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

(b)(6)

U.S. Citizenship and Immigration Services

Date: APR 10 2014 Office: VERMONT SERVICE CENTER

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 (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
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting Director ("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 resided with his former wife and entered into the marriage with her in good faith.

On appeal, the petitioner, through counsel, submits a brief.

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.
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> * * *
>
> (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

The petitioner was born in Palestine, and entered the United States as a nonimmigrant visitor on October 6, 2005. The petitioner married G-T-[1], a U.S. citizen on October 3, 2007. The petitioner and G-T- separated sometime in 2011, and divorced on June 7, 2012. The petitioner filed the instant Form I-360 on December 7, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residency with G-T- and good-faith entry into the marriage. The petitioner responded with additional evidence that the director found insufficient, and the director denied the petition.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Joint Residence

The director correctly determined that the record failed to demonstrate that the petitioner resided with his former wife at [redacted] The petitioner stated on his Form I-360 that he resided with G-T- from November 2007 until 2011. The record contains the following: a marriage certificate; a letter from the Social Security Administration; an identification card, two invoices, a free phone voucher, and envelopes that are all in the name of G-T- and show the

[1] Name withheld to protect individual's identity.

address; an employment authorization card, envelopes, school records, a telecommunications invoice, and utility invoices that all show the address and are in the name of the petitioner; five photographs of the petitioner and G-T- together; and the petitioner's emergency contact information for The letter, dated February 14, 2012, from the Social Security Administration indicates that the petitioner applied for a social security card. The photographs show the petitioner and G-T- pictured together, but the photographs are not identified as having been taken at any specific residence that the petitioner shared with his former wife. The emergency contact information and most of the invoices addressed to the petitioner are dated after the petitioner's separation from his former wife. While several documents addressed to G-T- show that mail was delivered to in her name, this documentation and the other remaining documents, when considered together, is not sufficient in demonstrating that the petitioner and his former wife shared a marital residence.

The petitioner also submitted an affidavit, and letters from his friends The petitioner stated in his affidavit that his former wife moved into the apartment in November 2007, but lived there "off and on" part time, and did not have all of her personal belongings at the apartment. The petitioner stated that his former wife moved into the apartment six months after their marriage because he still had a roommate and wanted to purchase furniture and other items before his former wife moved into the apartment. He stated that they were young and did not have established credit. The petitioner, however, fails to provide any detailed information about the claimed marital residence with his former wife or about shared residential routines, apart from the abuse. Although declared that the petitioner and G-T- received their visits at the apartment, they do not describe any particular visits or provide any substantive information about the claimed shared residence. Their letters, therefore, lack detailed information establishing that the petitioner and his former wife shared a joint residence.

On appeal, counsel declares that the petitioner and his former wife could not immediately move in together after their marriage. Counsel states that the petitioner's name was not included on utility invoices because the petitioner lacked government identification, but counsel has provided no evidence to show that government identification is required for utility services. Counsel asserts that even though the petitioner's and his former wife's mail and invoices are not jointly addressed, this fact is not indicative that the petitioner and his former wife did not reside together. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). We have discussed the deficiencies in the documentation. The limited evidence of invoices, envelopes, a marriage certificate, a few school records, photographs, an identification card, and an employment authorization card is not sufficient in establishing that the petitioner and his former wife shared a marital residence.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). A self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). In this case, the information in the petitioner's affidavit and in the letters from his friends provides little information in establishing that the petitioner and his wife shared a marital residence. Neither the petitioner nor his friends give any detailed information

about the petitioner's marital residence. Although the petitioner's friends stated that the petitioner and his wife received their visits, they do not describe any particular visit to the marital residence. Accordingly, the preponderance of the relevant evidence fails to demonstrate that the petitioner resided with his former wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner failed to establish that he married G-T- in good faith. The record contains: a letter from the Social Security Administration; the petitioner's emergency contact information for [redacted]; the petitioner's letter and affidavit; a marriage certificate; an identification card, two invoices, a voucher, and envelopes that are all in the name of G-T- and show the [redacted] address; an employment authorization card, envelopes, school records, a telecommunications invoice, and utility invoices that all show the [redacted] address and are in the name of the petitioner; five photographs of the petitioner and G-T- together; and letters from his friends [redacted] The emergency contact information and most of the invoices in the petitioner's name are dated a year after the petitioner's separation, and are not probative evidence of the intentions of the petitioner upon entry into marriage. The photographs show the petitioner and G-T- together, but the photographs are of unspecified occasions and dates and provide no substantive information to show the marital intentions of the petitioner. The evidence addressed to G-T- showing that mail was delivered to Ridgemont in her name, and the other remaining documents, are not sufficient in demonstrating that the petitioner entered into his marriage in good faith.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's letter stated that he met G-T- at a bar that he frequented. The petitioner declared that he liked G-T-, and dated her before he decided to get married. The petitioner declared that he and G-T- could not afford a wedding party, and it was six months after their marriage that his former wife moved in with him. The petitioner has not discussed in any detail how he met his former wife; their period of courtship and engagement; their joint residence; and any of their shared experiences, apart from the abuse. Although the letters of the petitioner's friends mentioned having visited the petitioner and G-T- on many occasions, their letters do not describe any particular visit or provide any probative information about the petitioner's relationship with G-T-, apart from the abuse and divorce. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

On appeal, counsel asserts that the documentary evidence demonstrates that the petitioner and G-T- intended to establish a life together upon entry into marriage.[2] Counsel argues that the fact that G-T- was the petitioner's emergency contact on school records is probative evidence that the petitioner married G-T- in good faith. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Service. 8 C.F.R. § 204.2(c)(2)(i). We have discussed the deficiencies in the affidavit, letters, and the other documentation. That the petitioner's decision was to have G-T- as his emergency contact on school records provides little information in demonstrating the petitioner's intentions in marrying his former spouse. Without credible testimony from the petitioner of his marital intentions, the evidence in the record, including the emergency contact information, fails in establishing that his entry into marriage with his former wife was in good faith.

Counsel states that the petitioner demonstrated that he was battered or subjected to extreme cruelty by his former wife, a fact which should carry weight in establishing that the petitioner entered into the marriage in good faith. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. The same or similar evidence may be submitted to demonstrate, for example, abuse and entry into a good faith marriage, but meeting one eligibility requirement will not necessarily demonstrate the others. Thus, even though the petitioner demonstrated that his former wife battered or subjected him to extreme cruelty, this fact does not demonstrate his good faith intent in marrying G-T-.

Counsel contends that the director erred in using notes of an interview that individuals from U.S. Immigration and Customs Enforcement (USICE) conducted with the petitioner shortly after his marriage when determining the petitioner's good faith entry into his marriage as well as his joint residence with this former spouse. A review of the denial decision does not reveal that the director relied exclusively on the interview between USICE and the petitioner in reaching his conclusions on the issues of joint residence and good faith entry into the marriage. Rather, the director also considered the relevant the credible evidence in the record. The director did not err in his conclusion that the petitioner did not establish that he entered into marriage with G-T- in good faith. We have discussed the deficiencies in the submitted evidence, the most significant of which is that the record lacks a substantive statement from the petitioner regarding his marital relationship, and that without a probative description from the petitioner he fails to establish his good faith intent in marrying his wife. Thus, when viewed in the totality, the preponderance of the relevant evidence fails to establish that the petitioner's entry into marriage with his wife was in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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, or entered into marriage with her in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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[2] Citing *Roe v. INS*, 771 F.2d 1328 (9th Cir.), *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983), *Matter of McKee*, 17 I&N Dec. 332 (BIA 1988).

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.