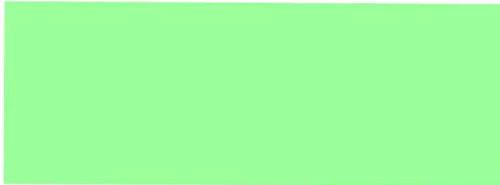




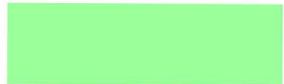
U.S. Citizenship  
and Immigration  
Services

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Date: NOV 05 2014

Office: VERMONT SERVICE CENTER File:

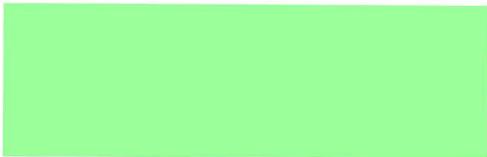


IN RE: Self-Petitioner:



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.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with his wife and married her in good faith. On appeal, 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 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)(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.

\* \* \*

(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, a citizen of Mali, entered the United States on August [REDACTED] as a nonimmigrant student. The petitioner married A-K-<sup>1</sup>, a U.S. citizen, on April [REDACTED] in Washington, District of Columbia. He legally separated from A-K- on March 8, 2012.<sup>2</sup> The petitioner filed the instant Form I-360 self-petition on September 10, 2012. The director subsequently issued a request for evidence (RFE) of the petitioner's joint residence with his spouse, and good-faith entry into the marriage, among other issues. The petitioner timely responded with further evidence, which the director found insufficient to establish his eligibility. The director denied the petition and counsel timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's ground for denial for the following reasons.

#### *Joint Residence*

The petitioner has established by a preponderance of the evidence that he resided with his U.S. citizen spouse. In the Form I-360, the petitioner stated that he resided with A-K- from January 2011 until January 2012 in an apartment on [REDACTED] in Washington, D.C. In his personal affidavit, dated June 5, 2012, the petitioner stated that he asked A-K- to marry him while they were at the apartment in March 2011, and they married on April [REDACTED]. The petitioner submitted his marriage certificate, dated April

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

<sup>2</sup> The petitioner submitted documentation indicating that he had initiated divorce proceedings against A-K-; however, he did not provide a divorce decree and it is not otherwise apparent from the record that the petitioner and A-K- are divorced.

13, 2011, which separately lists both his and A-K-'s addresses as the [REDACTED] apartment. The petitioner indicated that he resided with A-K- at the [REDACTED] apartment until he left on January 10, 2012 after their last fight. With his initial submission in support of his I-360 self-petition, the petitioner provided a letter from the restaurant where he and A-K- were both employed, dated March 8, 2012, which stated that the petitioner and A-K- resided together. The petitioner also provided a letter from a government benefits service center, dated December 22, 2011, addressed to the petitioner's spouse, denying her November 2011 application for food stamps because the "total monthly household gross income from [her] and [her] spouse" exceeded the limit. The petitioner also submitted rent receipts for December 2011 and January 2012, addressed to him and A-K-, from a non-profit organization that provides subsidized housing to certain individuals. The petitioner also provided a cable television bill, dated January 2012, addressed to him for service at the [REDACTED] apartment, and correspondence from a bank, postmarked October 2011, addressed to A-K- at the [REDACTED] apartment. The judgment of separation and the temporary restraining order each list A-K-'s address as the [REDACTED] apartment; both were filed after the date the petitioner states that he moved from the home. In an affidavit dated August 17, 2012, the petitioner's friend, [REDACTED], credibly attested to visiting the petitioner and A-K- at their apartment.

In response to the RFE, the petitioner submitted an additional personal affidavit, dated July 2, 2013, in which he explained that he did not have a lease for the [REDACTED] apartment because it was subsidized by a non-profit organization with which A-K- was involved. He also provided a printout of the non-profit's website that describes its mission.

