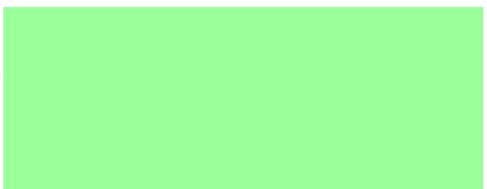




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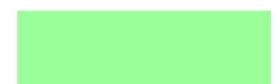


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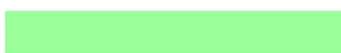
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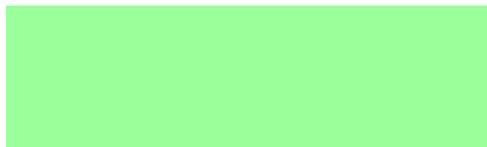
IN RE:

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 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 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 subjected him to battery or extreme cruelty, and that the petitioner had a qualifying relationship with his former spouse and is eligible for immediate relative classification based upon that relationship. The petitioner, through counsel, submits a brief but no new evidence on appeal.

*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 as an immigrant abused spouse 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 Jordan, last entered the United States on March 25, 2001 as a nonimmigrant B-2 visitor. On May [REDACTED] he married E-R-<sup>1</sup>, a United States citizen, in Texas and they divorced on December [REDACTED]. The petitioner filed the instant Form I-360 self-petition on February 17, 2010. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner 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 as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

### *Battery or Extreme Cruelty*

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

The director correctly determined that that the petitioner's former spouse did not subject him to battery or extreme cruelty, and the petitioner has not overcome this ground for denial on appeal. In the petitioner's first affidavit, he recounted how he met E-R- in January 2008, married her in May [REDACTED] moved into a home together in August 2008 after which he learned she had a child in Child Protective Services custody whom she was trying to get back. The petitioner recalled that E-R- told him they must keep their marriage a secret from her mother who would not want the child living with a foreigner and would likely interfere in her efforts to regain custody. He explained that he willingly complied, worked hard to earn money to pay their expenses, and was ecstatic when E-R- became pregnant. The petitioner recounted how in late February 2009, E-R- told him she had been having an affair for months, the child was not his, and then she left him. He recalled that although he felt betrayed, he wanted to repair the relationship, E-R- moved back into their home in April 2009, but she was angry all the time and picked fights over little things. The petitioner stated that he gave E-R- money, she often made frivolous purchases, and they had arguments during which she called him "old man" and threw unspecified objects at him. He recounted how after E-R-'s daughter was born in June 2009, he asked if he could be the father, E-R- replied that it was possible, but after a few weeks told him he was not.

The petitioner stated that in July 2009, they received an interview notice concerning the immigrant visa petition E-R- had filed on his behalf. He explained that E-R- was very happy for him to get a "green card," but was nervous about having had another man's baby while married to him and fearful that this would impact her existing case with Child Protective Services. The petitioner recalled that E-R- was interviewed alone by an immigration officer and she told him on their way home that she withdrew the petition because she was asked a lot of questions she feared would get back to her mother and get her in trouble. The petitioner explained that E-R- was very sorry and he told her not to worry. He stated that E-R- moved out of the home again in August 2009, he tried to reconcile with her but she declined, he filed for divorce in October 2009, and the divorce was finalized in December 2009.

In his second affidavit, the petitioner added that he was more socially active before his marriage, during which he worked long hours far from home in a job requiring long commutes and eventual five-day separations from E-R-. The petitioner recalled that E-R- would tell him she was going to stay with friends while he was away and when he asked about her activities she replied that it was none of his business. He repeated that she asked for money, which he gave to her, and she threw things and called him names when she was angry. The petitioner recounted how he left his friends and community in Louisiana to be with E-R- in Texas, but despite her promises they never traveled back together to visit. He added that E-R- read his email, went through his telephone log, and interrupted telephone conversations conducted in his native language. The petitioner's affidavits do not demonstrate that his former spouse battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted below the affidavits of his former spouse, sister, brother-in-law and cousin. E-R- stated that though the petitioner was older than her and they had different religious and cultural backgrounds, he treated her well, she loved him, and they decided to get married. She recounted how when the petitioner began to work long hours away from home, she became reacquainted with a former lover, began an affair, and learned in October 2008 that she was pregnant with his child. E-R- recalled

that she told the petitioner in late February 2009 that the baby was not his, he became angry and they separated, and though they reconciled in April 2009 she no longer felt the same toward him and found herself being mean to him and trying to push him away to alleviate her guilt. She confirmed that she spent their money on frivolous things, argued about it, and when he condescended to her on account of her youth he sounded just like her parents and she responded by throwing things. E-R- recounted how when she gave birth in June 2009, the petitioner wanted to believe the child could be his and when he kept asking if she was sure she told him it was possible he could be the father. She confirmed that she panicked during her immigration interview and fearing she would get in trouble she asked to withdraw the immigrant petition she had filed on the petitioner's behalf. E-R- recalled that when she explained to him what happened he was very understanding, and she felt really bad for him because she did not want him to be deported. E-R- stated that she still loves the petitioner and he loves her, but she is not sure that they can reconcile.

