U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: OCT 0 6 2014 Office: VERMONT SERVICE CENTER File: [redacted]

IN RE: Self-Petitioner: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Vermont Service Center acting 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 for failure to establish that the petitioner resided with his former spouse, that she battered or subjected him to extreme cruelty, and that he entered into the qualifying relationship in good faith.

On appeal, the petitioner submits a brief 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 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:

> (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
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> (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.
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> (ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary 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.
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> * * *
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> (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . ., deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.
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> (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 the Philippines and entered the United States on January 17, 2006, as an H-2B nonimmigrant worker. He divorced his first wife on Septembe[redacted] in Utah. He married his second spouse, D-H-,[1] a U.S. citizen, on June 6, 2009, in Las Vegas, Nevada. He filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on July 21, 2011, and divorced D-H- on January 6, 2012. The director subsequently issued a Request for Evidence (RFE) that, among other things, the petitioner resided with D-H-, that she subjected him to battery or extreme cruelty, and that he entered into their marriage in good faith. The petitioner timely responded, but the director found the response insufficient to establish the petitioner's eligibility on these grounds and denied the petition. The petitioner filed a timely appeal.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with D-H-. On the Form I-360 self-petition, the petitioner stated that he resided with D-H- from June 2009 to the "present" petition's filing date of July 21, 2011. He listed three shared addresses on the form where he was requested to list only "the last address at which you [and D-H-] lived together." The addresses consisted of one in [redacted] New Mexico and two in [redacted] Utah. The petitioner provided an affidavit in which he stated that at the time he and D-H- married, he was living [redacted] Utah and she was living in [redacted] New Mexico. He indicated that they initially planned for D-H- to move to [redacted] Utah, but she never moved from [redacted] Instead, he stated that he commuted to [redacted] to visit her on weekends. The petitioner did not claim to have seen D-H- after their October 30, 2009 interview in [redacted] Utah. The petitioner also provided affidavits from several friends who focused on

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

the alleged abuse in the petitioner's marriage, but did not claim to have visited the petitioner and D-H- at the marital addresses in Utah or in New Mexico. Accordingly, these affidavits do not establish that the petitioner resided with D-H-.

The petitioner initially submitted a marriage certificate showing that he and D-H- lived in separate states on the date of their June 2009 wedding. He also submitted a lease agreement, cable bills, and insurance statements that list his name and that of D-H- at the address; however, because the petitioner explained in his affidavit that they did not dwell at that location together, these do not establish they shared a marital residence.

In response to the RFE, the petitioner submitted a new affidavit in which he stated that "[r]ight away after we got married I include[d] the name of my wife…as joint owner of my bank account as well as in my other billing statements [and] listed …[the address] as our residential address in preparation if in case we decided to settle down in Utah." He did not claim that they lived together in Utah or New Mexico, describe a shared martial residence in Utah or New Mexico, or provide any evidence that they shared a joint marital residence on weekends. While the petitioner also provided affidavits from several friends, none of them described having visited the petitioner and D-H- at their claimed marital residences in Utah or New Mexico. For example, indicated that she "saw them as a married couple" and went "with them to celebrate [a] balloon festival on [sic] New Mexico" in 2009, but did not claim to have visited the petitioner and D-H- at their claimed marital residence in New Mexico.

The petitioner also resubmitted the lease agreement and other evidence in response to the RFE, including bills and bank statements, listing him and D-H- at the same address in Utah. However, he did not include any evidence showing that he visited her or resided with her in Because he claimed that he resided with his D-H- in New Mexico on weekends, the documents relating to his address do not establish that they shared a marital residence in Utah.

On appeal, the petitioner states that he has already provided evidence that he resided with D-H-, and that they "resided in the same apartment from August 1, 2009 to July 31, 2010." Although the petitioner's bills, bank statements, and insurance records included both of their names at the Utah address, the petitioner has consistently attested that he and D-H- did not live together at that address. Although he states that he resided with D-H- at her home on weekends, he has not submitted any other evidence to establish this claim. None of his friends claimed to have visited the petitioner and D-H- at either address or described either marital residence.

