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 2 1 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 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 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner's spouse battered or subjected him to extreme cruelty.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

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).

Section 204(a)(1)(J) of the Act 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 explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

Pertinent Facts and Procedural History

The petitioner was born in Romania and last entered the United States on August 17, 2001, as an F-2 nonimmigrant spouse of a student. He divorced his first wife on April and married his U.S. citizen spouse, G-G-,[1] on October Illinois. He filed the instant self-petition on November 21, 2012. On July 24, 2013, the director issued a request for evidence (RFE) that, among other things, G-G- subjected the petitioner to battery or extreme cruelty. The petitioner responded, but the director found the response insufficient to establish the petitioner's eligibility and denied the petition on this ground. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reason.

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

Battery or Extreme Cruelty

The petitioner did not initially submit an affidavit. Instead, he provided a psychological evaluation from a licensed clinical social worker, who recounted events that the petitioner described to her. The petitioner told the social worker that he and G-G- were happy for the first years of their marriage, but that his wife became more demanding when she got a job bartending in According to the petitioner, G-G- asked for an SUV, and although she promised to contribute toward car payments, the petitioner asserted that she soon stopped providing money for any payments. According to the petitioner, G-G- also began to withdraw more money from their joint bank account, frequently causing them to be overdrawn. He indicated that she began to spend more time away from their home, and that he had to ask G-G-'s mother to take care of G-G-'s three daughters so that the petitioner could continue to work. Although the petitioner explained that he desired to have children with G-G-, he asserted that G-G- refused and threatened to report him to immigration. The petitioner advised the social worker that G-G-'s three daughters each became pregnant with a total of five children, which the petitioner attributed to the lack of attention from G-G-. According to the petitioner, his work and finances suffered and he lost a house that he owned in a as a result of foreclosure.

In response to the RFE, the petitioner submitted three additional psychological evaluations from the social worker. In the evaluation dated February 10, 2013, the social worker indicated that the petitioner expressed feelings of isolation and abandonment as a result of G-G-'s alleged abuse. The counselor indicated that she listened to a recorded phone call, purportedly made by G-G- to the petitioner, and that the message "contained a lot of swearing and vulgar language," with threats to have the petitioner deported if he did not provide money. In the May 12, 2013 evaluation, the social worker explained that the petitioner advised her that he was not living with G-G-, but that G-G- continued to seek money from him for her separate housing in , Illinois, and repeatedly made verbally abusive phone calls to him. In the August 18, 2013 evaluation, the social worker indicated that the petitioner advised her that G-G- continued to seek money from him for herself and for her family, and that she continued to make abusive phone calls and text messages to him, all of which contributed to "making his life miserable." The social worker recounted the petitioner's claim regarding an incident in when the petitioner had been embarrassed into buying G-G- a car that he did not believe they could afford. The petitioner explained that when they went to look at cars, G-G- seated herself in a would not get out, and instead "continued to yell at him and put him down in front of her friend and people at the dealership." Apart from recounting episodes of G-G-'s verbal abuse and demands for money, the social worker did not provide any additional probative details to establish that G-G- subjected the petitioner to battery or extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also provided affidavits from friends and family members. indicated that he was married to the petitioner's sister-in-law, and that he heard the petitioner and G-G- argue at family events. Mr. explained that he witnessed G-G- "verbally mistreat" the petitioner and that as a result, the petitioner would become very quiet around family. Similarly,

indicated that he heard G-G- verbally abuse the petitioner during an argument about G-G's daughters having boyfriends. Mr. attested that the petitioner would react by being sad and embarrassed.

In her affidavit, asserted that her sister, G-G-, started mistreating the petitioner after about three years of marriage. For example, Ms. indicated that G-G- began to stay out late, withdrew money from the bank account she shared with the petitioner without letting him know, and did not help with their bills. Ms. also indicated that G-G- mocked the petitioner's masculinity, repeatedly discounted his advice about her daughters because he was not their father, and told him to go back to his country.

both attested that they heard G-G- remind the petitioner that he was not the father of her children and should not give her advice about them. added that G-G- and the petitioner argued about money in a bank account, and noted that that G-G- told the petitioner to go back to his country. Although the petitioner's friends and family provided nearly the same general details about G-G-'s alleged behavior, they did not provide additional probative details to establish that she battered the petitioner or subjected him to extreme cruelty.

On appeal, the petitioner resubmits the August 18, 2013 evaluation from his social worker, but does not provide additional probative details or evidence to establish G-G- subjected him to battery or extreme cruelty. The petitioner also submits a brief in which he points to the previously submitted evidence and suggests that because the director did not find the evidence to be lacking in credibility, it was sufficient to establish that G-G- subjected him to battery or extreme cruelty.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). The petitioner has not provided his own statement and the statements from the petitioner's social worker, friends, and family members did not discuss G-G-'s behavior in probative detail and do not show that she ever battered 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). When viewed in the aggregate, the preponderance of the relevant evidence is insufficient to establish that G-G- subjected the petitioner to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that G-G- subjected him to battery or extreme cruelty. 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 (AAO 2010). Here, the petitioner has not met that burden.

Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.