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

[redacted]

Date: AUG 2 5 2014 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Self-Petitioner: [redacted]

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:

[redacted]

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 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 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 based on the petitioner's failure to establish that he resided with his United States citizen spouse, and that he entered into the marriage with her in good faith.

On appeal, the petitioner, through 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).

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:

> (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.
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> (ix) *Good faith marriage*. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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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> (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.
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> (vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner, a native and citizen of Kenya, entered the United States on January 7, 2010 as a nonimmigrant student. A Decree of Dissolution of Marriage ("decree"), provided by the petitioner with the initial Form I-360 submission, indicates that he married N-L-[1] on or about March 13, 2011 in Oklahoma City. The decree, dated June 29, 2011, dissolved the petitioner's marriage, to be final six months from the date of the decree.[2] On July 20, 2011, the petitioner married A-N-[3], a United States citizen, in Arkansas.[4] He filed the instant Form I-360 self-petition on March 27, 2012. Upon review of

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

[2] The decree further enjoined the petitioner and N-L- from marrying any other party during the six month period. *See* Okla. Stat. tit. 43, §123 (prohibiting divorced spouses from remarrying other individuals within six months of the issuance of a divorce decree and providing that individuals that remarry before the expiration of the six month period are guilty of the felony of bigamy); *but see Wilson v. State*, 184 P. 603, 604 (Okla. Crim. App. 1919) (holding that the provision does not apply to remarriages that take place in another state).

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

[4] As the petitioner married A-N- in Arkansas, his marriage is valid in Oklahoma, despite the prohibition of remarriage within six months on the divorce decree. *See Loughran v. Lourghran*, 292 U.S. 216, 223 (1934) (finding that the statutory prohibition by the state of domicile on remarriage within a prescribed period after the entry of the decree is given only territorial effect); *see also Smiley v. Smiley*, S.W.2d 642, 645 (Ark. 1970) (finding that a marriage in Arkansas is not voidable due to a provision on a divorce decree from another state prohibiting remarriage within a specified period of time).

the initial submission, the director issued a Request for Evidence (RFE) of shared residency with the petitioner's second spouse and good-faith entry into marriage, among other issues. The petitioner timely responded with additional evidence. Based on a review of the entire record of proceeding, the director found that the evidence did not establish eligibility for the benefit sought and denied the petition.

The petitioner, through counsel, subsequently appealed the director's decision. The appeal consists of a Form 1-290B, Notice of Appeal; a supplemental statement from counsel; and additional evidence.

We review these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, including the documents provided on appeal, we find that the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the petitioner did not establish that he and A-N- resided together during the marriage, and the claims and evidence submitted on appeal do not overcome this ground for denial. Section 204(a)(1)(A)(iii)(II) of the Act requires that the petitioner demonstrate that he resided with his abusive spouse. The Act defines "residence" as a person's place of general abode, meaning the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). On the Form I-360, the petitioner claimed to have resided with A-N- from July 2011 until November 2011 and listed their last shared residence as an apartment on Oklahoma.

In the petitioner's affidavit dated March 4, 2012, provided with the initial Form I-360 submission, he stated that he moved in to A-N-'s apartment on July 22, 2011.[5] In an undated statement submitted in response to the RFE, the petitioner indicated that he left the home in November 2011, and "didn't show up again" until January 2012. The petitioner described an incident that occurred between him and A-N- in January 2012, but did not indicate whether he was residing with her at that time.

In his March 4, 2012 affidavit, the petitioner asserted that he moved in with A-N- on July 22, 2011 because she had her own apartment. In response to the RFE, the petitioner stated that he was living with roommates in an apartment in Oklahoma City at the time he married A-N-. However, the decree of dissolution of the petitioner's prior marriage, issued on June 29, 2011, indicates that the petitioner "shall retain and own" his "family home" located in Oklahoma. The petitioner does not acknowledge this property in either his affidavit or undated statement, nor does he explain why he would have moved in to A-N-'s rented apartment if he already owned a home.

[5] In the petitioner's second statement, submitted in response to the RFE, he states that he "changed [his] address" and moved in with his spouse "towards the end of July, 2012."

With his initial Form I-360 submission, the petitioner provided pediatric patient registration records dated February 21, 2012, a prescription dated March 1, 2012, and a Criminal History Record Information request dated March 9, 2012. These documents state the petitioner's address as the apartment, although the petitioner claimed he stopped residing with A-N- at this address in November 2011.

