



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

(b)(6)

Date: **JAN 07 2013** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

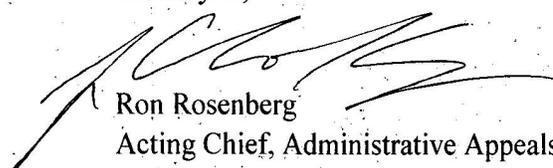
ON BEHALF OF PETITIONER:  
[REDACTED]

**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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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 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].

In this case, the director initially denied the petition on June 16, 2008 because the record did not establish that the petitioner entered into the marriage in good faith, is a person of good moral character, and his wife subjected him to battery or extreme cruelty. In its August 6, 2010 decision on appeal, the AAO concurred with the director's conclusions and also determined that the petitioner had not shown that he resided with his wife. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006).

Upon remand, the director issued a NOID on September 29, 2011 which informed the petitioner that he had not submitted sufficient evidence to establish his eligibility. The petitioner, through counsel, responded to the NOID with an additional self-affidavit, dated October 31, 2011, affidavits from his friends, [REDACTED] and a criminal history clearance from the Federal Bureau of Investigation (FBI). The director found that the FBI clearance established that the petitioner is a person of good moral character. However, the director found the remaining evidence insufficient to establish his entry into the marriage in good faith, the requisite battery or extreme cruelty and joint residence. Accordingly, the director denied the petition on August 20, 2012 and certified his decision to the AAO for review. In his Notice of Certification, the director informed the petitioner, through counsel, that he could submit a brief to the AAO within 30 days after service of the certified decision. In our prior decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the evidence submitted after that decision was issued.

*Entry into the Marriage in Good Faith*

In his affidavit submitted in response to the NOID, the petitioner reiterated the statements he made in the affidavit he initially filed with the Form I-360. The petitioner recalled that he met his wife at a restaurant in January 1997. He stated that they started dating and he proposed to her on May 1, 1997. The petitioner recalled that they wed on May 14, 1997 and his wife moved into his home. The petitioner briefly recounted that they initially "had a very smooth and happy start" and went out to dinner, the movies and socialized with their friends. The petitioner did not provide any additional, new details of his joint residence with his wife or any of their shared experiences, apart from the alleged abuse.

The affidavits from the petitioner's friends, [REDACTED] also fail to provide probative information regarding the petitioner's good faith in entering the relationship. The petitioner's friends attest to interacting socially with the petitioner and his wife, but they do not describe any particular visit or social occasion in detail. Nor do they provide detailed information establishing their personal knowledge of the relationship.

In response to the notice of certification, counsel contends that the petitioner provided facts that clearly indicate his marital relationship was real and bona fide. However, in his affidavit, the petitioner did not provide any additional, substantive information regarding his marital intentions. Neither of the petitioner's friends discusses in probative detail their personal observations of the petitioner's interactions with his wife during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Joint Residence*

In response to the notice of certification, counsel asserts that the petitioner had resided with his spouse for more than six months as witnessed by his friends and relatives. In his affidavit, the petitioner briefly recounted that after his marriage, he and his wife resided at his residence in Jamaica, New York. The petitioner did not describe his residence with his wife, their home or shared residential routines in any detail, apart from the alleged abuse. The petitioner's friends, [REDACTED] and [REDACTED] briefly recount that they have visited the petitioner and his wife at their marital home, but they do not describe any of their visits in probative detail. Accordingly, the petitioner has failed to establish by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

In his affidavit submitted in response to the NOID, the petitioner recounted that his wife yelled at him, called him names, hit him, pushed him, stole money from him, threatened him with deportation and demanded sexual acts that he found distasteful. A significant portion of the petitioner's

testimony is vague and fails to provide probative details of the abuse. The petitioner generally asserted that his wife battered him, but he failed to describe these alleged instances of abuse with detailed, credible testimony.

The petitioner's friends attest to his troubled marriage, but their statements also fail to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. [REDACTED] stated that he learned from the petitioner that his wife abandoned him. [REDACTED] stated that he called the petitioner and heard the petitioner's wife calling him names. He stated that he later learned from the petitioner that his wife abandoned him. Neither of these individuals discusses any specific incident of battery or extreme cruelty that they witnessed in probative detail, or provide any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner.

In response to the notice of certification, counsel asserts that the petitioner's personal statement details the abuse he suffered by his spouse. However, the affidavit the petitioner submitted in response to the NOID still lacks sufficient credible testimony of the abuse the petitioner claims he suffered. The petitioner's friends, [REDACTED] do not indicate that the petitioner's wife ever battered him or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty. Accordingly, the petitioner has not established by a preponderance of the evidence that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Conclusion*

On certification, the petitioner has failed to overcome the director's determinations that he did not establish the requisite entry into the marriage in good faith, shared residence with his spouse, and her battery or extreme cruelty. He is consequently ineligible 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 not been met. Accordingly, the director's decision will be affirmed and the petition will remain denied for the reasons stated above.

**ORDER:** The August 20, 2012 decision of the Vermont Service Center is affirmed. The petition is denied.