The petitioner confirmed that D-H- remained in New Mexico after their marriage, while he lived in Utah. The Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Although he claims to have visited D-H- on weekends, the petitioner's affidavits and those of his friends lack any substantive description of his residences with D-H- in or in Utah. Consequently, the petitioner has not established by a preponderance of the evidence that he

resided with D-H, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In his first affidavit, the petitioner said that shortly after their marriage in 2009, D-H- began to demand money from him. He stated that when he was unable to give her the money, she became "verbal[ly] and mentally abusive particularly pinpointing [his] legal status." The petitioner also asserted that D-H- mocked his sexual performance and the size of his genitalia. He indicated that when D-H- accompanied him to his adjustment interview, she dressed too casually for the occasion and was rude to the interviewing USCIS officer. The petitioner stated that he later found out that during D-H-'s separate interview with the USCIS officer, "she gave answers that were wrong and I was surprised by that," but did not explain what D-H-'s incorrect statements were. He claimed that D-H- failed to notify him when she received a subsequent notice of intent to deny (NOID) the Form I-130 petition, and that her failure to respond ultimately resulted in denial of his adjustment of status application. As further evidence of her controlling nature, he indicated that his attorney's wife attempted to discuss the NOID with D-H- but finally advised him that D-H- "wanted your petition to be denied and she wanted you to be deported." The petitioner submitted affidavits from several friends who described the abuse the petitioner recounted to them, but they did not claim to have witnessed any of the episodes of claimed abuse.

The petitioner included a June 15, 2011 Confidential Psychological Report. The psychologist diagnosed the petitioner with severe depression and discussed the petitioner's assertions, indicating that D-H- "reportedly became pervasively verbally abusive." Quoting the petitioner, the psychologist explained: "'She said I was dumb. She told me I was not good in bed, that I'm nothing, that I have a small penis.'" The report conveys the petitioner's claims, but does not provide additional probative information about specific incidents of battery or extreme cruelty. Accordingly, the evidence below does not establish that D-H- subjected the petitioner to battery or extreme cruelty.

In response to the RFE, the petitioner referred to affidavits from his friends. [redacted] stated that she often "overheard [D-H-] Screaming to [redacted] mocking him, and name calling are just a few [sic]," but she did not explain where she was when she heard D-H- screaming at the petitioner, or provide any probative information about specific episodes of abuse that she witnessed or heard. [redacted] stated that D-H- was verbally and mentally abusive to the petitioner, but did not describe the abuse in any detail or indicate whether she witnessed the abuse or heard of it from the petitioner. Accordingly, these documents do not contain probative detail establishing that D-H- battered the petitioner or subjected him to extreme cruelty.

On appeal, the petitioner again asserts that D-H subjected to him sexual abuse by mocking his sexual performance and genitalia. He indicates that D-H- was verbally abusive, ridiculed his English language skills, and "at the time of the I-130 Petition interview, [D-H-] purposefully lied in retaliation of [sic] the Self-Petitioner's lack of ability to financially support her." The petitioner does not explain what D-H- said about him during her interview and why it was a lie.

The petitioner also notes on appeal that his psychologist found that he "was the victim of unusually harsh psychological abuse, consistent with extreme mental cruelty." The psychologist diagnosed the petitioner with severe depression based upon the claims relayed to him by the petitioner. However, this evaluation does not establish that the actions of D-H- constituted battery or extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not further describe the alleged battery or any other specific incidents of battery or extreme cruelty.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). The petitioner did not discuss D-H-'s behavior in probative detail or show that she ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). When viewed in the aggregate, the relevant evidence is insufficient to establish that D-H- subjected the petitioner to battery or extreme cruelty, as that term is defined at 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

