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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

[Redacted]

Date: **DEC 17 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:

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,

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 and the petition will remain denied.

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 entered into marriage with his U.S. citizen spouse in good faith and pursuant to the section 204(g) of the Act, 8 U.S.C. § 1154(g), bar against the approval of immigrant visa petitions based on marriages contracted while an alien is in removal proceedings. The director further found that the petitioner's petition is barred by section 204(c) of the Act.

On appeal, the petitioner submits an affidavit 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, 8 U.S.C. § 1154(a)(1)(J) 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:

(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:

Evidence for a spousal self-petition –

(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.

* * *

(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.

In addition, the regulations require that to remain eligible for immigration classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

A self-petitioner is also required to comply with the provisions of section 204(c) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Facts and Procedural History

The petitioner, a citizen of Sierra Leone, entered the United States on [REDACTED] 1991 as a B-2 nonimmigrant visitor. The petitioner's administrative record indicates that he divorced his first wife in Sierra Leone in 1990. The record reflects that the petitioner married his second wife, A-F-¹, a U.S. citizen, on [REDACTED] 1993. A-F- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which she subsequently withdrew in a sworn statement dated [REDACTED] 1995, indicating that the marriage was not bona fide. The petitioner was placed in deportation proceedings on [REDACTED] 1995.² The petitioner and A-F- divorced on [REDACTED] 1995. On [REDACTED] 1995, the petitioner married T-J-³, a U.S. citizen.

On [REDACTED] 1997, T-J- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. INS issued her a Notice of Intent to Deny (NOID) the petition on [REDACTED] 2001, advising that approval of the petition was barred by section 204(c) of the Act based on the petitioner's marriage to A-F-. INS denied the petition on [REDACTED] 2001. On [REDACTED] 1998, during the petitioner's on-going deportation proceedings, Immigration and Naturalization Service (INS) District Counsel served the petitioner and his then representative with A-F-'s [REDACTED] 1995 sworn statement and a [REDACTED] 1995 Memo of Investigation, among other documents. The petitioner was ultimately found deportable for remaining in the United States beyond his period of authorized stay, and granted voluntary departure on [REDACTED] 2002. When the petitioner did not timely depart the United States,

¹ Name withheld to protect the individual's identity.

² The petitioner was issued a Form I-221, Order to Show Cause, on [REDACTED] 1995.

³ Name withheld to protect the individual's identity.

he was ordered deported to Sierra Leone. The petitioner remains in the United States under an order of supervision as he has been unable to obtain travel documents to return to Sierra Leone.

On [REDACTED] 2009, T-J- filed a second Form I-130 on behalf of the petitioner, which U.S. Citizenship and Immigration Services (USCIS) subsequently denied based on section 204(c) of the Act. On April 12, 2011, the Board of Immigration Appeals (BIA) remanded the petition for failure to inform T-J- of the section 204(c) finding prior to issuing the denial, although the BIA acknowledged that she had been previously notified of the petitioner's prior sham marriage in regard to her first Form I-130 filed on behalf of the petitioner. USCIS reopened the second Form I-130 proceeding on [REDACTED] 2011.

On [REDACTED] 2011, the petitioner filed the instant Form I-360 self-petition based on his marriage to T-J-. The director issued Requests for Evidence (RFEs) of the petitioner's good moral character, and good-faith entry into the marriage, among other issues. In two RFEs, the director advised the petitioner that approval of his petition was barred by section 204(c) of the Act based on his marriage to A-F-, citing A-F-'s [REDACTED] 1995 sworn statement. The director also advised the petitioner that because he married T-J- while in removal proceedings, section 204(g) of the Act further barred approval of his self-petition. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility, and denied the petition.

The petitioner subsequently appealed the director's decision and submitted a statement from the petitioner and additional evidence.

We review these proceedings *de novo*. A full review of the record reveals that the petitioner has established that he entered into his marriage with T-J- in good faith under section 204(a)(1)(A)(iii)(I)(aa) of the Act by a preponderance of the evidence, and by clear and convincing evidence to overcome the bar at section 204(g) of the Act. However, approval of the petition is barred by section 204(c) of the Act. Beyond the director's decision, the petitioner has not established his good moral character. The appeal will be dismissed for the following reasons.

