



U.S. Citizenship  
and Immigration  
Services

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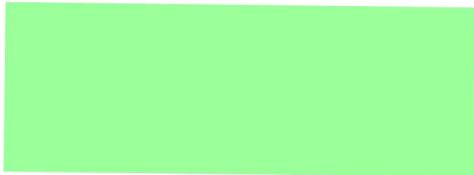


Date: **DEC 19 2014** Office: VERMONT SERVICE CENTER File:

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

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**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, determining that the petitioner did not demonstrate that he has a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immigrant classification, that he resided with his spouse, that his spouse subjected him to battery or extreme cruelty, and that he entered into the marriage with his wife in good faith.

On appeal, the petitioner reasserts his eligibility and submits 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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

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(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].

\* \* \*

(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.

(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.

\* \* \*

(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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages . . . of the self-petitioner . . . .

(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.

(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.

\* \* \*

(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.

*Pertinent Facts and Procedural History*

The petitioner was born in Ghana and entered the United States as a B-2 nonimmigrant visitor on July 18, 2001. He married his U.S. citizen spouse, D-P-, on [REDACTED] 2003.<sup>1</sup> The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on August 23, 2012. On August 30, 2012, the director issued a request for evidence (RFE) that, among other things, the petitioner shared a qualifying relationship with his U.S. citizen spouse and that he resided with his spouse. The petitioner timely responded. On June 12, 2003, the director issued a second RFE seeking evidence that the petitioner shared a qualifying relationship with his U.S. citizen

<sup>1</sup> Name withheld to protect identity.

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spouse, that he resided with his spouse, that D-P- subjected him to battery or extreme cruelty, and that he entered into his marriage with D-P- in good faith. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these grounds. The director also found that the petitioner had failed to establish his eligibility for immigrant classification. The director denied the petition and 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.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

A Form I-360 self-petition for this immigrant classification must be accompanied by primary evidence of a relationship with a U.S. citizen spouse, which includes a marriage certificate issued by civil authorities. 8 C.F.R. § 204.2(c)(2)(ii).

The petitioner initially submitted a copy of his marriage registration showing that he married D-P- on [REDACTED] 2003. He also provided a copy of a [REDACTED] 2005 Confirmation of Dissolution of Customary Marriage from a circuit court in Ghana showing that the petitioner's 1990 contracted customary marriage to [REDACTED] was validly dissolved on [REDACTED] 1995. *Matter of Kodwo*, 24 I&N Dec. 479 (BIA 2008) (modifying *Matter of Kumah* but noting that the preferred method of establishing dissolution of a customary marriage is a court decree; see also *Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985)). As the petitioner's customary marriage has been confirmed to have dissolved in 1995, he was free to marry D-P- in 2003. Accordingly, the petitioner has established that he had a qualifying spousal relationship with D-P- and his corresponding eligibility for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. However, the petition remains unapprovable for the following reasons.

*Joint Residence*

The petitioner's Form I-360 self-petition was incomplete at the time of filing and the petitioner did not indicate where he resided with the petitioner or how long. In his affidavit, the petitioner stated that he and D-P- "live [sic] in [REDACTED] [sic] also in [REDACTED] New York," but did not indicate when they began to live together or for how long. His friend, [REDACTED] stated that the petitioner and D-P- lived on [REDACTED] in [REDACTED] New York but did not describe their residence or any visits he made to their shared residence. [REDACTED] indicated that the petitioner and D-P- first lived at an apartment on [REDACTED] in [REDACTED] and moved to [REDACTED] and that D-P- abandoned the petitioner in October of 2008 while the petitioner was in the hospital recovering from an accident. Although he indicated that he "had been to their house on many occasions," Mr. [REDACTED] did not describe either claimed marital residence or any particular visit. Accordingly, these affidavits do not establish that the petitioner resided with D-P-.

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The petitioner submitted his certificate of marriage registration showing that he and D-P- resided at different addresses at the time of their marriage. He included a letter from [REDACTED] showing that the bank issued a debit card to D-P- at an address on [REDACTED] in [REDACTED] New York and photographs of the petitioner with D-P-. The bank letter is undated and does not list the petitioner's name, and the photographs are undated and taken at unknown locations. Accordingly, the initial supporting evidence did not establish that the petitioner and D-P- shared a marital residence.