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage with D-H- in good faith. On the Form I-360 self-petition, the petitioner asserted that he lived with D-H- from June 2009 until the "present." In his initial affidavit, the petitioner briefly described his courtship, explaining that he met D-H- in October 2008 when they were both in [redacted] celebrating their birthdays. He said they texted and telephoned each other for several months before he met her family, and that at first she did not introduce him to her family as her boyfriend. The petitioner indicated that they dated for about six months, communicating primarily through texting, e-mail, and telephone calls, and planned for D-H- to move to Utah after the wedding. Instead, the petitioner asserted that after their wedding the recession impacted their decision about where to settle down. While D-H- repeatedly told the petitioner that she had applied for jobs in [redacted] Utah, she remained in New Mexico and he in Utah.

The petitioner also provided affidavits from friends describing the petitioner's marriage. [redacted] attested that the petitioner met D-H- in [redacted] and married her, but did not provide further details. [redacted] asserted that she had attended D-H-'s birthday celebration in October 2009, and that she was "happy seeing them together as a loving and bubbly couple." Ms. [redacted] did not name the location of the birthday celebration or provide any kind of details about the event. [redacted] explained that he was "happy when [the petitioner] informed me that he meets a special girl that wanted to be with on the rest of his life and that is [D-H-]. They got married and planning their life with full of dreams" [sic]. Mr. [redacted] did not claim to have met D-H-, visited the petitioner and D-H- at their marital residence, or to have interacted with the petitioner and D-H-. None of these affidavits contain probative information about the petitioner's relationship with D-H- for purposes of establishing his good-faith entry into the marriage.

The petitioner provided a copy of a marriage certificate showing he wed D-H- on June 6, 2009, and undated photographs taken at one or more unknown locations. He also provided a lease agreement for the apartment in Utah for a term beginning on August 1, 2009, rental payment receipts, bills, and insurance statements listing him and D-H- at the address. However, as previously discussed, the petitioner explained that he and D-H- continued living and working in separate states; therefore, these documents do not establish that the petitioner entered into his marriage in good faith.

In response to the RFE, the petitioner referred to "attached evidences H, I, J, K, L, M & N." Although there is a packet of exhibits, there is no exhibit H or L. Exhibits I through K were affidavits from three of the petitioner's friends, who asserted that they knew the petitioner and D-H-. indicated that he was unable to attend the petitioner's wedding to D-H-, but that they invited him to a balloon festival in and that he had dinner with them in October 2009. Mr. did not claim to have attended the balloon festival with them, describe the October 2009 dinner he shared with them, or indicate that he had any knowledge about their courtship or marriage that could establish the petitioner's good faith entry into the marriage with D-H-. stated that the petitioner and D-H- entered into their marriage in good faith "[t]o the best of [her] knowledge," but did not provide any probative details to illustrate why she believed this. provided two affidavits dated October 15, 2012. In the first affidavit, she asserted that she "saw…how [the petitioner] was happy when he meets [sic] [D-H-] and full of dreams" until two months after the marriage when D-H- began demanding money. In the second affidavit, Ms. advised that she knew the petitioner married D-H, "saw them as a married couple," and "was there always in times that they needed me." However, Ms. did not provide any probative details about her interactions with the petitioner and D-H-, or describe the times that they needed her. Given the lack of details in each of these affidavits, they do not establish that the petitioner entered the marriage with D-H- in good faith.

While the petitioner also included his marriage certificate and divorce decree from D-H- in his RFE response, these simply establish that they married and divorced. He provided additional undated photographs of him with D-H- at various unknown locations. These documents do not establish his good faith entry into the marriage.

On appeal, the petitioner indicates that he has already provided evidence of his good faith entry into the marriage with D-H-, but includes no additional probative information such as details of his courtship with D-H-, their wedding ceremony, joint residence, and shared experiences. The petitioner's statements and those of his friends failed to provide probative information regarding his courtship, wedding, marital residence, and experiences. The petitioner has not established by a preponderance of the evidence that he entered into marriage with D-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he resided with D-H-, that she battered him or subjected him to extreme cruelty, or that he entered into their marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.