In the petitioner's undated statement submitted in response to the RFE, he indicated that he provided assistance toward household expenses, but all of the bills were in A-N-'s name. He referred to the dwelling as "her apartment."

The record contains two copies of the petitioner's and A-N-'s 2011 Internal Revenue Service (IRS) Form 1040 joint income tax return, both of which bear the address of the apartment.[6] On appeal, the petitioner provided a portion of a letter from the IRS regarding the petitioner and N-A-'s 2011 taxes. The address on the letter is a post office box in Oklahoma City, not the address listed on the petitioner's Forms 1040 and his Form I-360.

On appeal, the petitioner submits a letter from In the letter, dated October 7, 2013, Ms. attests that she was a neighbor of the petitioner and A-N- at the apartments, and claims to have observed the petitioner taking out the trash and doing laundry. She further states that beginning in July 2011 she saw the petitioner and A-N- going shopping and leaving for work together. Ms. does not state the address of the apartments, identify which apartment the petitioner and A-N- resided in, or provide any other probative information.

The petitioner also provides a letter from his prior employe , dated October 8, 2013. In the letter, identified as "Billing Office Manager/Payroll," states that both the petitioner and A-N- are former employees of the company. The letter briefly states that company files indicate that both the petitioner and A-N- shared the same address at the apartment in Oklahoma, but does not state the dates of their joint residence or any other details. The letterhead of this letter appears to be prepared on a word processor. No telephone number for the employer is provided. Last names for the petitioner and A-N- are not stated. The body of the letter appears in a different type face than the rest of the document. The letter contains grammatical errors contained elsewhere in the file. These issues detract from the credibility of the document. *See* 8 C.F.R. § 204.2(c)(2)(i) (stating that USCIS will consider any credible evidence, but "determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service").

Even apart from the questionable credibility of Ms. letter, the brief statements from her and Ms. provided on appeal are insufficient to establish that the petitioner resided with A-N-. None of the petitioner's statements submitted below contained any detailed description of his claimed residence with A-N-. The petitioner does not submit an additional statement on appeal or

[6] The discrepancies between the two copies of this document are discussed below.

otherwise address the discrepancies regarding the dates and location of his claimed residence with A-N- or explain his other residence noted on the divorce decree.

On appeal, counsel asserts that the petitioner explained why he lacked further documentation of his residence with A-N-, but does not acknowledge or resolve the inconsistencies in the record. Consequently, a preponderance of relevant evidence does not demonstrate that the petitioner resided with his spouse during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into the Marriage

The director correctly determined that that the petitioner did not establish that he married A-N- in good faith. As previously noted, evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. 8 C.F.R. § 204.2(c)(2)(vii).

In both his March 4, 2012 affidavit and undated statement, the petitioner provided few details regarding his relationship with A-N-. The petitioner did not substantively discuss how they met, their courtship, wedding, or any of their shared experiences beyond the details of the abuse. The petitioner also did not discuss the composition of his and A-N-'s family, although on the Form I-360, the petitioner indicated that A-N- has two children: W-B-, born in 2009, and N-N-[7], born on February 17, 2012 during their marriage. The petitioner only briefly referenced W-B- in his statements. In his March 4, 2012 affidavit, the petitioner acknowledged that A-N- was involved in an extramarital affair with "the father of [his] wife's baby." In his subsequent undated statement, he referred to the man as his "step-child's father," but he did not discuss his own relationship with W-B-, if any.

The pediatric patient registration for N-N- lists the petitioner as the baby's father and indicates that the baby was full term. Thus, it appears that the baby was conceived in late May 2011. In his statement, submitted in response to the RFE, the petitioner indicated that he and A-N- went on their first date in June 2011. The petitioner does not discuss his spouse's pregnancy in either of his statements. He does not recount when he learned that A-N- was pregnant. The petitioner states that he "ran away" from A-N- in February 2012, but does not mention that she was either nine months pregnant, or had very recently given birth to his child when he left. He does not discuss any ongoing contact or relationship with N-N-. In his March 2, 2012 affidavit, the petitioner stated that it would be an extreme hardship to be separated from his daughter, but did not provide details regarding the identity of his daughter or their relationship. The record reflects that the petitioner was divorced shortly before he married his second wife, and he did not submit the birth certificate for N-N-. Upon review of the evidence, the record does not establish that N-N- is the daughter of the petitioner and his second wife.