Good-Faith Entry Into Marriage with T-J- and Section 204(g) of the Act

At the time the petitioner married T-J-, he was in deportation proceedings and had not departed the United States under an order of deportation, nor had he resided outside of the United States for the requisite two-year period; thus, he remains subject to the bar at section 204(g) of the Act. 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A). He must therefore establish eligibility for the bona fide marriage exemption at section 245(e) of the Act to demonstrate eligibility for immediate relative classification.

The regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B), states, in pertinent part:

(B) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

- (1) Documentation showing joint ownership of property;
- (2) Lease showing joint tenancy of a common residence;
- (3) Documentation showing commingling of financial resources;
- (4) Birth certificate(s) of child(ren) born to the petitioner and the [abused spouse];
- (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or
- (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

Although identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). See also *Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

De novo review of the relevant evidence establishes by the preponderance of the evidence and by clear and convincing evidence that the petitioner entered into his marriage with T-J- in good faith. With his initial Form I-360 submission the petitioner provided a copy of a federal income tax return for 2008 in his and T-J-'s names, listing their filing status as "Married filing jointly." In response to an RFE dated December 7, 2012, the petitioner submitted a personal affidavit dated February 23, 2013, in which he

attested to his feelings for T-J- and caring for her and her two children. He discussed T-J-'s drug problem, and recounted activities that the couple did together when T-J- was sober. He described aspects of their shared residence such as T-J- cooking and cleaning during periods of sobriety.

In the June 18, 2013 RFE, the director listed relevant evidence not submitted in the instant proceeding, but contained in the petitioner's administrative record.⁴ The director found deficiencies with much of the documentation. Evidence from the petitioner's administrative record included a lease for a residence on [REDACTED] in the names of the petitioner and T-J- dated February 4, 2009; an unsigned copy of the petitioner's and T-J-'s jointly filed federal income tax return for 1996; an Internal Revenue Service (IRS) transcript for 2008 showing that the petitioner and T-J- filed as "Married Filing Joint" and a jointly filed 2009 income tax return; a cable television bill dated March 9, 2010 in the names of both T-J- and the petitioner at the [REDACTED] address; life insurance policies for both T-J- and the petitioner; a checking account statement in the names of the petitioner and T-J- for the period of December 22, 2009 through February 19, 2010; two utility bills in the names of the petitioner and T-J-; and photocopies of debit cards indicating that T-J- and the petitioner shared two bank accounts. In addition, the petitioner's administrative record contains an affidavit from T-J-'s father, dated February 22, 2010, attesting to the bona fide nature of the marriage, and an undated affidavit from the petitioner's friend, [REDACTED] who attested to introducing the petitioner and T-J-, and visiting them at the [REDACTED] residence. The petitioner's administrative record also contains third-party affidavits from the petitioner's mother-in-law, sister-in-law and her husband, and a friend and former landlord of the couple. The affidavits attest to the bona fide nature of the marriage, the couple's attendance at family gatherings together, and the petitioner's parenting of T-J-'s two children from a prior relationship.

In response to the June 18, 2013 RFE, the petitioner submitted a personal affidavit dated September 11, 2013, in which he described meeting T-J- through his cousin [REDACTED] and the couple's decision to make a life together. The petitioner discussed moving to [REDACTED] Ohio in 1995 so the couple could be near T-J-'s sister, and marrying in [REDACTED]. The petitioner recounted the volatile nature of their relationship, including T-J-'s drug abuse issues and disappearances, and the petitioner's attempts to get her into rehabilitation and job training programs. The petitioner indicated that T-J- took to the streets in 2000 as a result of her drug problems, but that the couple reunited and reconciled in 2008. In addition, the petitioner provided an affidavit from [REDACTED] dated September 11, 2013, who attested to introducing the petitioner to T-J-, and visiting the couple at three different residences that they shared over the course of their marriage. The petitioner also submitted a copy of a letter written by T-J- in September 1996, in which T-J- discussed how the petitioner cared for her and her two children during their first year and four months of marriage.

In his decision, the director discounted much of the relevant evidence and found that the petitioner failed to establish good-faith entry into his marriage with T-J- by clear and convincing evidence.

