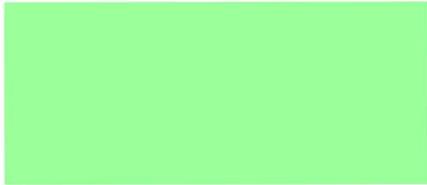


(b)(6)

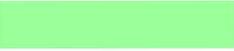


U.S. Citizenship  
and Immigration  
Services



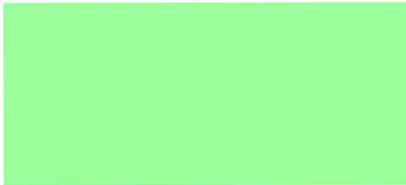
Date: **SEP 25 2014**

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:

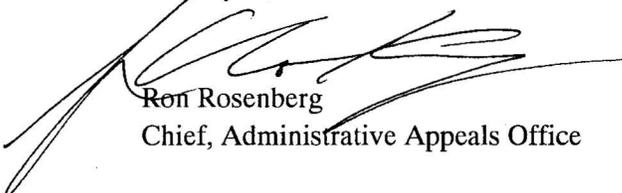


**INSTRUCTIONS:**

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 former spouse, a U.S. citizen.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by his ex-wife during their marriage. On appeal, the petitioner, through counsel, submits 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 an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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 explained in 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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Romania who entered the United States on March 9, 2005, as a temporary non-agricultural worker. The petitioner married T-L<sup>1</sup>, a U.S. citizen, on September 25, 2008, in [REDACTED] Florida. The marriage ended in divorce on March 26, 2010. The petitioner filed the instant Form I-360 self-petition on August 23, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, T-L's battery or extreme cruelty during their marriage. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel 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). A full review of the record fails to establish the petitioner's eligibility. The

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

additional evidence on appeal does not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

In his initial affidavit, the petitioner indicated that T-L- called him names, neglected him, and had an extramarital affair. He briefly recounted incidents when T-L- threw things at him. He also asserted that T-L- slapped him. Although the RFE specifically requested additional evidence of battery or extreme cruelty, the petitioner submitted an affidavit addressing only the couple's tax returns. See *Affidavit Regarding Tax Returns*, undated. Letters from the petitioner's sister and brother-in-law stated that the couple had arguments about different subjects, such as financial issues, in front of other people. The petitioner's initial affidavit, and letters from the petitioner's family members, did not describe 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, the petitioner submits an affidavit asserting that T-L- emotionally and physically abused him. He describes an incident when T-L- embarrassed him in front of others at a restaurant and another time when she yelled at him in a movie theater. He explains that nothing he did was ever good enough for her and that she would give him the silent treatment for days. He stated that she once threw a bottle of soda at him, once slapped him, and once pushed him, causing him to injure his knee. The petitioner also recounted that at his sister's house in December 2008, T-L- slammed the door leading to the garage on his hand, causing a bruise that lasted for weeks. Additional letters from the petitioner's sister and brother-in-law submitted on appeal state that when the petitioner and T-L- stayed at their house, they heard T-L- yelling at the petitioner and that on at least two occasions, they heard loud banging noises. According to the petitioner's sister, in December 2008 or January 2009, T-L- intentionally slammed the garage door on the petitioner's hand. The petitioner's sister also briefly recounted an incident when T-L- pushed, but did not harm, the petitioner.

On appeal, the petitioner fails to establish that T-L- subjected him to battery or extreme cruelty during their marriage. The petitioner's newly submitted affidavit asserts that T-L- intentionally slammed a door on his hand that caused significant bruising, but does not explain why he did not mention this incident in his initial affidavit and in response to the RFE. Similarly, although on appeal, the petitioner's sister states she witnessed this incident at her house, she also did not discuss it in her prior affidavit in response to the RFE. The petitioner also did not previously discuss any injury to his knee caused by T-L-. On appeal, he does not describe the knee injury, but submits two copies of photographs of the knee of an unidentified individual. Counsel also claims T-L- physically assaulted the petitioner with her fist and feet, and violently kicked him to the ground, but the petitioner himself does not discuss these incidents. The preponderance of the relevant evidence does not establish that T-L- subjected the petitioner to battery or that her behavior included other actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his 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.

*Conclusion*

On appeal, the petitioner has failed to establish that his ex-wife subjected him to battery or extreme cruelty during their marriage. He is consequently 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. 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.