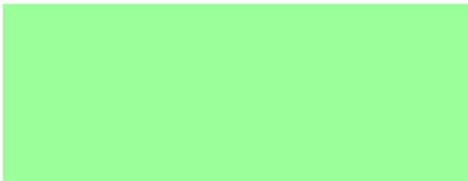


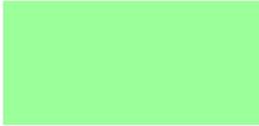


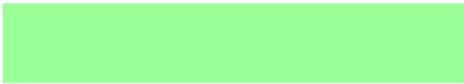
U.S. Citizenship
and Immigration
Services

(b)(6)



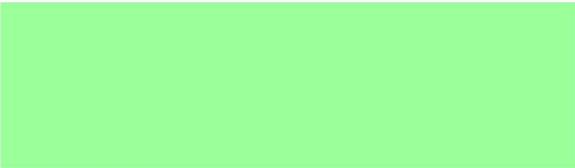
Date: **MAY 22 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

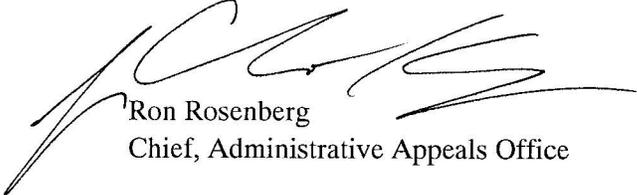


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal remains dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish that the petitioner resided with his wife and entered into marriage with his wife in good faith.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause . . . (ii) or (iii) of subparagraph (B) 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:

- (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.

* * *

- (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)(B)(ii) 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.

* * *

- (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.

* * *

- (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 is a citizen of Jamaica who claims that he entered the United States on November 1, 2001 as a nonimmigrant visitor. The petitioner married a lawful permanent resident of the United States on August 22, 2008 in New York. The petitioner filed the instant Form I-360 on March 3, 2011, which is now before the AAO on a motion to reopen and reconsider its prior decision dismissing the appeal. The motion will be granted.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Good Faith Entry into Marriage

In its March 14, 2013 decision, the AAO determined that the evidence submitted below and on appeal failed to demonstrate the petitioner's entry into his marriage in good faith. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, the AAO found that the petitioner's declaration failed to describe his intentions in marrying his wife, their courtship, wedding ceremony, joint residence or any of their other shared experiences, apart from the abuse. The AAO determined that the statements from the petitioner's friends failed to establish their personal knowledge of the relationship. The AAO also found that the petitioner's documentary evidence was of no probative value. The petitioner submitted 2009 federal and state income tax returns, bank account and telephone statements that were all in his name only. He also submitted photographs of his wedding ceremony, but failed to provide a description of this ceremony in his declaration.

On motion, the petitioner submits another statement that does not provide any further probative information on his good-faith entry into the marriage. He reiterated that he met his wife at a restaurant. He stated that they went on dates for two years. He provided no information on his two-year courtship with his wife, their wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

On motion, the petitioner also submits letters from his friends, [REDACTED] and [REDACTED] discussed an argument the petitioner said he had with his wife and attested to his good moral character. The petitioner's other friends, [REDACTED] and [REDACTED] also attest to the petitioner's good moral character. None of these individuals offers information to establish that they interacted with the petitioner and his wife or otherwise have any knowledge of the couple's relationship. Since these letters provide no information demonstrating that the petitioner married his wife in good faith, they are of little probative value.

A full review of the record does not establish that the petitioner married his wife in good faith. In the petitioner's second statement, he only briefly recounts that he dated his wife for two years. He provides no additional information on their courtship, wedding ceremony, joint residence and shared experiences, apart from the abuse. None of the petitioner's friends discuss their knowledge of his good-faith entry into his marriage. Accordingly, the petitioner has failed to establish that he married his wife in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Joint Residence

In its March 14, 2013 decision, the AAO determined that the evidence submitted below and on appeal failed to demonstrate that the petitioner resided with his wife. The AAO found that on the Form I-360, the petitioner stated that he lived with his wife from June 2008 until December 2010 and that their last joint address was on [REDACTED] but he did not identify the state they resided in. The AAO determined that the petitioner's declaration did not describe their home(s) or shared residential routines in any detail, apart from the abuse. The petitioner's friends similarly did not describe any visit to the petitioner and his wife's residence(s). The AAO also found that the

bank and telephone account statements are all in the petitioner's name only and list an address which is different from the [REDACTED] address the petitioner identified as his last shared address with his wife. The petitioner also failed to identify the address on his bank and telephone account statements as a residence he shared with his wife.

On motion, the petitioner in his second declaration does not describe his joint residence with his wife and their home(s) in any detail, apart from the abuse. He also does not explain and clarify the issues previously raised by the AAO regarding the incomplete address on his Form I-360 and the unidentified address listed on his bank and telephone account statements. None of the petitioner's friends discuss having ever visited the petitioner and his wife at their residence, or otherwise having personal knowledge of the couple's joint residence. Accordingly, a full review of the record fails to demonstrate that the petitioner resided with his wife, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Conclusion

On motion, the petitioner has failed to establish that he married his wife in good faith and they resided together. He is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The motion is granted. The AAO's decision to dismiss the appeal, dated March 14, 2013, is affirmed. The petition remains denied.