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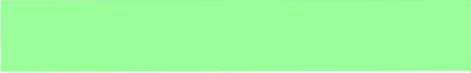
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



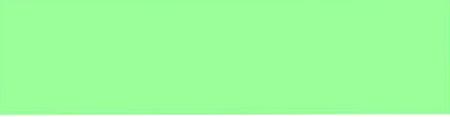
U.S. Citizenship  
and Immigration  
Services

Date: **MAY 17 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:  


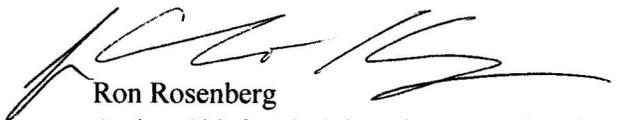
INSTRUCTIONS:

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 in accordance with the instructions on 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, (“the 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 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, they resided together, and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel submits a statement 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.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain

circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

\* \* \*

(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.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

\* \* \*

(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 Uzbekistan who was admitted to the United States on December 14, 2003 as a nonimmigrant visitor. The petitioner married a U.S. citizen on November 18, 2005 in Daytona Beach, Florida. The petitioner filed the instant Form I-360 on June 2, 2011. The director subsequently issued two Requests for Evidence (RFEs) of, *inter alia*, the petitioner's good-faith entry into the marriage, his residence with his wife, and his wife's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director then issued a Notice of Intent to Deny (NOID), which the petitioner responded to in a timely manner. The director determined that the petitioner's response did not resolve the inconsistencies in the record and denied the petition. Counsel timely appealed.

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

### *Joint Residence*

We agree with the director's determination that the record fails to demonstrate that the petitioner resided with his wife. On the Form I-360, the petitioner stated that he lived with his wife from November 18, 2005 until August 1, 2007 and that their last joint address was an apartment in Brooklyn, New York. The petitioner submitted two lease agreements for this apartment, dated November 15, 2005 to October 15, 2006 and October 15, 2006 until September 15, 2007, respectively. Both lease agreements were jointly signed by the petitioner and his wife. He also submitted payment slips for his joint utility account with [REDACTED] and two joint bank account statements from [REDACTED] addressed to the Brooklyn, New York address.

In the NOID, the director stated that the petitioner's evidence of residing with his wife at the Brooklyn, New York apartment in November 2005 is inconsistent with his two affidavits in which he stated that he and his wife resided in Daytona Beach, Florida after their marriage and they did not move to New York until August 2006. The director further noted that the petitioner and his wife purportedly signed the first lease for the Brooklyn apartment on November 14, 2005, which was when he stated in his affidavits that he was staying at a resort hotel in Florida for his wedding.

The director also found the petitioner's testimony of his residence in New York to be in conflict with the adjustment of status application (Form I-485) the petitioner had previously filed based on an underlying petition for alien relative (Form I-130) in which his wife was the petitioner. The adjustment application was filed on January 10, 2006 and was denied on July 28, 2010. The record reflects that the petitioner changed his address on his adjustment application to a second address in Daytona Beach, but there is no address change on the application for his purported move to New York in August 2006. The

petitioner also submitted a medical examination document (Form I-693), dated March 14, 2006, with his adjustment application in which he provided a residential address in Daytona Beach that differed from the one he listed in his affidavits.

The director provided the petitioner with the opportunity to submit a statement and corroborating documentary evidence to resolve the inconsistencies. The petitioner responded in an affidavit in which he stated that he and his wife signed a residential lease for an apartment in New York before their marriage and then they traveled to Florida for their wedding ceremony. He stated that they subleased their Brooklyn, New York apartment for one year while they resided in Daytona Beach, Florida. The petitioner explained that they resided at multiple addresses in Daytona Beach. He stated that they moved to their apartment in Brooklyn in August 2006 when he was offered a job in New York. The petitioner also submitted affidavits from his friends, [REDACTED] which discuss their knowledge of the petitioner's joint residence with his wife in Florida and New York.

In denying the petition, the director stated that the petitioner's new affidavit differed significantly from his previous affidavits in regard to his travel schedule and the location of his residence(s) with his wife prior to and following his marriage. The director determined that that the petitioner's affidavit did not offer a credible explanation regarding the differences in testimony and the petitioner failed to submit probative evidence to support his new claims. On appeal, counsel asserts that the petitioner "fell victim to actions of unscrupulous person, who held herself out as attorney." Counsel states that the petitioner never viewed the evidence that was submitted in support of his petition. Counsel states that when the petitioner received his file, he realized that his actual evidence was not submitted to United States Citizenship and Immigration Services (USCIS). Counsel asserts that instead, the individual who prepared the petition fabricated the petitioner's affidavits and his friends' affidavits as well as other documentary evidence. Counsel contends that the inconsistencies in the record exist because of the fabricated evidence. Counsel submits an affidavit from the petitioner and letters from his friends, [REDACTED]