⁴ Typically, each petition must be supported by its own evidence. In this matter, as both the director and the petitioner's counsel have repeatedly referenced documents submitted during prior proceedings, which may no longer be available to the petitioner, we have considered these additional documents. We do not, however, consider any statements made by the petitioner's abusive spouse, except for those submitted by the petitioner in the instant matter.

Among the various deficiencies noted was that the petitioner's administrative record contains tax transcripts for 2006 and 2007 indicating that in those years the petitioner filed as "Single." On appeal, the petitioner provided an affidavit in which he credibly addressed some of the perceived discrepancies in his evidence. He also submitted corrected tax returns for 2006 and 2007, showing his filing status as "Married filing separately," and indicated that the error was made by his tax preparer during the period when he was separated from T-J-.

Upon *de novo* review of all of the relevant evidence of record, described above⁵, the petitioner has established that he entered into marriage with T-J- in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, and by clear and convincing evidence as required to establish eligibility for the bona fide marriage exemption at section 245(e) of the Act from the bar at section 204(g) of the Act. The portion of the director decision finding to the contrary is hereby withdrawn. However, although we have withdrawn the director's finding on these grounds, additional grounds preclude approval.

Section 204(c) of the Act based on Petitioner's Marriage to A-F-

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(1)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt

⁵ The petitioner's administrative record contains additional relevant evidence that was not specifically mentioned by the director in his decision or in the RFEs. For example, the record contains a letter dated May 5, 1997 from the property manager at [REDACTED] apartments, naming the petitioner, T-J-, and her two children as the residents of the unit rented by the petitioner.

or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Where there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Id.* at 387.

Here, the petitioner's file (administrative record) contains a sworn statement prepared by A-F- dated January 12, 1995, indicating that the purpose of the marriage was to evade the immigration laws. In an RFE dated December 7, 2012, the director informed the petitioner of A-F-'s sworn statement, noting that A-F- stated that she received \$1000 in exchange for marrying the petitioner, with the understanding that there would be no obligation to be a wife and reside with the petitioner. In response to the RFE, the petitioner's counsel responded with a copy of the actual sworn statement contained in the record and asserted that the RFE misrepresented A-F-'s statement regarding the \$1000. Counsel further indicated that evidence of the bona fides of the petitioner's marriage to A-F- was already in the administrative record, and requested that all previously submitted evidence be considered. In response to the RFE, the petitioner, through counsel, submitted a final billing statement from the [REDACTED] Apartments, [REDACTED] in the names of [REDACTED] the petitioner, and A-F-, showing a lease term from March 29, 1993 to March 31, 1994 and a move out date of May 6, 1994; two unlabeled and undated photographs of the petitioner and A-F-; and the petitioner's and A-F-'s marriage license and marriage certificate. In addition, the petitioner submitted an undated affidavit stating that he was informed on [REDACTED] 2011 by T-J- that their apartment was on fire, and that all his documents and belongings were burned. The petitioner indicated that he contacted banks to obtain documentation but that records beyond seven years were not retained. The petitioner submitted letters from two banks indicating that he had no current accounts at those institutions and that information more than seven years old was not available. The petitioner submitted an additional personal statement dated March 1, 2013, with a generic list of potential joint documentation that was "burnt down"; however, the petitioner did not describe any specific documents that were lost.

On [REDACTED] 2013, the director issued a second RFE detailing the evidence of record relevant to the petitioner's claim that he entered into marriage with A-F- in good faith. The director further discussed the 1994-1995 INS investigation into the marriage, the findings from the investigation,

and the contents of A-F-'s sworn statement. Upon review of the evidence of record, including that submitted by the petitioner in response to the previous RFE, the director concluded that the evidence provided was not sufficient to overcome the provisions of section 204(c) of the Act, and offered the petitioner an additional opportunity to submit further documentation of the bona fides of the marriage. The director also noted that an immigration judge found the petitioner deportable based on marriage fraud.

In response to the June 18, 2013 RFE, the petitioner submitted a personal affidavit stating that he did not recall any request from INS to present evidence that his marriage to A-F- was bona fide, but did not offer any information regarding that marriage. The petitioner submitted a copy of the remand from the BIA, and a brief from counsel. In the brief, counsel disputed the director's finding that the submitted evidence was insufficient to establish that the petitioner's marriage to A-F- was bona fide, and asserted that the petitioner had not been provided any documentation of the immigration judge's finding of marriage fraud.

