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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date:

NOV 16 2010

IN RE:

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:

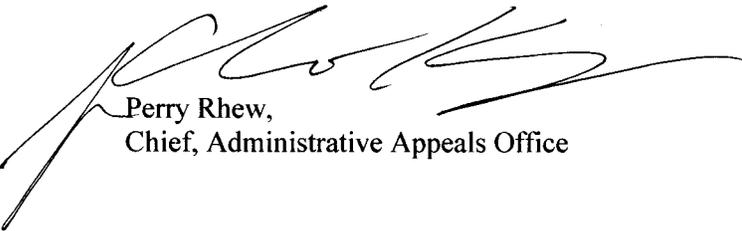
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The service center 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 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 on the basis of his determination that the petitioner had failed to establish: (1) that he and his wife shared a joint residence; and (2) that he married his wife in good faith. On appeal, the petitioner submits a letter and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii) 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, the following:

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, the following:

(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.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an

act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

- (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, the following:

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.

* * *

- (v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

- (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 Ghana who entered the United States as a B-2 visitor on June 30, 2004. He married W-B,¹ a citizen of the United States, on February 3, 2005, and they divorced on October 18, 2006.

The petitioner filed the instant Form I-360 on July 23, 2007. The director issued a subsequent request for additional evidence (RFE) and notice of intent to deny (NOID) the petition, to which the petitioner

¹ Name withheld to protect individual's identity.

submitted timely responses. After considering the evidence of record, including the petitioner's responses to the RFE and NOID, the director denied the petition on February 23, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition. Beyond the decision of the director, we find further that the petitioner has failed to demonstrate that that he is a person of good moral character.

Joint Residence

The first issue before the AAO on appeal is whether the petitioner has established that he shared a joint residence with W-B-. On the Form I-360, the petitioner stated that he and W-B- lived together from January 2004 until November 2006, and that the last address at which they lived together was 870 South 18th Street, Apt. 2 in Newark, New Jersey. The couple's February 3, 2005 marriage certificate also states they were both living at that address. However, on his Form G-325A, Biographic Information, which he signed on February 3, 2005, the same date the marriage certificate was issued, the petitioner stated that he had been living at [REDACTED] since June 2004. On his second Form G-325A, which he signed on July 11, 2005, he again stated that he had been living at the [REDACTED] address in Elizabeth since June 2004. The couple's July 1, 2005 lease agreement, which was not signed by W-B-, is for a residence located at [REDACTED]. The couple's October 18, 2006 divorce decree states that the petitioner was then living at [REDACTED] and that W-B- was living at [REDACTED] New York, and that W-B- had abandoned the petitioner for more than one year prior to October 4, 2006. April 2006 correspondence from the New Jersey Office of the Attorney General is addressed to the petitioner at the [REDACTED].

The director notified the petitioner of these inconsistencies in his April 17, 2009 NOID. In response, the petitioner submitted a May 18, 2009 letter in which he stated that he is "not very fluent" in English, and that the individual who completed the forms for him, a "family friend," made "typographical errors." With regard to the July 1, 2005 lease for the [REDACTED] address in Galloway, the petitioner stated that the landlord "put in the wrong year," and that it should have been dated July 1, 2006 rather than July 1, 2005. Finally, he stated that he and W-B- lived together at the [REDACTED] from December 2004 until December 31, 2005; at the [REDACTED] address in Elizabeth from January 1, 2006 until June 31, 2006; and at the [REDACTED] in Galloway from July 1, 2006.

On appeal, the petitioner states that he and W-B- lived together at the [REDACTED] address in Newark from December 2004 until April 2005, and at the [REDACTED] address in Elizabeth from April 2005 until August 2006.

In his undated letter, [REDACTED] stated that the petitioner and W-B- shared an apartment, and [REDACTED] made the same statement in her undated letter. The petitioner also submitted utility bills and other postal correspondence submitted as evidence of the couple's joint residence.

The evidence of record fails to establish that the petitioner and W-B- shared a joint residence. The petitioner stated on the Form I-360 that he lived with W-B- from January 2004 until November 2006. On appeal, he states that they lived together from December 2004 until August 2006. He stated on his Forms G-325A that they began living at the same address in June 2004. [REDACTED] stated that the petitioner told her that the couple lived together until December 2006. However, the divorce decree states that the couple ceased living together, at the latest, on October 3, 2005 (more than one year prior to October 4, 2006). The length of the alleged joint residence, therefore, is unclear.

