

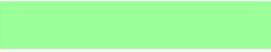


U.S. Citizenship
and Immigration
Services

(b)(6)

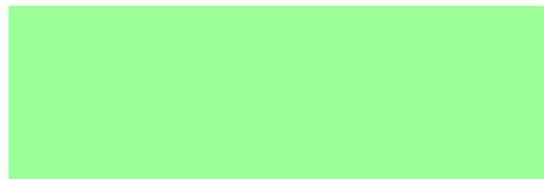


Date: **AUG 29 2014** Office: VERMONT SERVICE CENTER File: 

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:

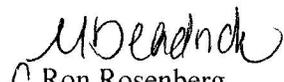


INSTRUCTIONS:

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 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner resided with his former spouse and entered into the qualifying relationship in good faith.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

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).

Under subsection 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, an alien whose intended spouse committed bigamy may still self-petition under these provisions if she or he:

believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States[.]

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].

The eligibility requirements are explained further 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.

* * *

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

* * *

(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 Pakistan and was paroled into the United States on [REDACTED]. He married his second spouse, a U.S. citizen, on October 7, 2010, in [REDACTED] New York, and their marriage was annulled on January 9, 2012 due to her bigamy. He filed the instant Form I-360 petition on February 28, 2012. The director subsequently issued two Requests for Evidence (RFE). The first RFE requested evidence of the petitioner's good moral character, and the petitioner timely responded. The second RFE requested evidence that, among other things, the petitioner resided with his former spouse and entered into his marriage in good faith. The petitioner responded with

additional evidence, which the director found insufficient to establish the petitioner's eligibility on these two grounds. The director denied the petition and the petitioner filed a timely appeal.

We review 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, and we will dismiss the appeal for the following reasons.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with his former spouse. On the Form I-360, the petitioner stated that he resided with his former spouse from September 1, 2010 until July 1, 2011, and that their last joint address was an apartment on [REDACTED] New York. The petitioner provided a personal affidavit, and affidavits from several friends, but none of these listed the shared address or described any particular visit to the petitioner's marital home.

The petitioner provided a copy of a Certified Transcript of Marriage showing that the petitioner resided in [REDACTED] New York and that his former wife resided in [REDACTED] New York on [REDACTED], the day they married. The petitioner submitted a copy of a lease agreement for rental of a one-bedroom apartment on [REDACTED] from November 1, 2010 to October 27, 2011. Although the petitioner and his former wife are listed on the lease agreement, only the petitioner signed it. The residential information on the marriage transcript and the date of the lease agreement are inconsistent with the petitioner's claim on the Form I-360 petition that he resided with his former spouse since September 1, 2010.

In response to the second RFE, the petitioner submitted a second affidavit in which he listed the [REDACTED] apartment address and asserted that he and his former wife moved into the apartment in mid-October of 2010. This statement is inconsistent with the terms of the lease agreement which show that he was permitted to occupy that address from November 1, 2010. The petitioner did not describe the [REDACTED] apartment or, for example, their shared belongings and residential routines, describe whether her two children lived with them in the one-bedroom apartment and, if so, where they slept, or otherwise provide any substantive information regarding their marital residence.

The petitioner also provided affidavits from friends, many of whom listed the [REDACTED] apartment address and described specific visits to see the petitioner and his former wife at that location. For example, [REDACTED] stated that he and his former wife visited the petitioner and his former wife at their apartment on several occasions, and described a specific visit to the petitioner's apartment on [REDACTED] for an [REDACTED] dinner in November of 2010. Mr. [REDACTED] described the petitioner's former wife's attire at the [REDACTED] dinner, the meal they shared, and the presents that he provided to the petitioner, his former wife, and her children, but he did not provide other probative information regarding the visit or describe the marital residence.

The petitioner's former employer, [REDACTED] stated that he periodically drove the petitioner

to the [REDACTED] apartment and always stopped to say hello to the petitioner's former wife and her children at that location, if they were home, but he did not describe the residence or indicate that ever visited them inside the address or describe a particular visit. [REDACTED] stated that he and his wife visited the petitioner and his former wife about five times at their [REDACTED] apartment, but did not describe the apartment or provide details of any particular visit. [REDACTED] asserted that he visited the petitioner and his former wife at their [REDACTED] apartment around Christmas of 2010 and "brought gifts for the whole family," but did not provide specific details about the apartment or describe any of the petitioner's family members residing there with him. [REDACTED] stated that he visited the petitioner a few times at his marital home, but did not describe any of the visits or the apartment. [REDACTED] stated that he visited the petitioner at his apartment on [REDACTED] several times but discussed an incident of abuse and did not describe the petitioner's marital residence.

