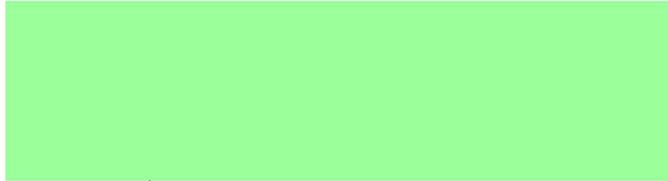




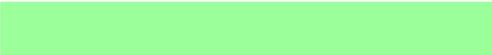
U.S. Citizenship  
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Services

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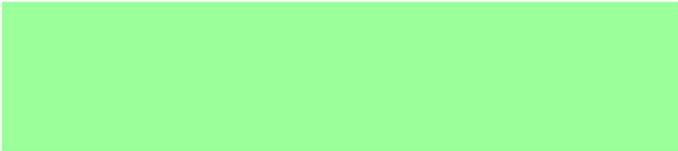
Date: Office: VERMONT SERVICE CENTER File: 

OCT 17 2014

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 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 former spouse, a U.S. citizen.

The director denied the petition for failure to establish that the petitioner entered into marriage with his former spouse, a United States citizen, in good faith and that she subjected him to battery or extreme cruelty during their marriage.

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 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 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. . . .

(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.

### *Facts and Procedural History*

The petitioner, a citizen of Brazil, claimed he entered the United States on February 1, 2003 as a nonimmigrant visitor. He married Y-M<sup>1</sup>, a United States citizen, on February 10, 2008, in [REDACTED] New Jersey. The petitioner and Y-M- were divorced on March 15, 2010. The petitioner filed the

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

instant Form I-360 self-petition on February 28, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty and entry into marriage with Y-M- in good faith. 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 timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons. Beyond the director's decision, the petitioner has also not established that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based upon such a relationship.<sup>2</sup>

#### *Battery or Extreme Cruelty*

In his initial affidavit, the petitioner stated that Y-M- called him names, accused him of trying to control her, had an extramarital affair and refused to be intimate with him. He briefly recounted one incident where he claimed that Y-M-slapped him before they were married.

In response to the RFE, the petitioner submitted affidavits from three friends. [REDACTED] stated that the petitioner's marital happiness did not last long and that Y-M- did not treat him with kindness. She recounted that Y-M- was rude to the petitioner in front of others and betrayed him. [REDACTED] described Y-M- as rude, disrespectful and unfaithful to the petitioner. [REDACTED] stated that Y-M- was rude, aggressive and unfaithful towards the petitioner. None of the petitioner's friends described in probative detail any battery or other behavior that would constitute extreme cruelty as that term is defined under the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel erroneously asserts that the director mischaracterized the evidence submitted below. Counsel claims that in his affidavit, the petitioner clearly described being slapped by Y-M- at a birthday party for trying to help an injured child. However, the petitioner did not describe any incident of abuse occurring at a birthday party and instead stated that the claimed battery occurred during an argument over money. On appeal, the petitioner submits an affidavit clarifying that he and Y-M- were married at the time that she slapped him, but he does not describe this incident further or provide substantive information about any other specific incident of abuse. The preponderance of the evidence does not show that the petitioner's former wife subjected him 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*

A petitioner who is divorced must file his self-petition within two years of the divorce date and demonstrate a causal connection between the divorce and any battery or extreme cruelty. As the

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<sup>2</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).

petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, beyond the director's decision, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

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

The director correctly determined that the petitioner did not establish that he married Y-M- in good faith. The petitioner submitted unlabeled photographs of what appears to be his wedding and utility statements, the majority of which are dated after the petitioner and Y-M-'s divorce.

Nonetheless, 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). In the petitioner's affidavit, he stated that he first met Y-M- in May of 2007 at the restaurant where she worked and he found her to be pleasant, attractive, and well-mannered. He stated that they began to date about a month later and briefly listed activities that they enjoyed doing together. The petitioner further recounted that after he proposed to Y-M- on Christmas day in 2007, the two were married on February 10, 2008, at Y-M-'s home. The petitioner did not further describe their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. The affidavits from the petitioner's friends, [REDACTED] also did not contain probative details regarding the petitioner's intentions in marrying Y-M-. They all stated that they spent time with the petitioner and Y-M- as a couple but did not describe any specific interaction with them or otherwise provide information establishing their personal knowledge of the relationship.

On appeal, counsel asserts that the director failed to give weight to all of the evidence of the record but counsel does not acknowledge the deficiencies of the relevant evidence. In his affidavit submitted on appeal, the petitioner only references the claimed abuse and does not address his marital intentions. Accordingly, a full review of the evidence submitted below and on appeal fails to establish the petitioner's good-faith entry into his marriage with Y-M-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Conclusion*

The petitioner has not demonstrated that he entered into marriage with his former wife in good faith or that he was subjected to battery or extreme cruelty by her during their marriage. Consequently, the petitioner cannot establish that he had a qualifying relationship with his former wife and that he was eligible for immediate relative classification based upon such a relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

(b)(6)

*NON-PRECEDENT DECISION*

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The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also 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.