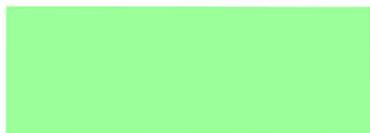




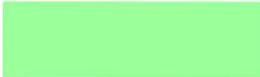
U.S. Citizenship
and Immigration
Services

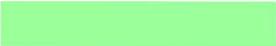
(b)(6)



Date: **AUG 07 2013**

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:

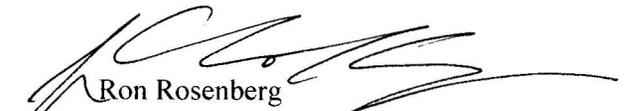
SELF-REPRESENTED

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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the petitioner’s appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The appeal will remain dismissed and the petition will remain denied.

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 former spouse, a United States citizen.

The director denied the petition for failure to establish that the petitioner jointly resided with his former wife and that he entered into marriage with her in good faith. On April 3, 2012, the AAO dismissed the appeal on these same grounds.

On motion, the petitioner 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). An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

* * *

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . .the self-petitioner . . .

(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. . . . 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 Slovenia who entered the United States on June 2, 2004 as a nonimmigrant visitor. The petitioner married D-S-¹, a U.S. citizen, in Los Angeles, California on January 18, 2008 and they were divorced on June 12, 2009. The petitioner filed the instant Form I-360 on July 17, 2009. The director denied the petition for failure to establish the petitioner's residence and good-faith entry into the marriage with his former wife and the AAO dismissed the appeal on April 3, 2012. The petitioner then submitted this motion to reopen.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner asserts that he resided with D-S- and that he entered into her marriage with her in good faith. On motion, the petitioner's assertion is supported by a brief and additional evidence.² Accordingly, the motion to reopen is granted. Additionally, the petitioner requests an in-person interview and administration of a polygraph test. While a motion to the AAO may be accompanied by a written request for oral argument, the regulation at 8 C.F.R. § 103.5(a)(7) does not pertain to written requests for in-person interviews and polygraph tests. Accordingly the petitioner's request is denied.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Beyond the prior decisions of the AAO and the director, the petitioner has also failed to establish his good moral

¹ Name withheld to protect the individual's identity.

² The petitioner's evidence submitted on motion includes documentation of what he claims are transcripts of two recorded telephone conversations with his former wife. Under California state law, such recordings are prohibited without the consent of both parties to the conversation. Cal. Penal Code §§ 631-2 (West 2009). It appears that the conversations were recorded without D-S-'s consent and the AAO will not take this submission into consideration as relevant evidence in the record.

character.³ The petitioner's claims and the new evidence submitted on motion fail to overcome the grounds for denial. The appeal will remain dismissed for the following reasons.

Joint Residence

The petitioner stated on his Form I-360 that he resided with D-S- from January of 2008 to November of 2008 in Santa Monica, California and specifies in his first affidavit that the two moved into their own apartment together a week after their January 18th marriage ceremony. The petitioner further stated in his affidavit that the petitioner had mental health issues and left him repeatedly throughout their marriage. He stated that in March of 2008, D-S- left him but contacted him a week later wanting to come back and also informed him at that time that she lost her engagement ring. He stated that he went with her to the police station to check if they had found it but that D-S- began acting erratically, became angry with him, and drove off. The petitioner then stated that D-S- filed for divorce in April of 2008 but came back to him two weeks later only to leave again in early May. He stated that she cancelled her divorce petition in early August and returned to him but then left again that month for a few weeks and re-filed for divorce in late August. He stated that she obtained a no-contact order against him in September of 2008, returned to him in early November, and was committed to the hospital for mental treatment on November 16, 2008. After her release from the hospital, D-S- returned to live with her parents.

In its decision dated April 3, 2012, the AAO determined that the petitioner had not established that he resided with D-S- because the relevant evidence did not provide sufficient, probative information regarding the dates and circumstances of the petitioner's claimed marital residences. The April 3, 2012 decision of the AAO is incorporated here. On motion, the petitioner submits a brief, declarations from friends [REDACTED], [REDACTED], and [REDACTED] a copy of D-S-'s profile on an internet website stating that she lived in Santa Monica, a temporary restraining order decision showing the petitioner's Santa Monica address, and copies of evidence already submitted on appeal. The petitioner asserts that the director failed to use the any credible evidence standard and that the evidence in the record clearly shows that he resided with D-S-. He further asserts that his former wife's visits to her parents' home did not represent her changing residences back and forth.

A review of the relevant evidence in the record including the brief and evidence submitted on motion do not establish that the petitioner and D-S- resided together. In his brief on motion, the petitioner states that his physical separations from D-S- resulted from her manic episodes and lasted one or two weeks in duration. He states that D-S- left him a month after the two were married, a second time in April of 2008 for one week, and then again in May and October of 2008 before leaving him for good in November of 2008. He states that the only time where D-S- did not reside with him was in October when she left to be with her ex-boyfriend and the petitioner changed addresses because he could not take it anymore. He then states that D-S-

³ 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).

found him at his new apartment and moved in before leaving for good on November 16th when she had another manic episode and was hospitalized.

