U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 16 2015 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 Acting 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 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 was subjected to battery or extreme cruelty by his wife during their marriage.

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 has divorced an abusive United States citizen may still self-petition under this provision of the Act if he or she 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 . . . 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.
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> (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 of Romania who entered the United States as a nonimmigrant visitor on June 19, 2001. The petitioner married C-R-[1], a U.S. citizen, on November and they subsequently divorced on November The petitioner filed the instant Form I-360 on July 18, 2013. 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 and the director denied the petition.

We review these proceedings *de novo*.

Battery or Extreme Cruelty

In his statements, the petitioner stated that he is a long-distance truck driver. He stated that since he has had arguments with C-R- and that she threatened to divorce him, have him deported, or withdraw his immigration applications when he did not give her money. He indicated that she withdrew money from their joint bank account without his knowledge and would scream at him when he inquired how she spent their money. He stated that she demanded more and more money and pushed him to work and work so that he can produce more. The petitioner claimed that C-R-

[1] Name withheld to protect the individual's identity.

threw his X box player, DVDs, and laptop on the floor until they were broken and that he did not call the police because he was afraid that C-R- would divorce him and have him deported. He stated that she criticized him, opened her own bank account, and refused to add him to her health insurance policy. He indicated that he was worried she would lock him out of their home. He generally claimed that at the beginning of C-R- told him that she would have "someone" hurt him if he returned to their home, and that he started to live in his semi-truck "because of fear she would destroy his important documents." He stated that in August he confronted C-R- about a letter she received from a collection agency regarding an apartment at and that C-R- told him that she lived with her boyfriend at that apartment. He stated that since the argument about the apartment C-R- has not returned and he has had anxiety and panic attacks. He stated that he filed for divorce in September after C-R- threatened to divorce him if he refused to give her more money. The petitioner indicated that he found an envelope from at the and called the city and discovered that C-R- had a gun license. He states that upon confronting C-R-, she "laughed" and told him that her boyfriend had a handgun and she will buy one as well. The petitioner claimed that he was "appalled by her affirmations and afraid for [his] life," and that he sold his truck and gave C-R- $5,000 so that she would stop asking for money, but his general statements about C-R-'s behavior do not probatively establish that she battered or subjected him to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1).

The petitioner provided an affidavit from his friend, who stated that the petitioner told him that C-R- had an affair and threatened to divorce the petitioner and have him deported. The petitioner also submitted a psychotherapy narrative report from Dr. a licensed psychologist. Dr. stated that he has been treating the petitioner since November 2013. Dr. stated that the petitioner reported that he was deeply hurt that C-R- secretly lived with another man, and that she would scream and curse when he did not give her all the money she demanded. Dr. further stated that the petitioner reported that upon discovering that C-R- obtained a gun permit, the petitioner was afraid that C-R- would "try to provoke" him into an argument, and then use the incident "as an excuse to shoot and kill" him. Dr. claimed that the petitioner "experienced extreme cruelty and emotional abuse involving intimidation, humiliation, degradation, and fear[ed] for his life." Although Dr. stated that the petitioner continues to suffer from the effects of post-traumatic stress disorder and major depressive disorder as a result of his marriage to C-R-, he has not discussed any specific incident of battery, psychological abuse, or extreme cruelty, and the petitioner's statements as well as those of do not probatively establish that C-R- ever battered or subjected him to psychological abuse, or extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1).

The petitioner also submitted a letter from Congress Collection Corportion addressed to C-R- for the creditor Apartment; and copies of envelopes addressed to C-R- from The at the and Drs.

On appeal, the petitioner asserts that the definition of the term "extreme cruelty" includes a pattern of economic control, humiliation, and isolation and that he has been subjected to such treatment

through C-R-'s behavior including her threats to divorce him and have him deported or withdraw his immigration applications when he would not give her money; forcing him to work "more and more" to provide her with more money; calling him derogatory names; refusing to add him in her health insurance policy; threatening to hurt him if he came home; and changing the locks on their home. The petitioner claims that he was afraid for his life, sold his truck, stopped going to work, felt isolated, and went to see a psychologist. He does not, however, describe behavior on the part of C-R- to establish that he was subjected to extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the preponderance of the relevant evidence fails to demonstrate that C-R- 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

Beyond the decision of the director, 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 pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he was battered or subjected to extreme cruelty by C-R- during their marriage. Beyond the director's decision, the record also fails to demonstrate the petitioner's qualifying spousal relationship with a United States citizen. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.