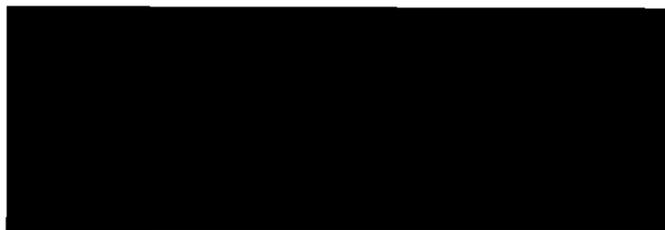


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prevent clearly unwarranted
invasion of personal privacy
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**U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave.,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



**U.S. Citizenship
and Immigration
Services**



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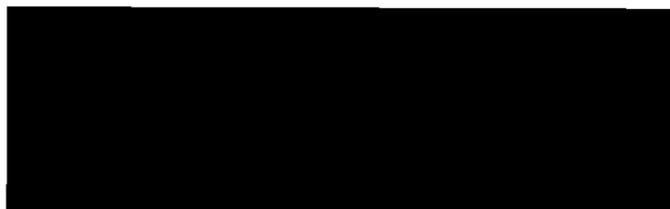
Date: **OCT 06 2011**

Office: VERMONT SERVICE CENTER File: 

IN RE: 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)

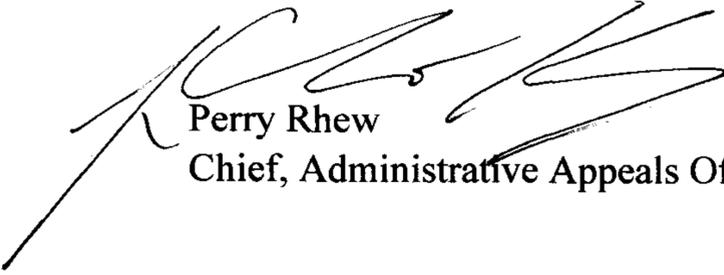
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The 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 and the petition will be approved.

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 entered into marriage with his wife in good faith and they resided together.

On appeal, counsel submits a supplemental brief and additional evidence.

Relevant Law and Regulations

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 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:

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

[REDACTED] as a nonimmigrant visitor.

[REDACTED] After U.S. Citizenship and Immigration Services (USCIS) denied the petition for alien relative (Form I-130), filed by the petitioner's wife on his behalf and the petitioner's corresponding application to adjust status (Form I-485), the petitioner was charged with remaining in the United States beyond his period of authorized stay and placed in removal proceedings.²

The petitioner filed the instant Form I-360 on July 19, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage. The petitioner,

¹ Name withheld to protect the individual's identity.

² The petitioner remains in removal proceedings before the Los Angeles Immigration Court and his next hearing is scheduled for November 22, 2011.

through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a supplemental brief and additional affidavits from the petitioner's friends and family members.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The issues on appeal are the petitioner's good-faith entry into marriage with A-T- and their joint residence. The director made a specific finding in his June 27, 2011 decision that all other grounds of eligibility had been satisfied and we find no error in that determination. Counsel's claims and the evidence submitted on appeal have overcome the director's grounds for denial and the appeal will be sustained for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal demonstrates that the petitioner entered into his marriage in good faith. In the declaration submitted in response to the RFE, dated April 29, 2011, the petitioner recalled how he met A-T- at a mall in September 2009. He explained that he was selling cosmetics and A-T- visited him at his workplace and at his home for several months. The petitioner recounted how their relationship became serious and how they came to the decision to marry in January 2010 because of their traditional parents. He described their wedding ceremony in Las Vegas, Nevada as a small event with A-T-'s family members. He also described their shared experiences after their marriage. He stated that they went to dinner at restaurants, visited his family and A-T-'s family, celebrated his birthday, went out on Valentine's Day, attended a baby welcoming party at his cousin's home and celebrated mother's day with A-T-'s family members. In the declaration the petitioner submitted on appeal, dated August 23, 2011, he offered additional details on how he first met A-T-, their courtship, wedding ceremony and shared experiences. These statements are detailed and offer probative information regarding the petitioner's good faith intentions in marrying A-T-.

The petitioner submitted numerous photographs of the following experiences he shared with A-T-: their wedding ceremony with A-T-'s family members in attendance; himself and A-T- at her various family gatherings; himself and A-T- at the "birth party" for his cousin's child; himself and A-T- at his extended family's house; himself and A-T- at various gatherings at his friends' homes; himself, A-T- and A-T-'s extended family members at a restaurant on Mother's Day; and the home he shared with A-T-. These photographs show that the petitioner and A-T- had a wedding ceremony with A-T-'s family members in attendance and they attended events together with their family members and mutual friends. The photographs corroborate the claims of good-faith marriage that the petitioner attested to in his declarations.

In response to the RFE and on appeal, the petitioner submitted letters from his landlord, [REDACTED] stated that the petitioner was residing in a guest house adjoining his home for a couple of years before he met A-T-. He reported that the petitioner and A-T- signed a joint rental agreement for the guest house in February 2010, after their wedding. [REDACTED] recalled that he witnessed A-T-'s presence at the guest house, and he could hear the petitioner and A-T- interacting. In an additional statement submitted on appeal, [REDACTED] further attested to A-T-'s

presence at the guest house. He reiterated that the guest house shares a living room wall and door with his home and he could hear the petitioner and A-T-'s interactions. He stated that A-T-'s mother and child would visit her frequently and he saw A-T- on a daily basis. These letters support the petitioner's claims of sharing a marital residence with A-T-.

