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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



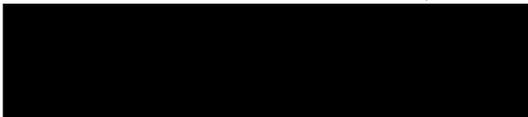
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DATE: SEP 14 2011 OFFICE: VERMONT SERVICE CENTER FILE: 

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)

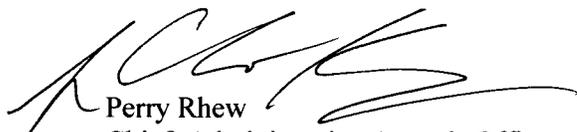
ON BEHALF OF PETITIONER:  


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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that he shared a joint residence with his ex-wife; (2) that he is a person of good moral character; and (3) that he married his ex-wife in good faith. On appeal, counsel submits an argument made on the Form I-290B, Notice of Appeal or Motion.

*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.

As noted, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, that “[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.” Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, the following:

- (f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was

\* \* \*

- (6) one who has given false testimony for the purpose of obtaining any benefits under the Act. . . .

\* \* \*

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Nigeria, married [REDACTED]<sup>1</sup> a citizen of the United States, on July 1, 2000 and they divorced on April 26, 2006. He filed the instant Form I-360 on June 21, 2007. The director issued a subsequent notice of intent to deny (NOID) the petition and the petitioner, through prior counsel, filed a timely response. After considering the evidence of record, including prior counsel's response to the NOID, the director denied the petition on December 14, 2009.

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.

#### *Joint Residence*

The petitioner stated on the Form I-360 that he resided with [REDACTED] from July 2000 until January 2006, and that the last address at which they lived together was located on [REDACTED]. In his June 6, 2007 letter, the petitioner stated that although he and [REDACTED] resided together briefly in 1999 while he was unemployed, [REDACTED] moved into his home following their July 1, 2000 wedding.

However, these statements conflict with other statements made by the petitioner as well as with certain documentary evidence. For example, although the petitioner claimed on the Form I-360 that he and [REDACTED] lived together until January 2006, and last lived together at the [REDACTED] address in [REDACTED], he stated on his Form G-325A, Biographic Information, dated June 6, 2007 that he moved to the [REDACTED] address in May 2006 and the submitted mortgage documents also indicate that he purchased that property in May 2006. If the petitioner and [REDACTED] ceased living together in January 2006, and he did not move to the [REDACTED] address until May 2006, then it is unclear how he and [REDACTED] could have ever resided together at that address. These inconsistencies diminish the probative value of the petitioner's testimony regarding his allegedly joint residence with [REDACTED].

The petitioner's testimony also failed to describe their home, their neighborhood, any of their furnishings or possessions, or their shared, residential routine in any meaningful way.

Nor does the other relevant testimonial evidence demonstrate that the petitioner and [REDACTED] resided together, as it lacks detailed, probative information regarding the allegedly joint residence the petitioner shared with [REDACTED]. Although [REDACTED] stated that they visited the couple's home on several occasions, neither individual described any such visit in probative detail.

Nor does the relevant documentary evidence establish that the petitioner and [REDACTED] resided together. The residential lease covering the period from October 8, 1999 to October 7, 2000 is not persuasive, as it was signed on November 22, 2000, more than one year after the document is purported to have entered into force, and more than one month after the end of the lease term. Although counsel notes on appeal that the lease agreement calls for automatic renewal, and argues that "it is clear that the lease

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

was renewed and that [REDACTED] was added,” we are not persuaded because counsel’s assertion directly contradicts both previous counsel’s claim that this was the original lease as well as the petitioner’s statement in his June 6, 2007 letter that he and [REDACTED] “signed the lease together” in 1999. Moreover, both the petitioner and [REDACTED] were named as tenants at section 1 of the lease, which further undermines counsel’s apparent assertion that this lease was initially executed solely by the petitioner and the lessor.

As they were all issued during the period immediately preceding the filing of the petitioner’s permanent residency petition, the utility bills and bank statement are also insufficient to establish that the petitioner and [REDACTED] resided together. There is also no evidence that both individuals had access to, and used the joint account. The joint tax returns, alone, are not evidence of joint residence.

Considered in the aggregate, the relevant evidence fails to establish that the petitioner resided with [REDACTED], as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Moral Character*

On April 24, 2007, the petitioner signed a sworn statement before the Philadelphia District Office in which he admitted that his October 2, 1998 entry into the United States took place under fraudulent circumstances. The petitioner also discussed his use of a false identity in his June 6, 2007 sworn statement submitted in these proceedings. Specifically, the petitioner admitted that while in Moscow, Russia,<sup>2</sup> he paid \$500 for a passport and birth certificate issued to [REDACTED]<sup>3</sup> a citizen of the United Kingdom, and that he held himself out as [REDACTED] in order to enter the United States under the former Visa Waiver Pilot Program. After entering the United States, the petitioner married [REDACTED] under the identity of [REDACTED] and opened a bank account, opened utility accounts, started a business, filed taxes, rented an apartment, and bought a home using that name. He also filed Forms I-I-751 and N-400 with USCIS under the name of [REDACTED] and represented himself as [REDACTED] during questioning at corresponding interviews with immigration officers in 2002, 2003 and 2006.

