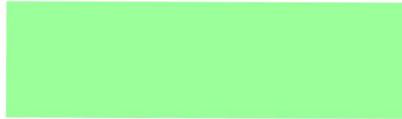
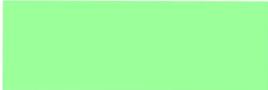


(b)(6)



U.S. Citizenship  
and Immigration  
Services



Date: **JAN 21 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:

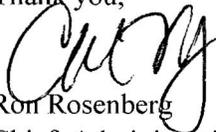
SELF-REPRESENTED

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,

  
for Ron Rosenberg

Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (“acting 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 U.S. citizen spouse.

On June 12, 2013, the acting director denied the petition for failure to establish a qualifying relationship with a U.S. citizen and corresponding eligibility for immigrant classification based upon such a relationship because the petitioner divorced his spouse more than two years before he filed his self-petition. The acting director further found that the petitioner failed to establish battery or extreme cruelty by his ex-wife during their marriage. On appeal, the petitioner submits a statement and additional evidence.

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 are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

\* \* \*

- (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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of El Salvador who claims he entered the United States in September of 1997 without being inspected, admitted, or paroled. On January [REDACTED] the petitioner married J-L,<sup>1</sup> a U.S. citizen. The marriage ended in divorce on January [REDACTED]. The petitioner filed the instant Form I-360 self-petition on July 30, 2012. The acting director subsequently issued a Request for Evidence (RFE) to which the petitioner timely responded with additional evidence. The acting director found the record insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed an appeal.

We conduct review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility and the appeal will be dismissed for the following reasons.

---

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

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

The acting director determined that the petitioner did not establish a qualifying relationship with J-L- because his marriage ended in divorce on January [REDACTED] more than two years before he filed the instant self-petition. On appeal, the petitioner concedes his self-petition “was out of time,” but requests that the denial be reconsidered in the interests of justice for him and his children.

Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act prescribes that a divorced alien’s self-petition must be filed no longer than two years after the legal termination of the marriage. In the instant case, the petitioner’s marriage ended in divorce on January [REDACTED] and therefore, he had until January [REDACTED], to file his self-petition. The petitioner did not file his self-petition until July 30, more than six months later. Neither the Act nor the regulations provide an exception to the two-year filing period for aliens who have divorced their abusive spouses. Consequently, the petitioner has failed to demonstrate that he has a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to section 204(a)(1)(A)(iii)(II)(aa), (II)(cc) of the Act.

*Battery or Extreme Cruelty*

The acting director correctly determined that the petitioner failed to establish that J-L- subjected him to battery or extreme cruelty. In his affidavit, the petitioner briefly recounted that J-L- was aggressive, got mad very easily, and threatened to have him deported. According to the petitioner, he called social services as well as the police a couple of times when she got very violent. He also stated he was very hurt when she left him for another man. The petitioner did not provide probative details regarding any specific incidents of abuse.

On appeal, the petitioner states that he called social services when J-L- “was taking it out on the kids,” and that she beat him many times. He submits a police report showing that he called the police on December [REDACTED]. The police report indicates that the petitioner claimed J-L- held a knife to their child, that she denied any wrongdoing, and that the Department of Family and Protective Services was contacted for a follow-up investigation. The petitioner does not provide probative details of any particular incident in which his ex-wife physically assaulted him or his children or threatened to do so. Although the police report shows that the petitioner once called the police, the report provides no other specific information to establish battery or extreme cruelty, and the record does not contain the results of the follow-up investigation conducted by the Department of Family and Protective Services. Accordingly, the record does not show that the petitioner was subjected to battery or other behavior that included 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) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not established a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based upon such a relationship. He

(b)(6)

*NON-PRECEDENT DECISION*

Page 5

has also not established that he was subjected to battery or extreme cruelty by his former spouse 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.