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good moral character, may preclude the petitioner from establishing his good moral character, as specified in section 101(f)(3) of the Act and the regulation at 8 C.F.R. § 204.2(c)(2)(v). However, as the petitioner has not otherwise established his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, we do not reach this issue on appeal.