In response to the director's August 2012 RFE, the petitioner provided two cable bills addressed to the petitioner and D-P- for 30-day periods ending on September 30, 2008 and December 31, 2009. Although the bills list the petitioner and D-P-, the December 2009 bill was issued after the October 2008 date that [REDACTED] stated that D-P- abandoned the petitioner. Therefore these bills do not establish that the petitioner and D-P- resided together for any period of time. The petitioner included a lease agreement to show that the petitioner and D-P- rented an apartment at [REDACTED] in [REDACTED] New York from November 1, 2004 to October 31, 2005. Although the lease is signed by both parties, it does not establish that they actually resided together after they signed the lease. The petitioner submitted a June 17, 2005 letter from [REDACTED] certifying that the petitioner and D-P- had shared a bank account since December of 2004 and that the current balance was \$376.65; however, the petitioner did not include any evidence of account activity or joint use of the account.

In response to the June 12, 2013 RFE, the petitioner provided an affidavit from his sister, [REDACTED], who indicated that the petitioner and D-P- resided with her after their 2003 marriage at her two-bedroom apartment on [REDACTED] in [REDACTED], New York. Ms. [REDACTED] attested that the petitioner and D-P- moved to the house on [REDACTED] in [REDACTED] after living with Ms. [REDACTED] for approximately a year and a half. This information is inconsistent with the lease agreement that the petitioner provided showing that he and D-P- leased the apartment on [REDACTED] approximately a year after their marriage. Moreover, Ms. [REDACTED] name is not listed on the lease, which contradicts her claim that she was the individual who rented the apartment on [REDACTED] and that the petitioner and D-P- moved in with her. The petitioner provided hospital records from 2008 showing that he resided at the house on [REDACTED], but the documents do not list D-P- or otherwise establish that they resided together. This evidence does not establish that D-P- and the petitioner resided together at any location.

On appeal, the petitioner points to the previously provided lease agreement, cable bills, and bank statement as evidence that he resided with D-P-; however, as discussed, these documents are insufficient evidence of their shared marital residence. Moreover, the conflicting information that the petitioner has provided about when and whether he and D-P- moved to [REDACTED] or [REDACTED] after approximately a year and a half of marriage undermines the credibility of his claims and remaining evidence. Regardless, the petitioner's statements and those of his friends failed to provide probative information regarding his marital residence with D-P- and shared routines and experiences. The petitioner has not established by a preponderance of the evidence that he resided with D-P-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Battery or Extreme Cruelty*

In his initial statement, the petitioner indicated that he and his wife were deeply in love when they married in October of 2003, but that in November of 2005, D-P- began drinking and bringing men into their home, telling the petitioner that "I can do whatever I want." He asserted that she also smoked marijuana, drank, and brought men home whenever the petitioner worked. The petitioner explained that he "noticed [D-P-] started sleeping with one of those men" and that when the petitioner confronted her boyfriend, the boyfriend began to fight. The petitioner suggested that D-P- called him names, threatened to "mess up" an immigration interview, and spat at him, causing him to live "in fear because of my status in this country." The petitioner also asserted that D-P-'s boyfriends made threatening phone calls to him, and that she overdrew their joint checking account. The petitioner advised that due to "the tension and arguing escalated [sic] which led her pouring hot coffee on me...I had a fatal accident on my way to work due to the stress and depression." He asserted that he had eight broken ribs and other injuries, and that his wife never visited him during the three weeks that he was in the intensive care unit. Although the petitioner generally alleged that there was abuse in his relationship with D-P-, he did not describe any specific occurrence in detail. Accordingly, the petitioner's affidavit does not contain sufficient probative information to establish that his wife subjected him to battery or extreme cruelty.

The petitioner also initially provided an affidavit from his friend, [REDACTED], who stated that D-P- became less friendly to the petitioner's friends about two years after she married the petitioner. Mr. [REDACTED] stated that "whenever we went out . . . [D-P-] would end up totally drunk and then start to insult [the petitioner] and call him names as well as spit drinks in his face." According to Mr. [REDACTED] D-P- repeatedly threatened to call the police on the petitioner. Mr. [REDACTED] recounts an incident in the summer of 2007 at a [REDACTED] music festival when D-P- became drunk and called the petitioner "stupid." Finally, Mr. [REDACTED] indicated that in the summer of 2008, he saw D-P- "degrading" the petitioner with abusive language, and that when Mr. [REDACTED] "once tried to advice [sic] her that they should bury their differences...she turned everything on [the petitioner]" and said she did not care if "they send [the petitioner] back to Africa." Mr. [REDACTED] did not recount any of the language that the petitioner's wife allegedly used in any of these incidents or provide other details about the claimed incidents. The petitioner also provided an affidavit from his friend, [REDACTED]. Mr. [REDACTED] indicated that the petitioner had recounted several episodes of abuse to him, but only claimed to have witnessed one episode when D-P- allegedly became angry with the petitioner and "with a high tone of voice" tell the petitioner "I am sick and tired of you, you worthless and ugly African [expletive]"

With his petition, the petitioner also provided a psychological evaluation from a licensed mental health counselor, who recounted the episodes of abuse that the petitioner described to him and found that the petitioner exhibited symptoms associated with depression and post-traumatic stress or related conflictive experiences. Mr. [REDACTED] did not provide additional probative details regarding D-P-'s alleged abuse beyond information the petitioner provided in his initial affidavit. Accordingly, this additional evidence does not establish that D-P- subjected the petitioner to battery or extreme cruelty.