The petitioner, therefore, freely admits to having given false testimony for the purpose of obtaining entry into the United States in 1998 and the immigration benefits of permanent resident status and naturalization. Consequently, section 101(f)(6) of the Act precludes a finding of his good moral character. See *Opere v. INS*, 267 F.3d 10 (1<sup>st</sup> Cir. 2001) (false testimony at adjustment interview); *Bernal v. INS*, 154 F.3d 1020 (9<sup>th</sup> Cir. 1998) (false statements at naturalization interview); *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973 ) (false statements to border patrol agent).

While a voluntary and timely retraction of false statements will not bar a finding of good moral character, the petitioner’s delayed admission of his use of a false identity was neither voluntary nor timely. See *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). Counsel claims on appeal that the petitioner “voluntarily came forward to admit his fraud and has been entirely honest with the USCIS since his

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<sup>2</sup> As noted, the petitioner admitted in his April 24, 2007 statement that he purchased the passport and birth certificate in Moscow, Russia. However, in the June 6, 2007 “Sworn Statement” that he submitted in support of the instant Form I-360, he stated that he purchased the passport and birth certificate in Kiev, Ukraine.

<sup>3</sup> Name withheld to protect individual’s identity.

interview on April 24, 2007.” However, the record shows that the petitioner did not make his admission until confronted by an immigration officer nearly 10 years after he first falsely stated his identity to seek entry into the United States.

Although the petitioner has submitted the results of a criminal record check conducted by the Pennsylvania State Police as evidence that he has not been convicted of any crimes in the State of Pennsylvania, his state of residence since 1998, the lack of a conviction does not, alone, establish a self-petitioner’s good moral character when other evidence of record shows that he or she has committed immoral acts. *See* Section 101(f) of the Act and 8 C.F.R. § 204.2(c)(1)(vii). In this case, the petitioner admits to having assumed a different identity, and presenting fraudulent documents, to procure entry into the United States and other immigration benefits.

The record fails to establish any extenuating circumstances or rehabilitation that would warrant a finding of the petitioner’s good moral character despite his false testimony and use of fraudulent documents. Present and prior counsel claimed that the petitioner had been honest and had consistently used his actual identify after his admission in 2007. However, the petitioner’s 2007 income tax return, which he filed on April 15, 2008, was filed using his fraudulent identity. The petitioner also used the fraudulent identity to make Western Union money transfers on March 24, June 4 and June 12, 2008. Prior counsel also cited the petitioner’s full-time employment, homeownership, payment of income taxes, financial support of his son, and religious practice as evidence of his good moral character and rehabilitation. However, as all of these activities were done using the petitioner’s false identity, none of them are evidence of rehabilitation.

While [REDACTED] address the petitioner’s allegedly good moral character in generalized terms, they offer little probative information and do not discuss the petitioner’s misrepresentations and false testimony.

The petitioner has admitted giving false testimony for the purpose of entering the United States, obtaining permanent residency and naturalization. Pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), the petitioner cannot be deemed a person of good moral character, as required by section 204(a)(1)(A)(iii)(II) of the Act.

#### *Good Faith Entry into Marriage*

The petitioner stated in his June 6, 2007 letter that he met [REDACTED] in 1999 while she was working as a parking lot attendant where he parked his car on a daily basis, and that during their courtship they saw movies and visited casinos in Atlantic City, New Jersey. He also recounted that they lived together for a few months in 1999 while he was unemployed, but that he moved back out after he secured employment. He stated that he proposed marriage in 2000, and that they married in a small ceremony on July 1, 2000.

The petitioner’s testimony does not establish that he married [REDACTED] in good faith, as he failed to provide probative information about their relationship. For example, he failed to describe their first introductions, their courtship, their engagement, their wedding, their shared experiences, or any

other aspects of their relationship in probative detail apart from the abuse. Nor did [REDACTED] or [REDACTED] provide any meaningful details about the couple's relationship.

Nor does the documentary evidence of record establish that the petitioner married [REDACTED] in good faith. The pictures of the couple demonstrate only that they were together on a few occasions. The evidence of a joint bank account does not demonstrate a good faith marriage because there is no evidence that both individuals had access to, and used, this account to pay for any joint expenses. There was also very little activity on the account. The residential lease covering the period from October 8, 1999 to October 7, 2000 is not persuasive, as it was signed on November 22, 2000, more than one year after the document is purported to have entered into force, and more than one month after the end of the lease term. Moreover, the record lacks evidence of any rent payments made pursuant to the lease. The statement from Philadelphia Gas Works does not name [REDACTED] and the other utility bills were issued immediately prior to the filing of an immigrant petition on the petitioner's behalf. The joint tax returns, alone, are not evidence of the petitioner's good faith entry into marriage with [REDACTED].

The petitioner has failed to establish that he married [REDACTED] 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 resided with [REDACTED] that he is a person of good moral character; and that he married [REDACTED] 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.