The director found that the record did not contain satisfactory evidence to establish the petitioner's joint residence with A-K- and denied the petition. The petitioner, through counsel, timely appealed with additional evidence. The petitioner provided A-K-'s checking account statement, addressed to the [REDACTED] apartment, for September and October 2011. The petitioner also submitted an affidavit from his friend [REDACTED] dated September 10, 2013, in which Mr. [REDACTED] states that he gave the petitioner and A-K- a ride to their home, and that the petitioner and A-K- resided together for approximately one year. In addition, the petitioner submitted a statement given by A-K- in 2010 on behalf of the non-profit organization that assisted her, in which she acknowledges the organization's assistance with various aspects of her life, including an apartment.

*De novo* review of the relevant evidence, and the additional evidence submitted on appeal, establishes that the petitioner resided with A-K- during their marriage. The petitioner provided credible statements regarding his residence with A-K-, which are supported by rent receipts, a cable television bill, a checking account statement, a government benefits denial letter, and third-party affidavits. The preponderance of the relevant evidence demonstrates that the petitioner resided with his U.S. citizen spouse during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Entry into the Marriage in Good Faith*

The petitioner has established by a preponderance of the evidence that he entered into his marriage in good faith. In his first affidavit, dated June 5, 2012, the petitioner stated that he met A-K- at the restaurant where they both worked. He recounted in detail how their relationship commenced when he gave A-K- a ride home from work one evening. The petitioner described shared experiences, such as

spending holidays together, and indicated that the couple married in a civil ceremony. The petitioner submitted photographs of him and A-K- on Christmas 2010, and on their wedding day. The petitioner also submitted a printout of a wedding announcement from his employer's corporate website, dated May 18, 2011, which described how the couple met at work, got engaged, and married. The petitioner provided two rent receipts in his and A-K-'s names from a non-profit organization. In his affidavit dated August 17, 2012, the petitioner's friend and former co-worker, [REDACTED] recounted that before the petitioner and A-K- got married, he would drive them to the petitioner's home in [REDACTED] and described playfully joking with them about their relationship in the workplace. Mr. [REDACTED] discussed visiting the couple in their marital home.

In the RFE, the director indicated that the petitioner had submitted insufficient evidence of the bona fides of his marriage in light of his representation that he resided with A-K- for approximately a year. The RFE stated that more evidence of the petitioner's and A-K-'s comingling of resources and shared financial responsibilities should be provided. In response to the RFE, the petitioner submitted a second personal affidavit, dated July 2, 2013, in which he credibly explained his lack of joint documentation sought by the director. The petitioner stated that he and A-K- did not have a lease because they resided in an apartment subsidized by a non-profit organization that was providing assistance to A-K-. He submitted a printout of the nonprofit organization's website about its mission. The petitioner noted that A-K- had been involved with the organization for several months before he met her. He indicated that the couple's financial situation was difficult and it never occurred to them to put their accounts in both names. Rather, each paid the bills that were in their respective names. In his July 2, 2013 affidavit, the petitioner further described his courtship of A-K-, discussing their shared interests and activities. The petitioner emphasized that he intended to share a life with A-K- at the time that they married.

In his decision, the director found that the relevant evidence did not satisfactorily establish that the petitioner married A-K- in good faith and denied the petition. On appeal, the petitioner submits an affidavit from friend [REDACTED] dated September 10, 2013. In his affidavit, Mr. [REDACTED] attests to personal knowledge of the couple's shared activities, including attendance at social gatherings at his home.

*De novo* review of the relevant evidence submitted below, and the additional evidence provided on appeal, establishes that the petitioner entered into marriage with A-K- in good faith. The RFE, referenced by the director in his decision, emphasized the lack of traditional forms of joint documentation submitted by the petitioner. However, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). Here, the petitioner's affidavits contain credible statements regarding his and A-K-'s courtship, wedding, shared residence and experiences, as described above. His statements are also supported by documentation including joint rent receipts, a marriage announcement on his employer's website, photographs, and third-party affidavits. The petitioner has established by a preponderance of the evidence that he married his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

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. at 375. *De novo* review of the record, as supplemented on appeal, reveals that the petitioner has met this burden. Because he has established his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.