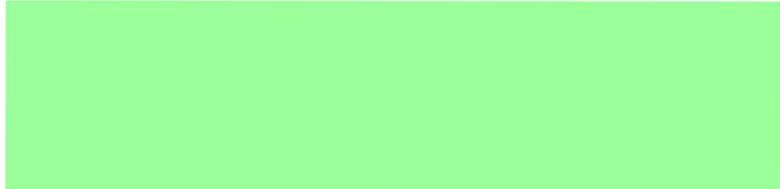


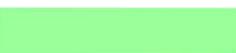


U.S. Citizenship
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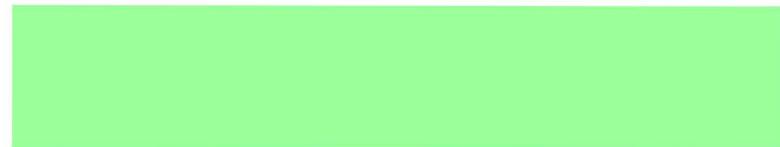


Date: **OCT 20 2014** Office: VERMONT SERVICE CENTER File: 

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:

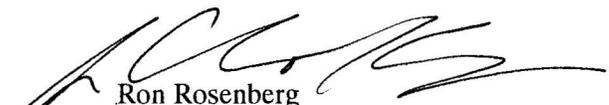


INSTRUCTIONS:

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 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 former spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his former wife during their marriage and that he is a person of good moral character. On appeal, counsel submits a brief and additional evidence.

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. . . .

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the

United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner is a citizen of Pakistan who entered the United States on April 28, 2007, as a nonimmigrant visitor. The petitioner married T-C-¹, a U.S. citizen, on June [REDACTED] in [REDACTED] Massachusetts. The petitioner and T-C- were divorced on February [REDACTED]. The petitioner filed the instant Form I-360 self-petition on June 7, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty and the petitioner's good moral character. 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 overcome one but not all of 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.²

Battery or Extreme Cruelty

The director correctly determined that the petitioner's statements and the previously submitted evidence did not show that the petitioner was subjected to battery or extreme cruelty by T-C- during their marriage. The petitioner submitted two personal affidavits, notarized letters and affidavits from friends, and a letter from licensed mental health counselor, [REDACTED]. In his first affidavit, the petitioner stated that T-C- disrespected his religion, threatened him with deportation, and was unfaithful. He further stated that she stole money from him and made him violate the rules of [REDACTED] but did not provide probative details about specific incidents of abuse. In his second affidavit, the petitioner repeated much of his earlier statements but again did not provide probative details regarding specific incidents of battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

¹ Name withheld to protect the individual's identity.

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

In their statements, the petitioner's friends described T-C- as abusive, unstable, and aggressive. They recounted that the petitioner became depressed due to T-C-'s threats of deportation. However, the petitioner's friends did not provide substantive information regarding any specific incidents of abuse. In her letter dated September 25, 2012, [REDACTED] a licensed mental health counselor, briefly stated that she met with the petitioner one time and that he presented with symptoms of depression. Ms. [REDACTED] did not explain the basis for this determination or connect the petitioner's depression to any incidents of abuse by T-C-.

On appeal, counsel argues that the director failed to give proper weight to the petitioner's affidavits and the affidavits from his friends. However, the petitioner's affidavits and the statements provided by his friends failed to provide substantive information about T-C-'s treatment of the petitioner. On appeal, the petitioner also submits a second letter from Ms. [REDACTED] dated September 2, 2013. She states that she met with the petitioner for a second time, diagnoses him with depression and anxiety and opines that T-C- subjected him to several forms of abuse. While we do not question Ms. [REDACTED] professional expertise, her assessment conveys the petitioner's statements during her interview with him and provides no further, probative information regarding the claimed abuse. Accordingly, the record does not demonstrate that T-C-'s actions constituted battery or extreme cruelty under the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and 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 his or her former spouse's battery or extreme cruelty. As the 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 Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) provides that evidence of a petitioner's good moral character includes local police clearances or state issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case during the period beginning in June of 2009 and ending in June of 2011). The record indicates that during this period, the petitioner resided in Massachusetts. Initially, the petitioner did not submit any evidence of his good moral character. In response to an initial RFE, the petitioner submitted a report from the [REDACTED] [REDACTED] dated June 23, 2011, showing that no criminal record existed based on a search of the petitioner's name and correct date of birth. In response to a second RFE, the petitioner submitted a second [REDACTED] report of no criminal record, but based on a search of the petitioner's name and incorrect date of birth. The petitioner also submitted letters from friends attesting to his good moral character. Given the discrepancy in the petitioner's date of birth in the second [REDACTED] report, the director found the evidence insufficient to establish the petitioner's good moral character.



On appeal counsel asserts that the petitioner submitted the requisite evidence of his good moral character, notwithstanding the error in the petitioner's date of birth on the second [REDACTED] report, because the first [REDACTED] report contained the petitioner's correct date of birth. On appeal, the petitioner submits a third [REDACTED] report dated September 11, 2013, which contains the petitioner's correct date of birth and shows no criminal record. Accordingly, the petitioner has now demonstrated by a preponderance of the evidence that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

Although the petitioner has established that he is a person of good moral character, he has not established that his former wife subjected him to battery or extreme cruelty during their marriage. Consequently, beyond the director's decision, 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.

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

ORDER: The appeal is dismissed.