However, in the petitioner's initial affidavit submitted with the Form I-360, the petitioner described D-S- as having left him in March 2008 after a manic episode. He stated that she contacted him a week later in tears because she lost her engagement ring. The petitioner stated that he agreed to help her find it and drove her to San Diego. They did not find the ring and instead, D-S- became angry with the petitioner, caused several public scenes, and drove off. The petitioner stated that he then began receiving strange magazine subscriptions in the mail and D-S- began making harassing telephone calls to his job. At that point, the petitioner stated that he called the police to report her abusive behavior and D-S- filed for divorce in April of 2008. The petitioner stated that she returned to him two weeks later but that in early May, both of them filed for restraining orders against each other. He stated that D-S- withdrew her divorce petition in early August of 2008, left him for a few weeks, and then filed for divorce again in late August. He further recounted that D-S- vacated her restraining order against him but he did not cancel his restraining order against her. D-S- subsequently filed for a new restraining order against him which was denied but she was able to obtain a no contact conduct order in September of 2008. He then stated that she returned to live with him in early November of 2008 before her hospitalization on November 16, 2008. A review of the administrative record shows that the petitioner was arrested on May 23, 2008 for violating D-S-'s restraining order against him.

This recounting of events is inconsistent with the petitioner's assertion on motion that D-S- resided with him with the exception of week-long visits to her parents' home during her manic episodes. The petitioner does not expand upon the nature of the residences he claims to have lived with D-S- nor does he explain how the two resided together when both had restraining orders against each other. Instead, the petitioner repeats much of his earlier statements and does not further describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with D-S- after their marriage. In his declaration, [REDACTED] states that he knew the petitioner and D-S- as a married couple and that the two resided together. He states that the three of them intended to get an apartment together but that the petitioner and D-S- were able to find one for the two of them that they could afford. He states that he sometimes stayed overnight at their apartment on [REDACTED] when he worked late and often went to the gym with the petitioner. In his declaration, [REDACTED] states that he knew the petitioner and D-S- as a couple and that he spent time with them at their marital residence on [REDACTED] and other apartments. Neither declarant further describes any residential visit, observations, or otherwise provides probative details regarding the former couple's living arrangements. In his declaration, [REDACTED] states that after their marriage, he helped the petitioner and D-S- move into their new apartment and regularly visited them at their apartment to watch movies. [REDACTED] does not describe any particular visit in detail and provides no further probative information regarding this shared residence. [REDACTED] further lists three addresses that he states he knows for a fact that the petitioner resided at each location with D-S- but does not state the basis for this assertion.

The remaining evidence submitted on motion fails to establish that the petitioner jointly resided with D-S- after their marriage. The online job profile for D-S- does not state a specific address in Santa

Monica, California and is not probative of a joint marital residence with the petitioner. Likewise, the temporary restraining order indicates that D-S- resided in Bonita, California and the petitioner in Santa Monica, California and therefore is not evidence that the two resided in Santa Monica together. Upon a full review of all the relevant evidence submitted below and on motion, the record does not include sufficient, consistent, and probative testimony to establish that the petitioner jointly resided with D-S- during their marriage. Accordingly a preponderance of the evidence does not demonstrate that the petitioner and D-S- resided together after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In its prior decision, the AAO determined that the petitioner had not established that he entered into marriage with D-S- in good faith because he failed to provide probative details regarding their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. On motion, the petitioner submits a brief, declarations from friends [REDACTED] and [REDACTED] an undated love letter draft from the petitioner to D-S-, and mental health medical reports during the petitioner's detention by the United States Immigration and Customs Enforcement (ICE).

In his brief submitted on motion, the petitioner does not establish that he jointly resided with D-S- but does provide a probative account of how he met D-S- and established a relationship. He describes activities that the two liked to do together and provided credible explanations for the inconsistencies below. The letters from [REDACTED] and [REDACTED] explain their connections with the petitioner and D-S- and their knowledge of the relationship. De novo review of the record establishes that the petitioner married his former wife in good faith. When viewed in the totality, the preponderance of the relevant evidence submitted below, on appeal, and on motion demonstrates that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Beyond the director's decision, the petitioner has failed to establish that he is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that "[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." The petitioner submitted multiple briefs, letters, and affidavits below describing the various protective orders that he and D-S- obtained against each other. In his letter in response to the RFE, the petitioner stated that the latest arrest in May of 2010 was based on false allegations by D-S-. He did not address his May of 2008 arrest that resulted in his conviction in May of 2009 and sentencing of 96 days in jail. In his brief on motion, the petitioner states that his 2009 conviction resulted from contacting D-S- in order to save their marriage. He did not provide further probative details regarding his arrest. The petitioner also submitted letters from friends who described the petitioner as a good person who has had to deal with his former wife's accusations in court. None of the support letters indicate, however, that any of the individuals are aware of the petitioner's conviction or the circumstances around it and can knowledgeably attest to his good moral character.

Section 101(f) of the Act further prescribes, in pertinent part: “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.” The regulation at 8 C.F.R. § 204.2(c)(1)(vii) also provides, in pertinent part:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character . . . although the acts do not require an automatic finding of lack of good moral character.

In this case, the petitioner lacks good moral character because he, despite court orders to the contrary, personally contacted his former wife after she was granted a protective order against him. On motion, the petitioner claims that he engaged “willingly and knowingly in conduct” that has “assured deportation consequences” because he loves D-S- and wanted to work on the marriage. The petitioner failed to demonstrate that his conviction was related to his wife’s battery or extreme cruelty or that his offense was committed under other extenuating circumstances. Consequently, the petitioner has committed unlawful acts which adversely reflect upon his moral character. Accordingly, the petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has established that he married D-S- in good faith but has not shown that they resided together. Beyond the director’s decision, the petitioner has also not shown that he is a person of good moral character. Consequently, the appeal will remain dismissed and the petition will remain denied.

ORDER: The motion is granted. The April 3, 2012 decision of the Administrative Appeals Office is affirmed as modified above and the petition remains denied.