The petitioner asserts in his affidavit on appeal that his petition was filed by an individual who falsely held herself out to be an attorney. He states that this individual submitted self-affidavits on his behalf in response to the RFEs and NOID that were not written by him and not signed by him. He further states that the affidavits submitted by his friends were also not actually written or signed by them. The petitioner also asserts that he has never had a joint [REDACTED] account with his wife and the joint utility account with [REDACTED] never existed. Although the petitioner has offered an explanation for the numerous inconsistencies in the evidence submitted below, he has not provided any new evidence of his joint residence with his wife on appeal. The petitioner does not discuss his joint residence with his wife in his affidavit submitted on appeal. The petitioner's friends also fail to provide any probative details of their knowledge of the petitioner's residence with his wife. In his letter, [REDACTED] only states that the petitioner is a person of good moral character, and does not discuss the petitioner's marriage. [REDACTED] briefly states that the petitioner resided with his wife in New York, but he does not discuss any visit to their residence or otherwise explain the basis for his knowledge of their marital residence. The petitioner has failed to submit on appeal any detailed, credible and probative evidence of his joint residence with his wife.

Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Entry into the Marriage in Good Faith*

The relevant evidence also fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit submitted in response to the first RFE, the petitioner discussed how he first met his wife, their courtship, engagement and wedding ceremony. The petitioner made similar statements in the affidavit he submitted in response to the second RFE and the NOID. The petitioner also submitted the following documentary evidence of his good-faith marriage: payment slips for his joint utility account with [REDACTED] two joint residential leases for an apartment in Brooklyn, New York; a joint bank account statement with [REDACTED]; and statements from his friends, [REDACTED]

In the NOID, the director found that the biographic information sheet (Form G-325A) the petitioner submitted with his adjustment application contained information that was inconsistent with the petitioner's statements. On the biographic information sheet, dated December 5, 2005, the petitioner stated that he resided in Biddeford, Maine from 2001 through October 2005 and moved to Port Oran, Florida in October 2005. However, the petitioner claimed in his affidavits that his wife made multiple visits to his residence in New York during their courtship from June 2003 until November 2005. The petitioner failed to address this inconsistency in his response to the NOID.

In denying the petition, the director determined that based upon the unresolved inconsistencies, the petitioner failed to establish that he entered into the marriage with his wife in good faith. On appeal, counsel asserts that in the petitioner's affidavit submitted with the appeal he attests to his bona fide marriage. However, the petitioner does not discuss his good-faith entry into the marriage in this affidavit. The petitioner only asserts that the previously submitted affidavits from him and his friends were fabricated by the individual who prepared his petition as were the [REDACTED] account statements and the [REDACTED] statements. The supporting evidence submitted on appeal is also of little probative value. Neither of the petitioner's friends discusses in probative detail their observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. [REDACTED] only attested to his knowledge of the petitioner's good moral character. Although [REDACTED] briefly attested to knowing of the petitioner and his wife as a married couple, he does not provide any information to establish his personal knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate 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.

*Battery or Extreme Cruelty*

The record also fails to establish that the petitioner's wife subjected him to battery or extreme cruelty. The petitioner recounted in his first affidavit that his wife called him derogatory names, encouraged her friends to insult and threaten him, abandoned him, took money from him, drank alcohol excessively, used illegal drugs and had extramarital affairs. He further stated that on one occasion his wife's friends forced him to drink alcohol, beat him and sexually assaulted him. The petitioner stated that after this incident, his wife and her friends threatened to kill him, humiliate him

and have him deported if he did not give them money. The petitioner made identical statements in the affidavits he submitted in response to the second RFE and NOID. The statements from the petitioner's friends, [REDACTED] also discuss their knowledge of the alleged abuse in the petitioner's marriage.

The petitioner submitted a psychiatric evaluation from [REDACTED] M.D., dated October 13, 2011. [REDACTED] reiterated the allegations of abuse the petitioner had discussed in his affidavits. He diagnosed the petitioner with major depressive disorder, adjustment disorder, anxiety and post-traumatic stress disorder.

In denying the petition, the director found that the unresolved inconsistencies in the record detract from the credibility and reliability of the petitioner's testimony. The director determined that the petitioner's testimony, therefore, did not establish that he was battered or subjected to extreme cruelty. On appeal, the petitioner asserts that the individual who prepared his petition submitted fabricated affidavits that contain "inconsistent and incredible stories." The petitioner states that contrary to previous statements, he was never sexually assaulted, beaten or forced to drink alcohol by his wife and her friends. The petitioner states that instead his wife was an alcoholic who would throw things at him, threaten him, and demand money from him. The petitioner's brief statements of the alleged abuse fail to provide any probative details. Counsel resubmits with the appeal the psychiatric evaluation that the petitioner provided in his initial filing. However, the evaluation contains instances of alleged abuse from the self-affidavits the petitioner now insists were fabricated and never written by him. The evaluation, therefore, is of no probative value in these proceedings. The additional affidavit from the petitioner's friend, [REDACTED] also lacks probative details of his personal knowledge of the alleged abuse. [REDACTED] briefly stated that the petitioner's wife would drink heavily, demand money and threaten the petitioner with deportation. However, his letter fails to discuss any specific instances of abuse or provide his observations of the effects of the abuse on the petitioner. The petitioner has submitted no other evidence of the alleged abuse. Accordingly, the petitioner has not established 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 appeal, the petitioner has failed to establish that he entered into the marriage in good faith, he resided with his wife, and she subjected him to 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 appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.