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In response to the June 12, 2013 RFE, the petitioner provided an affidavit from his sister, [REDACTED] who asserted that the petitioner and D-P- lived with her after their marriage and that at first they seemed happy, but then D-P- started letting people hang around the apartment. Ms. [REDACTED] asserts that she saw D-P- throw a drink in the petitioner's face, said mean things to anyone who crossed her path, overdrew on the bank account that she shared with the petitioner, spent the petitioner's money, and refused to visit the petitioner when he was hit by another car in 2008 and hospitalized. Ms. [REDACTED] indicated that D-P- left the petitioner while he was in the hospital and never returned home. Her account did not provide any additional probative details to establish that D-P- battered the petitioner or subjected him to extreme cruelty. The petitioner also provided hospital records showing that he had been involved in a car accident, but these do not establish that D-P- was involved in his car accident or caused his injuries.

On appeal, the petitioner says that he has submitted sufficient evidence to establish that D-P- subjected him to extreme cruelty by calling him names and spending his money indiscriminately and submits copies of articles about domestic violence, but does not provide any additional probative information regarding the abuse to which he claims D-P- subjected him. Accordingly, the petitioner has not established that D-P- battered him or subjected him to 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.

*Good-Faith Entry into Marriage*

Regarding the director's final ground for denial, the petitioner initially submitted a personal statement in which he asserted that he and his wife were deeply in love when they married, and "could not sleep without talking to one another for hours." He said that their early married life was "perfect" and that they went to the movies, mall, and beach. The remainder of the petitioner's statement focused on describing episodes of alleged extreme cruelty. Similarly, the petitioner's friends, [REDACTED] and [REDACTED], stated that the petitioner and his wife initially loved each other, but they do not describe any particular visits or interactions with the petitioner and D-P- that led them to this conclusion. Mr. [REDACTED] and Mr. [REDACTED] affidavits primarily focused on the alleged abuse to which D-P- subjected the petitioner. The petitioner provided photographs of himself with D-P-; however, these are unlabeled and undated and do not establish his intentions at the time he entered into marriage with D-P-. The petitioner provided a copy of a lease that he indicated was for the apartment he claimed to have shared with D-P-, but this does not establish that they resided together after the date they signed the lease. The petitioner also provided copies of separate bank cards for the petitioner and D-P-, including the cover letter from the bank to D-P- for her card, and an insurance card showing the names of the petitioner and D-P-, but no evidence of activity on either the bank or insurance accounts. The petitioner did not provide any probative information regarding their courtship, marriage proposal, wedding ceremony, or shared marital routines to establish his good-faith entry into the marriage.

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In response to the director's June 12, 2013 RFE of shared emotional, economic or domestic bonds, the petitioner submitted an affidavit from his sister, who says that the petitioner and D-P- resided with her after their marriage, that she initially thought D-P- was nice because D-P- would order takeout meals for her, that they talked together a lot, and that she cooked for D-P- as well. The petitioner's sister said that D-P- seemed happy with the petitioner but that problems developed when D-P- started bringing her friends to the apartment to drink. Apart from D-P-'s alleged abuse and extreme cruelty, the petitioner's sister did not describe the wedding ceremony between D-P- and the petitioner, any particular meals that all three ate together, or provide any details about the couple's marital interactions or shared routines that would have given her insight into the petitioner's intentions at the time he entered into marriage with D-P-. The petitioner also provided his 2008 hospital records, but the records do not list D-P- as his wife or otherwise show that they shared a life together.

On appeal, the petitioner asserts that he and his wife lived together in two apartments, and his evidence of a good faith marriage consists of the bank cards, the bank letter to DP-, the lease agreement and the cable bill. The petitioner does not, for example, describe his marriage proposal to D-P-, indicate whether anyone else was present either during the marriage ceremony or for a post-wedding celebration when he married D-P-, or include any probative details about their shared marital routines apart from the abuse.

The petitioner's statements and those of his friends and family do not provide probative information regarding his courtship, wedding, marital residences, and experiences with D-P-. The petitioner consequently has not established by a preponderance of the evidence that he entered into marriage with D-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

On appeal, the petitioner has overcome two of the director's stated grounds for denial. However, the petitioner has failed to establish that he resided with D-P-, that D-P- battered him or subjected him to extreme cruelty, and that he entered into the marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, 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.

**ORDER:** The appeal is dismissed.