In the initial filing and in response to the RFE, the petitioner submitted the following documentation as evidence of his good-faith marriage: bank statements, check cards and canceled checks reflecting their joint savings and checking accounts; a copy of their joint rental agreement; copies of a certificate of title and car registration card reflecting joint ownership of a car; and print-outs of Facebook e-mail messages to the petitioner from A-T-. These documents reflect that the petitioner resided with A-T- and they shared a car and bank accounts. The petitioner also submitted in response to the RFE and on appeal numerous letters from his family members and friends discussing their observations of the petitioner's interactions with A-T- and feelings for A-T- during their courtship and marriage.

In denying the petition, the director found that the petitioner submitted credit card statements for the period of January 2010 through January 2011, which show that the account is in his name only and are addressed to his prior address, not his claimed marital residence. The director also found that the joint bank statements reflect minimal account activity and do not provide sufficient evidence that the petitioner and A-T- shared joint financial responsibilities. The director determined that the petitioner's evidence of shared ownership of a car is in conflict with the petitioner's premarital agreement, which indicates the petitioner and A-T- agreed to continue to own and control their own property. The director further determined that the Facebook messages and a note the petitioner submitted as additional evidence cannot be authenticated. The director found an inconsistency between the petitioner's statements filed with the instant petition and his sworn testimony before a USCIS officer during his adjustment interview on May 24, 2010. The director noted that during the petitioner's interview he testified in a sworn statement that he informed his parents about his marriage after the wedding. The director stated that this statement contradicts the petitioner's personal statement, dated April 29, 2011, in which the petitioner recalled that his parents told him to get a premarital agreement when he told them about his marriage proposal. The director determined that this inconsistency brings into question the reliability of the petitioner's statements and diminishes their weight as probative evidence.

On appeal, counsel asserts that the petitioner told his parents, family and friends of his intent to marry, but when he was faced with their concerns he did not tell them of the actual wedding ceremony until it had taken place. Counsel states that the wedding photographs, rental agreement, car title and insurance, joint bank accounts and the numerous letters from the petitioner's friends and family members are evidence of the petitioner's good-faith entrance into the marriage. The petitioner explained in a statement filed on appeal that he had discussed his plans to marry with his parents, but waited until he was married to tell them because of his parents' own experiences with divorce and the fact that A-T- was not Jewish. He stated that he knew his parents would accept his marriage if it was "already done." The petitioner stated that he applied for a joint credit card with A-T-, but it did not get approved because of her poor credit. The petitioner also noted that some of his mail was going to his prior residence at his cousin's home.

The AAO finds that upon a full review of all of the evidence submitted below and on appeal, the petitioner has established his good-faith entry into the marriage. Even if we give little weight to the

petitioner's evidence of a joint bank account, joint ownership of a vehicle and Facebook e-mail messages for the reasons cited by the director, the remaining evidence meets the petitioner's burden of proof. The petitioner has adequately addressed the discrepancy involving his parents' knowledge of his wedding plans. He explained that his parents had knowledge of his marriage proposal, but he did not tell them of the marriage until after the wedding ceremony. In his personal declarations filed in response to the RFE and on appeal, the petitioner offers detailed testimony of how he first met [REDACTED] their courtship, wedding ceremony and shared experiences. The numerous photographs in the record corroborate the petitioner's claims of entry into his marriage in good-faith. The petitioner's landlord, [REDACTED] discussed his personal knowledge of the petitioner and [REDACTED] interactions at their marital residence. The petitioner's friends and family members also briefly discussed their observations of the petitioner's interactions with [REDACTED] and feelings for [REDACTED] during their courtship and marriage. This documentation demonstrates by a preponderance of the evidence that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also demonstrates that the petitioner resided with [REDACTED] and their last joint address was on [REDACTED]. In denying the petition, the director noted that the evidence submitted in response to the RFE presents conflicting information regarding the petitioner's joint residence with [REDACTED]. The director concluded that the evidence submitted in support of the petitioner's joint residence was insufficient to show that he and his spouse resided together. The director, however, found no need to further address the issue because the petition would be denied for failure to establish a good-faith marriage. On appeal, counsel assumes that the director found the petitioner to have satisfied the joint residence requirement and therefore does not address this issue.

Although the director did not provide a full analysis of the petitioner's failure to establish joint residence, the director had noted that the petitioner submitted credit card statements for the period of [REDACTED] not his claimed marital residence at [REDACTED]. Neither the petitioner nor counsel directly confronts the discrepancy involving the address on the petitioner's credit card statements, but the petitioner noted in his statement filed on appeal that some of his mail was going to his prior residence at his cousin's home.

While the address on the credit card statement brings into question the veracity of the petitioner's claim of joint residence, the petitioner has submitted sufficient documentation to overcome these doubts. The petitioner submitted a copy of the rental agreement he jointly signed with [REDACTED] for their residence on [REDACTED]. The petitioner's landlord, [REDACTED] submitted three letters attesting to his personal knowledge of the petitioner and [REDACTED] joint residence at the guest house adjoining his home on [REDACTED]. The petitioner submitted a letter from [REDACTED] who also resides in an apartment on [REDACTED] describing his personal knowledge of [REDACTED] residence with the petitioner. [REDACTED] discussed how he personally witnessed [REDACTED] and the petitioner interacting at their residence. The petitioner also submitted documents addressed to his [REDACTED] residence, including bank statements and canceled checks in the petitioner and [REDACTED] names and copies of a certificate of title and car registration card in the petitioner and [REDACTED] names. Moreover, the temporary restraining order the petitioner received on [REDACTED] mandated that [REDACTED] move out of their joint

residence on [REDACTED] Accordingly, the record establishes by a preponderance of the evidence that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has overcome the director's determinations that he did not enter into his marriage in good faith and that he did not reside with his wife. He is consequently eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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). Here, that burden has now been met. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.