On appeal, the petitioner submits a third personal affidavit in which he asserts that he has no evidence of his joint residence with his former wife because his counsellor suggested that the petitioner destroy everything related to their shared life in order to help the petitioner recover. He provided a letter from his counsellor confirming that he suggested the petitioner get rid of anything in his possession which reminded him of his former wife, including letters, papers, pictures, and cards. The petitioner also submits a document from his real estate broker confirming that the landlord for the [REDACTED] apartment only required the petitioner to sign the lease.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "affidavits or any other type of relevant credible evidence of residency may be submitted." 8 C.F.R. § 204.2(c)(2)(i). In this case, however, the documents and affidavits submitted by the petitioner are inconsistent and detract from the credibility of his claimed joint residence with his former spouse. He first claimed to have lived with his former wife since September 1, 2010, but submitted a marriage certificate showing that they lived in different cities on [REDACTED]. In his second affidavit, the petitioner asserted that he and his former wife moved into the [REDACTED] apartment in mid-October of 2010, but the lease he provided did not permit occupancy until November 1, 2010. In addition to these unresolved inconsistencies, the affidavits of the petitioner and his friends lack any substantive description of the petitioner's residence with his former wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his former wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his second marriage in good faith. On the Form I-360 petition, the petitioner asserted that he lived with his former wife from September 1, 2010 to July 1, 2011. In his initial affidavit, the petitioner briefly described his courtship, explaining that he and his former wife were "introduced by friends at gatherings," but does not provide a date. He briefly recounted that they began dating, and married in October of [REDACTED]. He stated that he was not working during the marriage and asked her to sponsor

him so that he could get work authorization and “make money so she would be happy.” He asserted that he felt “destroyed” when his former wife told him she still loved her ex-husband and that they were still married. He provided affidavits from friends who briefly described the petitioner’s courtship and marriage in essentially identical language.

The petitioner provided a copy of a Certified Transcript of Marriage showing he wed his second wife on [REDACTED] a copy of the judgment of annulment for his second marriage based on his former wife’s “prior subsisting marriage,” and photographs that he stated were taken at a restaurant on their wedding day. He also provided a lease agreement for the apartment on [REDACTED] for a one-year term beginning on November 1, 2010. The director issued an initial RFE, but did not seek additional evidence relating to the petitioner’s good faith entry into marriage.

In response to the second RFE, the petitioner submitted an affidavit in which he described his relationship with his former spouse in more detail, including their courtship, marriage, and incidents of abuse. He asserted that he began to live with his former wife in the [REDACTED] apartment in mid-October of 2010, which, as previously discussed, contradicts the terms of the lease commencing on November 1, 2010.

On appeal, the petitioner submits a third affidavit but does not provide any additional probative information such as details of his courtship with his former spouse, their wedding ceremony, joint residence, and shared experiences. The petitioner cites a decision of the Third Circuit Court of Appeals (Third Circuit) to assert that his testimony and that of his friends and family are sufficient to establish his good faith in marrying his second spouse. The decision is neither binding or persuasive because it is unpublished, from the Third Circuit when this case arose from the Second Circuit Court of Appeals, and concerned the waiver of the joint-filing requirement for conditional residence under section 216(c)(4) of the Act, 8 U.S.C. § 1186a(c)(4), not a self-petitioner’s entry into a marriage in good faith under section 204(a)(1)(A)(iii)(I)(aa) of the Act. Regardless, USCIS must consider all credible, relevant evidence of the petitioner’s good faith marriage, but the determination of what evidence is credible and the weight accorded that evidence lies within the Agency’s sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i), (vii).

In this case, the petitioner’s statements contain an unresolved inconsistency regarding his marital residence. His statements and those of his friends fail to provide probative information regarding his courtship, wedding, marital residence, and experiences, apart from the abuse. The petitioner has not established by a preponderance of the evidence that he entered into marriage with his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he resided with his former spouse or that he married her in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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NON-PRECEDENT DECISION

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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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.