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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



U.S. Citizenship  
and Immigration  
Services

Date: **JAN 29 2015** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

APPLICATION: 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 cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner was the subject of battery or extreme cruelty by his former wife. On appeal, the petitioner, through counsel, submits a brief.

*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 U.S. 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 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 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 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.

#### *Pertinent Facts and Procedural History*

The petitioner, a citizen of Eritrea, entered the United States on July 3, 1996 as a nonimmigrant student visitor. He married Z-B-<sup>1</sup>, a U.S. citizen, on May [REDACTED] Maryland. The petitioner represents that the couple separated on June [REDACTED] and submits a divorce decree evidencing the termination of their marriage on September [REDACTED]. The petitioner filed the instant Form I-360 self-petition on March 22, 2013. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty. The petitioner responded with further evidence, which the director found insufficient to establish his eligibility. The director denied the petition the petitioner timely appealed.

We review these proceedings *de novo*. Upon preliminary review of the record, we issued an RFE for evidence of the petitioner's divorce, which he timely provided. However, upon full review of the record, as supplemented on appeal, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

#### *Battery or Extreme Cruelty*

The preponderance of the relevant evidence does not establish that Z-B- battered the petitioner or subjected him to extreme cruelty. In his personal affidavit, dated June 10, 2010, the petitioner generally

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

recounted that Z-B- engaged in an extramarital affair with a former boyfriend, and subsequently treated the petitioner disrespectfully, becoming angry over minor issues, raising her voice at him, insulting him, and once attempting to hit him. The petitioner did not describe any of his claims in detail. The petitioner also indicated that Z-B- locked him out of their apartment during arguments on three occasions. The petitioner stated that after the last incident, which occurred on June [REDACTED] the petitioner called the police. The petitioner stated that the police arrived, and he entered the home when Z-B- opened the door for the police. The petitioner recounted that after the police departed, Z-B- yelled at the petitioner and threw a shampoo bottle at him, but did provide probative information about the incident sufficient to establish battery or extreme cruelty. The petitioner stated that he stayed the night in a hotel, and returned to retrieve his belongings with the police the next day.

In an affidavit dated September 6, 2011, the petitioner again generally recounted the same difficulties in the marriage and indicated that marital infidelity is considered insulting and shameful in his culture. The petitioner also submitted a police call log indicating that he called the police after they departed his residence on June [REDACTED] and reported that his wife had yelled at him and assaulted him. The petitioner did not provide a police report from either the earlier incident or his subsequent meeting with the police in the lobby of his building on June [REDACTED]. The petitioner submitted psychological evaluations indicating that Z-B- engaged in an extramarital affair, and treated the petitioner disrespectfully. Regarding the June [REDACTED] incident, the evaluation from [REDACTED] dated June 25, 2010, recounted the petitioner's claim that after the police left, Z-B- yelled at the petitioner and threw a shampoo bottle at him. The evaluation does not provide any further probative details. The petitioner also submitted a letter from [REDACTED] indicating that the petitioner sought counseling for unhappiness stemming from his marital issues with his wife. In addition, the petitioner submitted affidavits from family members stating that the couple had disagreements, argued with one another, and that Z-B- locked the petitioner out of their home. The petitioner's friend, [REDACTED] asserted that Z-B- yelled at the petitioner, that she locked him out of the house, and that Z-B- admitted to him that she threw a lotion container at the petitioner during one argument.

In response to the RFE, the petitioner discussed the counseling he received related to his marital problems and his desire to start a family. The petitioner indicated that the only "physical abuse" that he suffered was when his wife threw a shampoo bottle at him during their last argument. He also stated that he sought further documentation from the police department regarding the incident, but no further reports were available.

In her decision, the director found that the relevant evidence did not establish that Z-B- battered the petitioner or subjected him to extreme cruelty. The director also noted some minor discrepancies in the affidavits and letters, and observed that the petitioner failed to provide police reports associated with his calls on June [REDACTED].

On appeal, the petitioner emphasizes that there were no inconsistencies in the evidence, and that his wife's marital infidelity, and her treatment of him, including locking him out of the house on a few occasions, amounted to emotional and psychological abuse.

Upon *de novo* review of the record, Z-B-'s behavior, as described in the relevant evidence submitted below, and as summarized by the petitioner on appeal, does not reflect a pattern of violent behavior

consistent with the definition of extreme cruelty at the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner must demonstrate that his former spouse 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). The preponderance of the relevant evidence, reviewed above, does not so demonstrate. The petitioner's statements, the third-party affidavits, and the psychological evaluations provide a generally consistent picture of the petitioner's relationship with his wife. The petitioner and other affiants state that his wife was unfaithful, that during arguments she yelled at him, insulted him, and locked him out of the house on three occasions as the marriage disintegrated. Although the petitioner also claims that Z-B- threw a shampoo bottle at him during an argument on one occasion, the petitioner's discussion of the incident in his personal statements and the description contained in his psychological evaluation do not contain sufficient probative detail to establish that he was battered. Although the petitioner may have been distressed by his marital problems, the preponderance of the relevant evidence does not establish that Z-B-'s behavior involved battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

As the petitioner has failed to establish the requisite battery or extreme cruelty, he also has not demonstrated any connection between his divorce and such battery or extreme cruelty. Consequently, beyond the director's decision, the petitioner has not established that he had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(CC)(ccc) of the Act.<sup>2</sup>

#### *Conclusion*

On appeal, the petitioner has failed to establish his former wife's battery or extreme cruelty, a qualifying relationship with his former wife, and his corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> An application or petition that fails to comply with the requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).