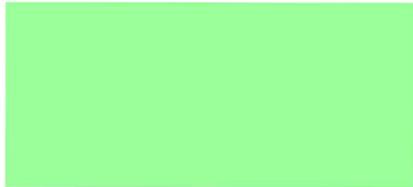


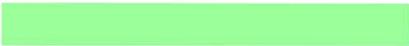
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U.S. Citizenship  
and Immigration  
Services

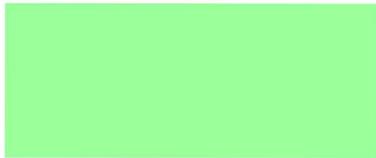


Date: **OCT 16 2014** Office: VERMONT SERVICE CENTER File: 

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:

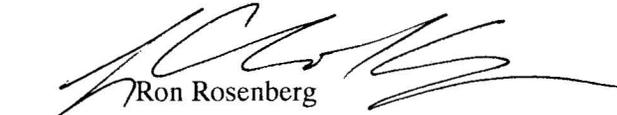


INSTRUCTIONS:

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 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.

On August 30, 2013, the director denied the petition for failure to establish a qualifying relationship with a U.S. citizen and corresponding eligibility for immigrant classification based upon such a relationship because the divorce certificate from the petitioner’s first marriage was fraudulent and, therefore, the petitioner was not legally free to remarry. The director further found that because the petitioner’s second marriage was invalid, he was not battered or subject to extreme cruelty during that marriage. On appeal, the petitioner submits a brief and a new translation of the divorce decree.

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).

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 an abused spouse self-petition are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) . . . (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

\* \* \*

(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 explained 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner. . . .

\* \* \*

(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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Uzbekistan who last entered the United States on June 6, 2000, as a nonimmigrant visitor. When the petitioner entered the United States, he was married to A-U<sup>1</sup>, a citizen of Uzbekistan. On August 5, 2005, the petitioner married, R-S<sup>2</sup>, a United States citizen. The petitioner filed the instant Form I-360 self-petition on June 16, 2008. The director subsequently issued a Notice of Intent to Deny (NOID) for failing to establish, among other things, a qualifying

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

<sup>2</sup> Name withheld to protect the individual's identity.

relationship with a U.S. citizen. The petitioner, through counsel, responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the evidence submitted on appeal overcome one, but not all, of the director's grounds for denial and the appeal will be dismissed for the following reasons.

#### *Battery or Extreme Cruelty*

The relevant evidence submitted below demonstrates that the petitioner was subjected to battery and extreme cruelty by R-S-. The petitioner submitted a credible and detailed affidavit, describing specific incidents of battery. He recounted an incident when he asked R-S- about changing her job and she became verbally abusive. He stated that when he tried to end the conversation, she slapped him in the face and told him he had no right to make her stop talking. The petitioner recounted another incident when R-S- was screaming at him that he had ruined her life because her father would not let her take her kids home with her. The petitioner provided probative details of their altercation which culminated in R-S- throwing a kitchen knife at him. He also explained that she had drug and alcohol problems, made derogatory remarks about him, threw things at the wall, had adulterous affairs, and threatened to have him deported. He stated that he sought help from a domestic violence shelter and that R-S- later moved out.

Letters from the [REDACTED] confirmed that the petitioner asked for help in finding a safe place to stay because R-S- tried to kill him with a knife. The petitioner's friend, [REDACTED], stated that the petitioner stayed at his house after R-S- had threatened the petitioner with a knife, and [REDACTED] attested to personally observing R-S- screaming and cursing at the petitioner. Licensed psychologist [REDACTED] also described the petitioner's depression and anxiety as a result of R-S-'s physical, verbal, and mental abuse.

Upon a full review of all the relevant and credible evidence, the petitioner has demonstrated by a preponderance of the evidence that R-S- subjected him to battery and extreme cruelty. The director's contrary determination is withdrawn.

#### *Qualifying Relationship*

The appeal cannot be sustained, however, because the petitioner has still not established he has a qualifying relationship with R-S-. The petitioner initially submitted a one-page document in Russian and a one-page English translation by [REDACTED] titled "Divorce Certificate." Notably, the Russian document was a lengthy single-spaced one-page document whereas Ms. [REDACTED] English translation consisted of two sentences. On August 4, 2011, the Vermont Service Center issued a NOID, requesting an original divorce certificate and stating that it must have been registered with a civil authority in order to be considered valid for immigration purposes.

In response to the NOID, counsel stated that a hearing regarding the petitioner's divorce was held on July 18, 2003, and that the decision granting the divorce was given full force and effect twenty days later, on August 8, 2003. Counsel also stated that the petitioner requested a certified copy of the divorce decree from Uzbekistan, but would not receive it before October 14, 2011. Counsel re-submitted the same one-page divorce decree in Russian as well as a new two-page English translation by [REDACTED] Ms. [REDACTED] translation indicated that both the petitioner and A-U- were questioned in open court on July 18, 2003, that the decision could be appealed for twenty days, and that the court's decision would have full force and effect on August 8, 2003.

