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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



U.S. Citizenship  
and Immigration  
Services



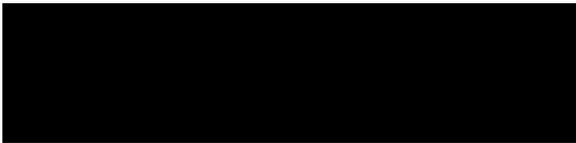
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FILE:  Office: VERMONT SERVICE CENTER Date: FEB 10 2011

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:

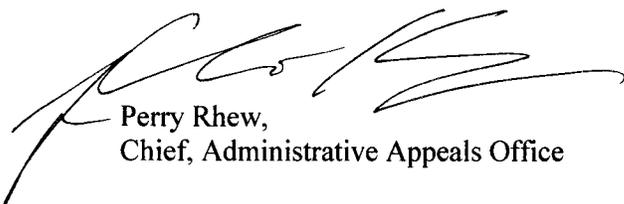


INSTRUCTIONS:

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, with a fee of \$630. 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, counsel submits a memorandum of law and copies of previously-submitted 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.

\* \* \*

- (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.

\* \* \*

- (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 Russia, married N-C-,<sup>1</sup> a citizen of the United States, on December 6, 2008. He filed the instant Form I-360 on January 29, 2010. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, filed a timely response. After considering

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

the evidence of record, including the petitioner's response to the request for additional evidence, the director denied the petition on July 27, 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, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

#### *Evidentiary Standard and Burden of Proof*

Counsel argues on appeal that the director incorrectly applied the "any credible evidence" standard and that he denied the petition for lack of documentary evidence. To the extent that the director implied documentary evidence of a joint residence and good faith entry into marriage is required, that portion of his July 27, 2010 decision is hereby withdrawn. Self-petitioners may, but are not required, to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

However, counsel has conflated the evidentiary standard set forth by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. Section 204(a)(1)(J) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." *Id.* This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for establishing the petitioner's claim list examples of the types of documents that may be submitted and reiterates, "All forms of relevant credible evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). However, in this case, as in all visa petition 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof.

#### *Joint Residence*

The first issue before the AAO on appeal is whether the petitioner shared a joint residence with N-C-. On the Form I-360, the petitioner stated that he and N-C- lived together from May 2008 until July 2009. As evidence that he and N-C- shared a joint residence, the petitioner submitted his own testimony and that of [REDACTED] a tax return listing a joint address for the couple; a copy of an envelope addressed to N-C-; copies of two envelopes addressed to the petitioner; a utility bill issued by [REDACTED] addressed to the petitioner; a copy of N-C-'s 2008 Form W-2; a copy of an appointment notice issued by USCIS; and a copy of one of N-C-'s paystubs.

Considered in the aggregate, the relevant testimonial and documentary evidence fails to establish that N-C- and the petitioner shared a residence. The testimony of the petitioner does not

demonstrate his joint residence with N-C- because he provided no probative information about the shared residence. For example, he did not describe their apartment, their building, their furnishings, their jointly-owned belongings, their neighborhood, their neighbors, or their shared, residential routines. Nor did [REDACTED] provide any of that information.

Nor is the documentary evidence sufficient. There is no evidence that the joint tax return was actually filed;<sup>2</sup> all three envelopes were postmarked after the end of the alleged joint residence; and the [REDACTED] utility bill does not name both individuals as residing at the address provided. Nor do the three envelopes or Form W-2 name both individuals as residing at the address provided. The appointment notice issued by USCIS was also issued subsequent to the cessation of the alleged joint residence. The copy of N-C-'s paystub covered the period June 13, 2009 through June 19, 2009, and displayed N-C-'s address as [REDACTED]. However, on the Form G-325A, [REDACTED] signed by the petitioner on January 20, 2010, he stated that he moved away from that address in December 2008. Although counsel states on appeal that photographs of the couple contained in the record are evidence of a shared joint residence, we disagree: the submitted pictures document only that the petitioner and N-C- were together on a few occasions.

The relevant evidence fails to demonstrate that the petitioner resided with N-C -, 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 N-C- in good faith. In his October 14, 2009 letter, the petitioner stated that he met N-C- while attending a party at her father's house. They spoke about employment matters, and he later called her to tell her that his place of employment was hiring. He stated that although their relationship began as a friendship, they began living together in May 2008, and she proposed marriage in September 2008.

In her October 29, 2009 letter, [REDACTED] stated that although she spent holidays with the petitioner, N-C- refused to speak with her; and [REDACTED] stated in her November 21, 2009 letter that she attended the couple's wedding. The record also contains a letter from [REDACTED] who interviewed the petitioner on November 28, 2009. According to [REDACTED] the petitioner told her that he met N-C- in September 2007, and that they married in December 2008.

The relevant testimonial evidence fails to establish that the petitioner married N-C- in good faith. The testimony of the petitioner and his affiants lacks detailed, probative information regarding the couple's relationship that would provide insight into his intentions upon entering into the marriage, and provides little information regarding shared experiences, apart from the abuse. Nor does [REDACTED] letter contain such information. Nor does the documentary evidence discussed earlier establish that the petitioner married N-C- in good faith. As there is no evidence it was ever filed,

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<sup>2</sup> The director noted as such in his decision, and counsel does not respond on appeal.

the joint income tax return is not evidence of shared financial obligations. Nor is the utility bill evidence of joint financial obligations, as it was issued to the petitioner alone. The three envelopes were all postmarked after the relationship ended, and none of them were addressed to both individuals. Nor do the photographs of the couple together provide evidence of the petitioner's good faith entry into the marriage, as they are only evidence that the petitioner and N-C- were together on a few occasions.

The petitioner has failed to establish that he entered into marriage with N-C - in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that he jointly resided with N-C- or that he married her in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and his petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.