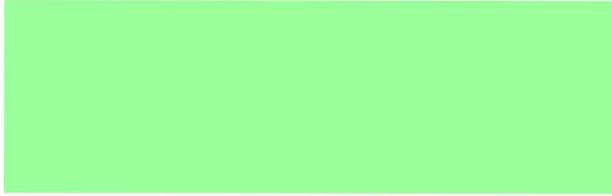
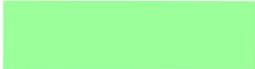


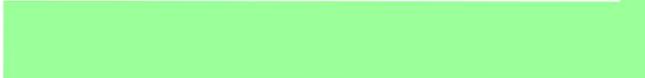


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **OCT 24 2014** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Self-Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Sections 204(a)(1)(A)(iii) and (v) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii) and (v)

ON BEHALF OF PETITIONER:

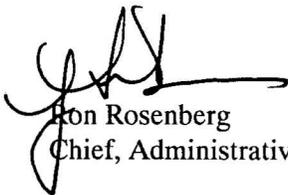


INSTRUCTIONS:

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 and the petition will remain denied.

The petitioner, who resides abroad, seeks immigrant classification under sections 204(a)(1)(A)(iii) and (v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii) and (v), as an alien battered or subjected to extreme cruelty by a United States citizen spouse.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty in the United States during their marriage. 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).

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)....

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.

\* \* \*

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 is a citizen and resident of Russia. The petitioner married her husband, a U.S. citizen, on February [REDACTED], in New York. After their wedding, the petitioner and her husband returned to Russia and both still live there. The petitioner filed the instant Form I-360 self-petition on July 31, 2013, listing her address in [REDACTED], Russia. The director subsequently issued a Notice of Intent to Deny (NOID) because the petitioner failed to show that she resided with her husband in the United States, or that he subjected her to battery or extreme cruelty in the United States. The director found the petitioner’s response to the NOID insufficient and denied the petition because she did not establish that

her husband battered or subjected her to extreme cruelty in the United States. On appeal, counsel submits a brief and additional evidence.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility for the following reasons.

*Battery or Extreme Cruelty*

We find no error in the director's determination that 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. The petitioner filed her Form I-360 self-petition while living abroad in Russia. 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 her 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 does not claim that her spouse is an employee of the United States government or a member of the uniformed services.

On appeal, counsel contends that immigrant classification under section 204(a)(1)(A)(iii) of the Act does not require that the battery or extreme cruelty have occurred in the United States and that the petitioner can apply under section 204(a)(1)(A)(iii) of the Act instead of section 204(a)(1)(A)(v) of the Act. However, the statutory language at section 204(a)(1)(A)(v) of the Act clearly applies to a self-petitioner who is living abroad, providing that the self-petitioner "*shall* file such a petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii)." (Emphasis added). Thus, for a self-petitioner living abroad at the time of filing the petition, U.S. Citizenship and Immigration Services (USCIS) does not reach the self-petitioner's eligibility under section 204(a)(1)(A)(iii) of the Act unless the self-petitioner first establishes that her 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.

The amendments to the abused spouse self-petitioning provisions further show that a self-petitioner who is living abroad at the time of filing the Form I-360 petition must first meet the requirements at section 204(a)(1)(A)(v) of the Act. Congress first granted an abused spouse the ability to self-petition in 1994, when it enacted the *Violent Crime Control and Law Enforcement Act of 1994*, Pub. L. 103-322, 108 Stat. 1796 (Sep. 13, 1994). At that time, a petitioner living abroad was not eligible to file the Form I-360 self-petition. *Id.* at Sec. 40701; 8 USCA § 1154(a)(1)(c)(iii)(I). In 2000, Congress further amended section 204 of the Act by enacting the *Victims of Trafficking and Violence Protection Act of 2000* (VTVPA), Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). Division B of that Act contained the *Violence Against Women Act of 2000* (VAWA 2000). Pursuant to VAWA 2000 and the VTVPA, seven groups of abused aliens became eligible to self-petition for classification as immediate relatives or preference immigrants under sections 204(a)(1)(A)(iii) or (iv), or 204(a)(1)(B)(ii) or (iii) of the Act. The VTVPA also amended the Act by adding that an alien living abroad could now file for VAWA immigrant status if certain conditions were met. See VTVPA section 1503(b)(3); Section 204(a)(1)(A)(v) of the Immigration and Nationality Act. Prior to this

amendment, there was no mechanism for a self-petitioner to file for VAWA immigrant status from abroad.

In the alternative, counsel asserts that the petitioner's son was subjected to extreme cruelty in the United States. In her affidavits, the petitioner indicates that her husband cancelled her son's flight from New York to [REDACTED] and sent a defamatory letter to his intended boarding school which ultimately did not allow her son to enroll. The petitioner's son also confirmed this information in his affidavits, and the petitioner submitted additional evidence that her son's flight was cancelled and that she had to rebook his flight.<sup>1</sup> While the petitioner's son's flight was cancelled in the United States and the letter was sent to his intended boarding school in the United States, the petitioner and her son do not contend that her husband battered her or her son in the United States, and the behavior they describe does not involve threatened violence, psychological or sexual abuse, or otherwise constitute extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

As the petitioner is living abroad and has not shown that her husband was an employee of the U.S. government, a member of the uniformed services, or that he subjected her or her son to battery or extreme cruelty in the United States, she is not eligible to file a petition under section 204(a)(1)(A)(iii) of the Act, as proscribed by section 204(a)(1)(A)(v) of the Act. The record is insufficient to show that the petitioner was subjected to battery or extreme cruelty by her husband, as the evidence as a whole does not probatively describe any particular incident where the petitioner's husband battered her or her son in the United States, or where his behavior in the United States involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that her husband subjected her or her son to battery or extreme cruelty in the United States, and she is not eligible to file a petition under section 204(a)(1)(A)(iii) of the Act. See section 204(a)(1)(A)(v) of the Act.

### *Conclusion*

On appeal, the petitioner has not established that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because she did not show that she met the requirements under section 204(a)(1)(A)(v) of the Act.

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.

**ORDER:** The appeal is dismissed.

---

<sup>1</sup> Although the petitioner submitted evidence that her husband battered her in Russia, such as affidavits, photographs, and police reports, the AAO does not reach the issue of whether or not her husband subjected her to battery or extreme cruelty while in Russia as she is living abroad and is ineligible to file under sections 204(a)(1)(A)(iii) and (v) of the Act.