The petitioner's sister, [REDACTED] stated that after the petitioner learned that E-R-'s baby was not his, he began calling and visiting less and when she did speak with him on the telephone, she often heard E-R- screaming in the background. She recalled that the petitioner used to be happy and positive, but this news crushed him, he did not want to talk or see anyone anymore and even stopped visiting on holidays and special occasions. Ms. [REDACTED] explained that after his divorce, the petitioner moved back to Louisiana, isolated himself from friends, and told her he was humiliated by E-R- and believed everyone was pointing and laughing at him. The petitioner's brother-in-law, [REDACTED] stated that the petitioner said he had been ashamed to tell him that E-R- cheated on him and he had been a "sucker" loving a baby that was not his. He recalled that the petitioner did not visit him for a while but he understood because it is shameful for an Arab man to be cheated on by his wife and made to look like a fool. The petitioner's cousin, [REDACTED] recalled that he heard from others that E-R- cheated on the petitioner and had another man's baby. Mr. [REDACTED] stated that the petitioner is far less social now after his divorce, and he believes he is afraid of what others will say or think about him. None of the affiants demonstrated below that the petitioner's former wife battered him or subjected him to threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation.

The petitioner also submitted below a "patient summary" by [REDACTED] M.D. Therein, Dr. [REDACTED] indicated that he interviewed the petitioner on June 14, 2010 and the petitioner told him that his problems started after his divorce. Dr. [REDACTED] summary conveys the petitioner's statements to him during a single interview, after his divorce, and more than one year after the petitioner stated he no longer resided with his former wife.

On appeal, the petitioner submits no new evidence. Rather, counsel asserts that E-R- could be prosecuted for felony assault under Texas law and therefore, her conduct constitutes a battery. The record does not indicate that E-R- was ever charged with or prosecuted for any crimes, and the instant matter does not concern the definition of assault under Texas criminal law but whether the petitioner's former spouse subjected him to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Counsel bases his assertion on statements by the petitioner and E-R- that when she was angry she would sometimes "throw things" at him, and a statement by the petitioner that he had bruises on his body from the "household items" she threw. The brief statements in the petitioner and his former spouse's affidavits, however, do not contain the probative details of the

alleged events and, therefore, are not considered to constitute specific instances of battery or extreme cruelty.

Counsel further asserts that the director engaged in prohibited gender bias by discounting “the violence” perpetrated on the petitioner because he is male and his former spouse is female. Counsel’s assertion is without merit. The petitioner has not demonstrated any bias by the director in the review and analysis of the evidence, as the record contains no probative evidence demonstrating that E-R- subjected the petitioner to battery or threats of violence, psychological or sexual abuse, or other conduct constituting extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

Counsel contends that E-R- isolated the petitioner from his family and friends. However, the petitioner’s affidavits show that he maintained employment that took him far from home, often for five days at a time, and continued to visit his family and friends, albeit alone when E-R- would refuse to join him. The affidavits of his sister and brother-in-law demonstrate only that the petitioner withdrew from family and friends out of embarrassment over his former wife’s indiscretions. The evidence does not support a conclusion that E-R- controlled the petitioner such that her behavior constituted battery or extreme cruelty.

The preponderance of the evidence does not establish that the petitioner’s former spouse subjected him to battery or extreme cruelty during their marriage. The preponderance of the relevant evidence does not demonstrate that E-R- ever battered the petitioner 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). Accordingly, the petitioner has not shown that his former 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.

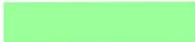
#### *Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

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, 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.

#### *Conclusion*

The petitioner has not overcome the director’s grounds for denial on appeal. He has not demonstrated that his former spouse subjected him to battery or extreme cruelty during their marriage. Consequently, the petitioner has also not established a qualifying relationship with his former spouse and his corresponding eligibility for immediate relative classification based on such a relationship because he and E-R- divorced prior to filing the self-petition. 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. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.