In his decision, dated [REDACTED] 2014, the director acknowledged that the petitioner was not found deportable for marriage fraud, but again discussed A-F-'s sworn statement and other findings from the INS investigation of the petitioner's marriage to A-F-. The director found that based on A-F-'s sworn statement, section 204(c) of the Act barred approval of his self-petition. After reviewing the relevant evidence of record, and noting the deficiencies of that evidence, the director found that the petitioner failed to overcome the bar at section 204(c) of the Act.

On appeal, the petitioner submits a personal affidavit dated March 19, 2014, in which he indicates that evidence to establish his eligibility for the benefit sought was burned in a fire at the [REDACTED] apartment that he shared with T-J- in [REDACTED] 2011. The petitioner provided documentation that he owes a fire deductible related to his residence at the [REDACTED] apartment, but did not provide any other evidence regarding the extent of the damage, or a description of the documents that he claims were destroyed.

Regarding his marriage to A-F-, the petitioner states that he and A-F- lived at separate addresses until they married, at which time A-F- moved into the apartment where he resided. The petitioner indicates that A-F- was added to the lease at that time. The petitioner asserts that the investigator forced A-F- to say things about their marriage that she did not mean, and that after he was granted voluntary departure, A-F- apologized and "gave [him] the remaining evidence that [he] needed to submit," but that the documents were burned in the fire. The petitioner does not describe the documents that he claims A-F- gave him, except for a photograph of A-F- and her two daughters, which the petitioner provides on appeal. The petitioner indicates that the director's finding regarding the applicability of section 204(c) to his self-petition was erroneous, and points to the BIA remand of T-J-'s second Form I-130 petition in support of his assertion.

Upon review of the relevant evidence, the director did not err in finding that section 204(c) applies to the instant self-petition, and the evidence submitted on appeal fails to overcome that finding. The record reflects that the director made an independent conclusion in finding that section 204(c) of the Act applies to the instant self-petition. *See Matter of Rahmati*, 16 I&N Dec. at 539. The evidence

of record supports the director's conclusion. A-F-'s sworn statement, a photocopy of which the petitioner submitted as evidence in this matter, states that A-F- met the petitioner through a friend in approximately [REDACTED] 1993, and was asked if she would marry the petitioner so that he could "renew his visa by marriage to a U.S. citizen." She further stated that she "was told that there would be no obligation on [her] part to be a wife and [she] would not have to live with him," and that "[they] never lived together." She stated that she resided at an address on [REDACTED] since [REDACTED] 1993. A-F- indicated that "[the petitioner] set up a joint acct. from which [she] withdrew approx. \$1,000.00." In response to the December 7, 2012 RFE, counsel asserted that A-F- did not state that she received the money "in exchange" for marrying the petitioner. Indeed, the statement indicates that she withdrew the money from the joint account set up in both names. However, neither counsel nor the petitioner address A-F-'s statement that she married the petitioner to help him renew his visa, that it was her understanding that she was not obligated "to be a wife" in the arrangement, and that she never lived with him.

