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U.S. Citizenship
and Immigration
Services

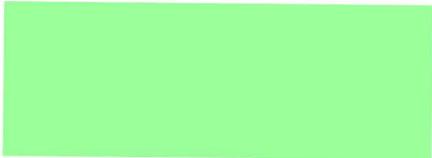


Date: **SEP 25 2014** Office: VERMONT SERVICE CENTER File: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 under section 204(a)(1)(A)(iii) of 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 determined that the petitioner failed to demonstrate the existence of a qualifying relationship with a citizen of the United States and his corresponding eligibility for immediate relative classification on the basis of such a relationship because the petition was filed more than two years after he and his former spouse divorced. The director also determined that the petitioner had not established that he resided with his former wife, that she had subjected him to battery or extreme cruelty during the 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 individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she is an alien: "who was a bona fide spouse of a United States citizen within the past 2 years and . . . who 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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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:

Evidence for a spousal self-petition –

(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.

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 Latvia who first entered the United States on September 19, 2000, as a J-1 nonimmigrant visitor. He married M-M¹, a citizen of the United States, on September 11, 2003, in Georgia and they were divorced on July 16, 2010. The petitioner filed the instant Form I-360 on July 26, 2013. The director denied the petition and the petitioner, through counsel, timely appealed.

We review these matters on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition. The appeal will be dismissed for the following reasons.

¹ Name is withheld to protect the individual's identity.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with a U.S. citizen spouse and was eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. The instant petition was filed more than two years after the petitioner and M-M- divorced. The petitioner consequently had no qualifying relationship with M-M- under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and is ineligible for immediate relative classification based on such a relationship as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Counsel argues on appeal that the two-year post-divorce filing deadline is a statute of limitations subject to equitable tolling. However, she cites no binding authority in support of her argument. Although counsel cites *Moreno-Gutierrez v. Napolitano*, 794 F.Supp.2d 1207 (D. Colo. 2011), that decision is not precedential, as the AAO is not bound to follow the published decision of United States district courts, even in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). While courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation, the petitioner cites no case finding visa petition filing deadlines subject to equitable tolling. Compare *Albillo-DeLeon v. Gonzalez*, 410 F.3d 1090, 1098 (9th Cir. 2005) (time limit for filing motions to reopen under NACARA is a statute of limitations subject to equitable tolling) with *Balam-Chuc v. Mukasey*, 547 F.3d 1044, 1048-50 (9th Cir. 2008) (deadline for filing a visa petition to qualify under section 245(i) of the Act is a statute of repose not subject to equitable tolling). We acknowledge that the petitioner may not have been aware that his Form I-360 self-petition was not timely submitted by his previous counsel. However, notwithstanding the petitioner's reliance on his previous attorney and his ineffective assistance of counsel complaint filed with the [REDACTED] the two-year, post-termination filing period of section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act is a statute of repose not subject to equitable tolling, and we lack the authority to waive this statutory deadline.

Joint Residence

The director determined without discussion or analysis that the petitioner failed to establish that he resided with M-M- during their marriage. The petitioner stated on the Form I-360 that he resided with M-M- from September of 2003 to December of 2006. The relevant evidence in the record contains the petitioner's affidavit, an affidavit from his friend and neighboring landlord [REDACTED] a letter from the Internal Revenue Service (IRS) jointly addressed to the petitioner and M-M-, and an Arrest and Booking Report by the [REDACTED] Sheriff's Office listing the petitioner and M-M- as residing at the same address.

Upon de novo review, the relevant evidence demonstrates that the petitioner established joint marital residence with M-M-. In his affidavit, the petitioner credibly described how he moved to Florida based on the availability of work as a laborer. He recounted that through work, he met M-M-'s brother who helped the petitioner find an apartment nearby. The petitioner was subsequently introduced to M-M- who later moved in with him after their marriage. [REDACTED] provided a

detailed recollection of seeing M-M- frequently come to visit her brother and later enter into a relationship with the petitioner. Mr. [REDACTED] further stated that after the couple's marriage, he frequently witnessed M-M- in front of their apartment and around their neighborhood. Additionally, the Arrest and Booking Report dated November 23, 2005, provides a summary by the responding police officer who was dispatched to the petitioner and M-M-'s residence in response to an incident of domestic battery. The report listed the same address for both the petitioner and M-M- and also detailed damage done by the petitioner to the front door of the property. Accordingly, a preponderance of the evidence demonstrates that the petitioner resided with M-M- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act and that portion of the director's decision is withdrawn.

