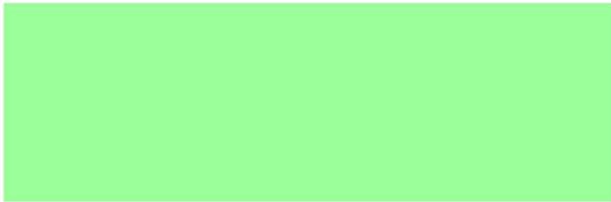


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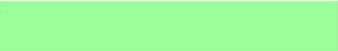
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

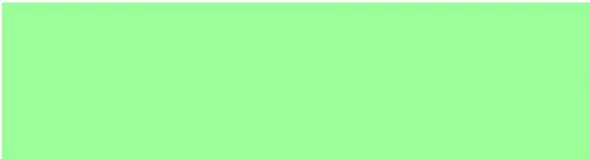


Date: **AUG 28 2014** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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:

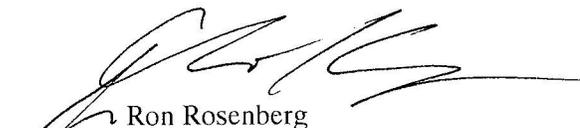


INSTRUCTIONS:

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 a qualifying relationship with a U.S. citizen, eligibility for immediate relative classification based on this relationship, and entry into marriage with his U.S. citizen wife in good faith.

On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

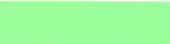
Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, 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 for a self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
 - (A) Is the spouse of a citizen. . . .
 - (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].



* * *

(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:

(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 . . . abuser. 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

* * *

(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, a citizen of Montenegro, entered the United States on June 21, 2004, as a nonimmigrant visitor. The petitioner married A-G-¹, a U.S. citizen, on [REDACTED] 2007, in [REDACTED] Michigan. The petitioner filed the instant Form I-360 on April 25, 2011. The director subsequently issued a Request for Evidence (RFE) of a registered marriage certificate for the petitioner and A-G-, evidence that A-G- is a U.S. citizen, and evidence of the petitioner's good-faith entry into the marriage. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner's claims and the new evidence submitted on appeal fail to overcome all the grounds for denial. The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship and evidence of the citizenship of the U.S. citizen spouse. The petitioner initially submitted an unregistered Michigan marriage certificate reflecting that he and A-G- were wed on [REDACTED] 2007. In response to the RFE, the petitioner submitted a registered marriage certificate. Regarding the request for evidence of A-G-'s U.S. citizenship, the petitioner submitted a statement explaining that he does not have A-G-'s birth certificate or U.S. passport, but that she filed a petition for alien relative, Form I-130, which was approved on his behalf so evidence of her citizenship should be in his file. However, a review of the administrative record did not yield any evidence of A-G-'s U.S. citizenship and the director concluded that the petitioner failed to establish a qualifying relationship with A-G- and eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i).

On appeal, the petitioner submits a copy of A-G-'s Michigan birth certificate to demonstrate that his spouse is a U.S. citizen. The petitioner has now established that he has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

Entry into the Marriage in Good Faith

The director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith entry into his marriage. The evidence in the record contains: the petitioner's declaration; letters from his family and friends; joint bank statements; joint utility statements; an unsigned 2008 tax return completed as married filing separately; the first page of the petitioner's 2010 tax return also completed as married filing separately; and an order requesting a replacement bank card for the petitioner and A-G-. The joint bank and utility statements and replacement order for a bank card demonstrate that the petitioner and A-G- resided together but do not establish that they shared financial responsibilities. Additionally, there is no indication that the 2008 or 2010 tax returns, submitted by the petitioner as married filing separately, were ever filed with the Internal Revenue Service (IRS). Even if they were filed with the IRS, both were not jointly filed by the petitioner and A-G- and the 2010 tax return is for a time period after the petitioner and A-G- were already separated.

Regardless of the deficiencies of the record, 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 his declaration, the petitioner stated that he met A-G- at the community college that they both attended. He stated that they met at a theater group, started a dating, and decided to get married after being together for a year. He then recounted that both of their families disapproved of the relationship and as a result, they did not have contact with them. The petitioner did not provide any additional probative details regarding their courtship, wedding ceremony,

joint residence or any of their shared experiences, apart from the abuse. The letters from his family and friends submitted below were also insufficient to establish the petitioner's good faith in marrying A-G-. His family and friends all described knowing the petitioner and A-G- as a happy couple but they did not describe any visit or social occasion in detail or otherwise provide probative information establishing their personal knowledge of the relationship.

On appeal, counsel states that the petitioner now submits evidence that he married A-G- in good faith. However, the majority of the evidence submitted on appeal is not new, including the petitioner's personal declaration and letters from his family and friends, is already part of the record. As new evidence, the petitioner submits an unsigned copy of his 2011 tax return completed as married filing separately. The petitioner does not submit any evidence that this tax return was filed and, as it is dated over three years after the petitioner and A-G- were separated, it does not establish his good-faith intentions upon marrying her. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate 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.

Conclusion

On appeal, the petitioner has demonstrated that he had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on that relationship, but has not demonstrated that he entered into marriage with his wife in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.