The petitioner submitted a final billing statement dated June 3, 1994, listing A-F- as a resident with the petitioner and another individual on a lease that terminated on March 31, 1994 with a move out date of May 6, 1994. Although this document suggests that A-F-'s name was added to the petitioner's lease, the petitioner has not provided probative evidence to overcome A-F-'s sworn statement that she never resided with the petitioner and in fact resided at a separate address since September 1993. The administrative record contains a statement for a joint deposit account covering a period in December 1993 showing limited activity. The petitioner has not provided any probative testimony as to who made the deposits in the account or for what purpose the account was established. The two unlabeled photographs showing the petitioner and A-F- together on one occasion do not establish the petitioner's intent in marriage, nor does the photograph of A-F- and her daughters, which the petitioner states A-F- gave him after the termination of their marriage. The petitioner's administrative record contains affidavits from the petitioner's friends, [REDACTED] dated August 27, 1998 and January 23, 2001, and [REDACTED] dated August 28, 1998 and January 23, 2001, attesting to the petitioner's good faith marriage with A-F-. Mr. [REDACTED] stated that he visited the petitioner and A-F- in the home that they shared, and attempted to mediate their conflict when the marriage broke down, but did not provide any probative information regarding their shared residence or other bona fides of the marriage. Mr. [REDACTED] stated that he resided with the petitioner and moved out of the apartment when A-F- moved in. Mr. [REDACTED] stated that the petitioner and A-F- attended African parties on a few occasions, but did not describe either the social events during which he witnessed the petitioner and A-F- together, or provide probative information regarding the couple's shared residence. Both the lease, which is contained in the administrative record, and the final bill for the residence indicate that the third resident of the apartment was [REDACTED] not Mr. [REDACTED]. The discrepancy detracts from the credibility of Mr. [REDACTED] affidavit; however, even absent the discrepancy, Mr. [REDACTED] affidavit contains insufficient probative information regarding the petitioner's relationship with A-F- to establish his intent in marriage.

Although the petitioner suggests on appeal that his and A-F-'s joint documentation was destroyed by a fire in 2011, the petitioner has not specifically stated what joint accounts he shared with A-F- beyond the deposit account that is already documented. The petitioner's and A-F-'s divorce decree

notes only the deposit account as their joint property, which was already closed at the time of the divorce. Other accounts are listed, but as A-F-'s separate property.

Numerous times throughout these proceedings, the petitioner and counsel have referenced and provided copies of the BIA's remand of T-J-'s second Form I-130, filed on behalf of the petitioner, which was denied on the applicability of section 204(c) of the Act. The BIA remanded that petition based on its determination that T-J- was not given proper notice of the ground of denial and an opportunity to present evidence in response. In contrast, throughout this Form I-360 proceeding, the petitioner has received ample notice of the applicability of section 204(c) to the instant matter, and has been afforded multiple opportunities to present evidence in response prior to the director's final determination.

The petitioner has not provided a probative account of his courtship with A-F-, their marriage ceremony, shared residence and other experiences. The relevant evidence of record, described above, does not overcome the director's independent finding that section 204(c) of the Act applies, based on A-F-'s sworn statement that she married the petitioner to help him renew his visa, that she did not intend to be his wife, and that she never resided with him. Approval of the instant self-petition therefore remains barred by section 204(c) of the Act.

Good Moral Character

Beyond the director's decision, the petitioner has failed to establish his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.⁶ The regulation at 8 C.F.R. § 204.2(c)(1)(vii) provides, in pertinent part:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character . . . although the acts do not require an automatic finding of lack of good moral character.

Here, the petitioner's administrative record indicates that on [REDACTED] 1997, [REDACTED] Ohio arrested the petitioner and charged him with domestic violence and assault for punching T-J- repeatedly in the face on [REDACTED] 1997. The administrative record shows that one month later, T-J- executed a statement that was subsequently filed with the [REDACTED] Municipal Court asserting that her injury was actually caused by hitting her face on a car door while hastily exiting the vehicle. The record of conviction related to this incident shows that as part of a plea deal, the petitioner pled guilty to negligent assault, in violation of section 2903.14 of the Ohio Revised Code,

⁶ An application or petition that fails to comply with the technical 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); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

on [REDACTED] 1997. The record of conviction further indicates that the petitioner's request to expunge the conviction from his record was denied on [REDACTED] 2000. The petitioner has failed to provide an affidavit explaining the circumstances surrounding this incident. See 8 C.F.R. § 204.2(c)(2)(v) ("Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit").

Without an explanation from the petitioner, he has not demonstrated that his conviction was related to battery or extreme cruelty by his wife, or that his offense was committed under other extenuating circumstances. Consequently, the petitioner fails to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has established by a preponderance of the evidence and by clear and convincing evidence that he entered into his marriage with his second U.S. citizen spouse, T-J-, in good faith, and has thus demonstrated his eligibility for the exemption from the bar at section 204(g) of the Act under section 245(e)(3) of the Act. However, the petition remains barred by section 204(c) of the Act based on his marriage to A-F-. Beyond the director's decision, the petitioner has also not established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner bears the burden of proof to establish eligibility. 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.