Battery or Extreme Cruelty

The petitioner failed to establish that M-M- subjected him to battery or extreme cruelty and the evidence submitted below and on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavit and an affidavit from friend, [REDACTED]. In his affidavit, the petitioner stated that when he married M-M-, he was unaware that she had a serious drug addiction problem. He stated that her drug use worsened over time, making her act in "erratic and abusive ways." The petitioner stated that in addition to subjecting him to verbal abuse, M-M- stole money from him and hit him when angry and jealous. However, the petitioner did not provide substantive information regarding any specific incidents of abuse. In his affidavit, Mr. [REDACTED] stated that he did not think highly of M-M- because he was aware of her drug habit. He stated that M-M- was possessive and that he witnessed her being physically aggressive toward the petitioner. However, Mr. [REDACTED] did not further describe this incident or provide additional details regarding any other specific incidents of battery or extreme cruelty.

On appeal, counsel submits a psychological evaluation from licensed psychologist, [REDACTED] Ph.D. Dr. [REDACTED] states that the petitioner has had a lifelong exposure to abusive women and that it seems highly unlikely that the petitioner would have hit M-M- had he not been provoked by her chronically abusive behavior. While we do not question Dr. [REDACTED] professional expertise, his evaluation is based on the petitioner's responses during their interview and does not provide any further, substantive information to demonstrate that the petitioner was subjected to battery or extreme cruelty by M-M- as defined at 8 C.F.R. § 204.2(c)(1)(vi) and required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

A preponderance of the evidence does not demonstrate the petitioner's good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that "[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." The petitioner submitted his personal affidavit; an affidavit and multiple letters from friends; police and court documents relating to the petitioner's 2005 Florida arrest and conviction for battery; and a Massachusetts Criminal Offender Record Information (CORI) report showing two arrests that resulted in dismissals of the charges. In his affidavit, the petitioner stated that M-M- accused him of infidelity and the stress of their relationship caused him to

lose his temper. He stated that he is ashamed to admit that he snapped and recounted striking M-M- with his fist who then called the police. In his affidavit, Mr. [REDACTED] stated that although he cannot state what the petitioner was thinking the night of his 2005 arrest, it is in Mr. [REDACTED] opinion that the petitioner basically snapped after years of abuse. The remaining letters submitted in support of the petitioner's good moral character all describe the petitioner as a hardworking and good person. None of the support letters indicate, however, that any of the individuals are aware of the petitioner's 2005 conviction or the circumstances around it and can knowledgeably attest to his good moral character.

The record shows that on December 8, 2005, the petitioner pled nolo contendere to and was convicted in the Circuit Court of [REDACTED] County, [REDACTED] Florida of "battery/domestic" in violation of section 784.03 of the Florida Statutes.² The petitioner was sentenced to 16 days in jail and placed on probation for a period of nine months. He was also required to attend a batterers intervention course. The conviction record, which includes the Arrest and Booking Report, reflects that the petitioner admitted to the responding police officer that he punched and kicked M-M- every time she made him angry. In the report, the petitioner was summarized as stating that M-M- did not hit him "the entire time he was hitting her."

Section 101(f) of the Act prescribes, in pertinent part: "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) also provides, in pertinent part:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character . . . although the acts do not require an automatic finding of lack of good moral character.

Here, the record shows that the petitioner has committed an unlawful act which adversely reflects upon his moral character and that his behavior was below the standards of the average citizen in the community. On appeal, counsel asserts that the petitioner's conviction was connected to his former wife's battery and extreme cruelty but the record does not support counsel's claims. As the petitioner has failed to establish that he was subjected to battery and extreme cruelty by M-M- during their marriage, he has also failed to demonstrate that his conviction was related to his former wife's abuse or that his offense was committed under other extenuating circumstances. Consequently, the petitioner has committed unlawful acts which adversely reflect upon his moral character. Accordingly, the petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

² At the time of the petitioner's conviction for battery, section 784.03 of the Florida Statutes provided, in pertinent part, "The offense of battery occurs when a person... 1. Actually and intentionally touches or strikes another person against the will of the other; or 2. Intentionally causes bodily harm to another person." FLA.STAT.ANN. §784.03 (West 2005).

Conclusion

On appeal, the petitioner has not demonstrated the qualifying relationship and corresponding eligibility for immediate relative classification, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. Although the petitioner has shown that he resided with his former spouse, he has not established that he was battered or subjected to extreme cruelty by M-M- and that he is a person of good moral character.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.