Both in support of the initial Form I-360 submission, and again in response to the RFE, the petitioner provided several photographs, including four photographs of what appear to be the petitioner's and A-N-'s wedding, two photographs of the petitioner and A-N- at the Arkansas border, and seven additional

[7] Names withheld to protect the individuals' identity.

undated photographs. While they show the petitioner and A-N- were together on some occasions, the photographs alone are insufficient to establish that the petitioner entered the marriage in good faith.

In his undated statement submitted in response to the RFE, the petitioner indicated that at the end of January 2012 or beginning of February 2012, he and A-N- filed their taxes. The petitioner provided two copies of the IRS Form 1040 that he claimed was filed.[8] Both versions of the form bear the address of the apartment. Neither version of the IRS Form 1040 is signed. On appeal, the petitioner provided a portion of a letter from the IRS regarding the petitioner and N-A-'s 2011 taxes. The portion of the letter that appears to contain the information in the Form 1040 that was filed with the IRS was not provided. The address on the letter is a post office box in Oklahoma City, not the address listed on the petitioner's Forms 1040 and his Form I-360. The discrepancies between the Forms 1040 and the IRS letter diminish the credibility of the evidence regarding the petitioner and A-N-'s filing of joint tax returns.

The record also contains discrepancies regarding whether the petitioner and A-N- attended church together, and whether they sought assistance of a marriage counselor associated with the petitioner's church. In his undated statement provided in response to the RFE, the petitioner asserted that A-N- stopped attending church with him in October 2011. Thus, the petitioner appears to indicate that A-N- attended church with him at some prior time. However, the letter from Pastor dated February 27, 2012, states that the petitioner attended church alone. In his letter, Pastor states that he is pastor of and a marriage counselor. He states that the petitioner first approached him regarding his family issues on November 12, 2011 after he had run away from his wife.

On appeal, the petitioner provides an affidavit from dated October 4, 2013. In the affidavit, Mr. states that he is a marriage counselor that assisted the petitioner and A-N- between August 13, 2011 and October 14, 2011. It is not apparent whether and Pastor are the same person. The signatures on the documents are different. In his statements, the petitioner did not indicate that there were problems in his marriage as early as August 2011. Rather, in both his March 4, 2012 affidavit and subsequent undated statement, the petitioner recounted problems in the marriage that began in September. The petitioner did not describe attending marital counseling with A-N- in either his affidavit or statement.

On appeal, the petitioner submits a letter from John Horn, associate agent at dated October 9, 2013. The letter states that the petitioner had a life insurance policy from February 1, 2011 through May 1, 2012, which listed A-N- as the primary beneficiary. However, at the time the petitioner obtained the policy he had not yet met A-N-, and the letter does not state when A-N- was added as a beneficiary. A copy of the policy was not provided. *See* 8 C.F.R. § 204.2(c)(2)(i) (encouraging self-petitioners to submit primary evidence whenever possible). The

[8] The 2011 tax return provided on appeal is nearly an identical copy of the 2011 tax return provided with the petitioner's initial Form I-360 submission; however, the version submitted on appeal bears a different social security number for the petitioner, and both social security numbers appear in a different type-face than the original version.

letter contains several irregularities. It appears that the telephone number has been erased from the letterhead. The section regarding the policy's beneficiaries contains font in different sizes and unconventional grammar. These irregularities detract from the document's credibility.

The petitioner also provided on appeal a greeting card from his wife, and three others jointly written to him and his wife. While the cards are jointly addressed, they do not provide substantive information regarding the petitioner's relationship with A-N-.

On appeal, counsel asserts that the petitioner "jumped into a dating relationship with his co-worker, then marriage." Counsel suggests that this scenario resulted in "thin documentation" regarding the petitioner's good faith marriage. Counsel states that the petitioner's "poor choices" should not be "negative evidence" of his good faith marriage. The record lacks any indication that the director improperly considered the length or breakdown of the petitioner's relationship with A-N- in his determination that the petitioner did not enter into the marriage in good faith. Counsel further claims that as the director found the petitioner credible on other grounds, the petitioner should be found credible regarding his good faith marriage. The statute prescribes six distinct eligibility criteria for the benefit sought by the petitioner. *See* section § 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii). While some evidence may be relevant to more than one criterion, each must be independently established.

The inconsistencies and diminished credibility of the relevant evidence have not been acknowledged or resolved. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with A-N- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner either resided with his second spouse or entered into their marriage in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

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). 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.