In addition to the discrepancies regarding the length of the alleged joint residence, the record contains multiple unresolved inconsistencies regarding the location of the alleged joint residence. The petitioner stated on the Form I-360 that the final address at which he and W-B- lived together was the [REDACTED] address in Newark, and the marriage certificate indicates they were living at that address as of February 3, 2005. In his May 18, 2009 letter, he stated that they lived together at that address from December 2004 until December 31, 2005, and on appeal states that they resided there from December 2004 until April 2005. In his February 3, 2005 and July 11, 2005 Forms G-325A, he stated that he had been living at the [REDACTED] address in Elizabeth since June 2004. In his May 18, 2009 letter, he stated that the couple lived together at that address from January 1, 2006 until June 31, 2006; and on appeal states that they lived there from April 2005 until August 2006. He also submitted a lease indicating that he began living at the [REDACTED] address in Galloway on July 1, 2005, although he later stated that he began living at that address on July 1, 2006.

The record, therefore, contains multiple inconsistencies and discrepancies regarding both the length and the location of the petitioner's alleged joint residence with W-B-. We do not find convincing the petitioner's explanation that these inconsistencies are the result of his lack of fluency in the English language: as noted by the director in his February 23, 2010 decision, [REDACTED] specifically noted the petitioner's "fluent English" in her August 17, 2007 letter. Moreover, the petitioner's two separate letters (May 18, 2009 and March 20, 2010) attempting to clarify his earlier inconsistencies add further discrepancies into the record. Nor do we find convincing his explanation that the individual preparing the forms made typographical errors: the petitioner signed each of the forms and is responsible for the assertions made therein.

Nor do the utility bills and postal correspondence establish that the petitioner and W-B- shared a joint residence, as all of that documentation dates from 2006. As noted previously, the couple's divorce decree states that they ceased living together, at the latest, on October 3, 2005.

The petitioner's testimony and the evidence he submits contains conflicting information regarding both the length and the location of the petitioner's purported joint residence with W-B-, and these

inconsistencies diminish the probative value of his testimony. Moreover, he has failed to resolve those conflicts on appeal. Considered in the aggregate, the relevant evidence of record fails to demonstrate that the petitioner resided with W-B-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The second issue before the AAO on appeal is whether the petitioner has established that he married W-B- in good faith. In his May 18, 2009 letter, the petitioner stated that he entered into the marriage in good faith; that numerous family members and friends joined the couple for their wedding celebration on February 3, 2005; and that those who could not attend the wedding to meet W-B- communicated with her via mail. In his March 20, 2010 letter submitted on appeal, he stated again that he married W-B- in good faith. In her August 17, 2010 evaluation of the petitioner, [REDACTED] stated that the petitioner told her that he met W-B- five months after entering the United States in June 2004; that they married in February 2005; and that they separated in December 2006.

The relevant evidence fails to establish that the petitioner married W-B- in good faith. As a preliminary matter, the AAO incorporates here its previous discussion regarding the inconsistencies of record regarding the location of the couple's alleged joint residence, which undermines the evidentiary value of the petitioner's claim that they lived together after the marriage. For example, the petitioner's statement to [REDACTED] that they separated in December 2006 conflicts with the divorce decree, which states that they ceased living together, at the latest, on October 4, 2005. Moreover, the petitioner fails to provide a detailed account of the couple's courtship and marriage, apart from the alleged abuse. For example, the petitioner fails to describe in any meaningful detail, the couple's first introductions; his first impressions of W-B-; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences, apart from the alleged abuse. The relevant evidence of record fails to demonstrate that the petitioner entered into marriage with W-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Beyond the decision of the director, the petition may not be approved for another reason, as the record fails to establish that the petitioner is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in July 2004 and ending in July 2007).

The record contains a criminal background check, issued by the City of New York, New York. However, there is no such evidence covering the petitioner's residence in New Jersey and,

accordingly, he has failed to establish that he is a person of good moral character. For this additional reason, the petition may not be approved.

Conclusion

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that he jointly resided with W-B- or that he married her in good faith. Beyond the decision of the director, we find further that he has also failed to establish that he is a person of good moral character. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and his petition must remain denied.

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 Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.