On March 1, 2013, the Vermont Service Center issued a second NOID, stating that the certified copy of the divorce decree had not been received. In addition, the NOID indicated that the American Embassy in Tashkent, Uzbekistan, had determined that the divorce certificate was fraudulent and that a search of records by the Chief of the Archives of the [REDACTED] City Court on civil cases confirmed that no record of the divorce certificate existed. In response to this second NOID, counsel submitted a two-page document in Russian and a two-page English translation by [REDACTED] The first pages of both documents are identical to the first pages of what had previously been submitted. However, the second page of the English translation by Ms. [REDACTED] includes a notation from April 4, 2013, stating that the marriage was dissolved based on a decision from the [REDACTED] District Civil Court on July 18, 2003. Counsel indicated that it was extremely difficult to obtain these documents, that the original documents would be sent to the petitioner in the next two weeks, and that the originals would be submitted as soon as possible.

The director denied the self-petition, concluding that the translations were confusing, contained different typeface, and were not certified. On appeal, counsel submits the same two-page Russian document along with a three-page English translation from [REDACTED]

We find no error in the director's determination that the petitioner did not establish that his first marriage ended in a valid divorce and the additional evidence submitted on appeal fails to overcome this ground for denial. Although the petitioner's prior counsel has twice indicated that an original divorce decree would be submitted, to date, the record does not include an original divorce decree from Uzbekistan. In addition, the petitioner has not provided any explanation for why the first two divorce decrees submitted in Russian consisted of only one page while the third and fourth submissions consisted of two pages. Similarly, the petitioner has submitted four different English translations that range from two sentences to three pages and there has been no explanation for the wide disparity in translations. Moreover, the second and third translations by Ms. [REDACTED] and Ms. [REDACTED] respectively, have identical first pages, but different second pages, including differing fonts within Ms. [REDACTED] translation between page one and page two, detracting from their credibility. Furthermore, the second, third, and fourth translations by Ms. [REDACTED] Ms. [REDACTED] and Mr. [REDACTED] respectively, state that the petitioner and A-U- were questioned in open court in Uzbekistan on July 18, 2003. However, the record shows the petitioner last entered the United States on June 6, 2000, and has been residing in the United States since that time. *See Application to Register Permanent Resident of Adjust Status (Form I-485)*, filed March 24, 2009; *Form I-485*, filed March 30, 2006; *Biographic Information Form (Form G-325A)*, dated March 8, 2006; *see also Letter from Yevgeniy Margulis*, dated April 23, 2008. The petitioner has not claimed or submitted evidence that he returned

to Uzbekistan to testify in court about his divorce in July 2003 and subsequently returned to the United States. Additionally, the petitioner has not addressed why the third and fourth English translations by Ms. [REDACTED] and Mr. [REDACTED] respectively, include a notation from April 4, 2013, or how that notation was obtained almost ten years after the divorce.

Counsel contends on appeal that the petitioner was divorced on July 18, 2003, which became a final decision after the appeal period ended on August 8, 2003, and that this record was simply not registered with the Chief of the Archives of the [REDACTED] Court until April 4, 2013. According to counsel, whether or not the divorce decree was properly registered does not void or invalidate the 2003 divorce decree. Counsel further contends that the American Embassy can and should confirm this information.

The validity of a marriage for immigration purposes is determined by the law of the place in which the marriage was celebrated. *Matter of Hosseinian*, 19 I&N Dec. 453, 455 (BIA 1987). Under the principle of comity, a foreign divorce will generally be recognized in the United States for immigration purposes if it was valid under the laws of the jurisdiction granting the divorce. *Matter of Luna*, 18 I&N Dec. 385, 386 (BIA 1983). When the petitioner relies on foreign law to establish eligibility, the application of the foreign law is a question of fact, which must be proved by the petitioner. *Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008).

In this case, counsel provides no legal support for his claim that the ten-year delay in the claimed registration of the divorce did not invalidate the 2003 divorce date. Counsel also does not acknowledge that the [REDACTED] Uzbekistan confirmed with the Chief of the Archives of the [REDACTED] Court on civil cases that no record of the divorce exists. Consequently, the petitioner has not established that his divorce from A-U- was valid in Uzbekistan. In addition, counsel has not shown that Wyoming, where the petitioner and R-S- were married, would consider the petitioner's second marriage to be valid despite the absence of a valid divorce decree from his first wife. See *Matter of Hosseinian*, 19 I&N Dec. at 455 ("where one of the parties to a marriage has a prior divorce, we look to the law of the state where the subsequent marriage was celebrated to determine whether or not that state would recognize the validity of the divorce").<sup>3</sup> Accordingly, the petitioner has not established that his divorce from A-U- and his subsequent marriage to R-S- were valid. Consequently, the petitioner has failed to demonstrate that he has a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification based on such a relationship pursuant to section 204(a)(1)(A)(iii)(II)(aa), (II)(cc) of the Act.

### Conclusion

On appeal, the petitioner has not established a qualifying relationship with a U.S. citizen and his corresponding eligibility for immigrant classification based upon such a relationship. While he demonstrated that R-S- subjected him to battery or extreme cruelty during their relationship, he has not shown that she was his spouse at the time. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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<sup>3</sup> Bigamy is a felony offense in Wyoming. See WYO. STAT. ANN. § 6-4-401 (West 2014).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.