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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: **DEC 17 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (“acting 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 acting director denied the petition for failure to establish that the petitioner resided with his wife during their marriage, that she subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith. On appeal, counsel submits a brief and additional evidence.

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].

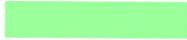
The eligibility requirements for an abused spouse self-petition are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (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].

\* \* \*

(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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. . . .

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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 explained 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. . . .

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

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(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 Uruguay who entered the United States on [REDACTED] 2000, under the Visa Waiver Program. On [REDACTED] 2008, the petitioner married K-I-<sup>1</sup>, a United States citizen, in

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<sup>1</sup> Name withheld to protect the individual's identity.

Georgia. The petitioner filed the instant Form I-360 self-petition on 2011. The acting director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residence with his wife, her battery or extreme cruelty, his good-faith intent to marry K-I, and his good moral character. The petitioner, through counsel, responded with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the petitioner has overcome some, but not all, of the acting director's grounds for denial and the appeal will be dismissed for the following reasons.

### *Joint Residence*

The record shows that the petitioner and K-I- resided together during their marriage. In the petitioner's initial affidavit, dated September 8, 2011, he recounted living with K-I- in his parents' house, her mother's house, and a two-bedroom apartment at Apartments in Georgia. He recounted that after a brief separation, they rented a small apartment together in August 2009 in an attempt to "start over." The petitioner described having to buy everything for the apartment, including a washer and dryer. He explained that they separated again, but reconciled in April 2011 and got an apartment together on Georgia, until they separated in August 2011. In response to the RFE, the petitioner stated that he and K-I- moved into her mother's apartment together in November 2011, but have since separated. On appeal, the petitioner explains that he and K-I- have had a very tumultuous relationship, that they have two children together, and that they have tried hard to make their marriage work.

Documentation in the record supports the petitioner's contention that he and K-I- resided together and have two children together. The petitioner submits copies of the birth certificates of the couple's two children on appeal. The record also includes a copy of a police report, dated 2010, showing that officers were called to the couple's residence on Georgia, in response to a domestic disturbance. This address is also listed on the petitioner's Biographic Information Form (Form G-325A) as well as on the divorce petition in the record which lists a total of three addresses for the couple's residences. In addition, an affidavit from the petitioner's father's fiancé stated that she and the petitioner's father moved into the couple's apartment at after the petitioner and K-I- had broken up again. This address is also listed on the petitioner's Form G-325A as well as on the divorce petition. Moreover, according to a copy of the Sheriff's Department's Impound Form, dated 2011, the petitioner and K-I- are both listed as residing on Georgia, the address the petitioner listed on his Form I-360 self-petition as the last address at which they lived together. Therefore, the record supports the petitioner's contention that the couple resided together during their marriage. Accordingly, the petitioner has established by a preponderance of the evidence that he resided with K-I- during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The acting director's contrary determination is withdrawn.

*Good-Faith Entry into the Marriage*

The petitioner gave a probative, credible, and detailed account of how he first met K-I-, their courtship, residences, and shared experiences. He explained that he first met K-I- in February of 2007 at the dance club where he was working and that they were introduced to each other by his ex-girlfriend. He described K-I- as an excellent dancer and that he is a dance instructor, that he felt connected to her and loved her, and that she spent almost every night with him. He recounted K-I- taking care of his mother who had cancer, and that K-I- got pregnant in early 2008. The petitioner gave a detailed account of their attempt to get married on April 4, 2008, but that the marriage did not occur because the court would not accept his passport as proper identification. He recounted the couple's actual wedding and described that both of their mothers attended. He also described the couple's shared residences and their son, [REDACTED] birth on [REDACTED] 2008. The record contains statements from the petitioner's friends, [REDACTED] who described personally witnessing that the couple tried to get married in April 2008, but could not do so because the courthouse would not accept the petitioner's expired passport as identification. In addition, the record includes numerous photographs of the family as well as a thank you card for attending the couple's baby shower while K-I- was pregnant. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with K-I- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The acting director's decision to the contrary will be withdrawn.

*Battery or Extreme Cruelty*

Nonetheless, the appeal cannot be sustained because the petitioner has not established that K-I- subjected him to battery or extreme cruelty during their marriage. In the petitioner's initial statement, he described that K-I- was angry with everything, yelled at him, and threatened to have him and his family deported. He briefly recounted an argument in [REDACTED] of 2010 when she assaulted him, pulled a knife out of a drawer, and he called the police. He briefly recounted another incident when she woke him up, yelled, and hit him. In response to the RFE, the petitioner repeated that he was assaulted during an argument in [REDACTED] of 2010. He reiterated that she yelled obscenities at him and threatened to have him and his family deported. The petitioner also described that in [REDACTED] 2012, he called the police again because she would not give him his immigration papers. He stated that she kept his tools, their cars, the money in their bank account, and his immigration papers. On appeal, the petitioner stated that K-I- always threatened him with deportation and that he will not be able to see his children. He claimed he went to the hospital twice due to the stress from their relationship and the medical documents indicate he was diagnosed as having an anxiety attack and hypertension based upon "having a lot of stress at job," and "recently quit smoking which has increased his stress level."

The petitioner failed to describe in probative detail any particular incident in which his wife allegedly physically assaulted him or threatened to do so. Statements from [REDACTED] also failed to describe any specific incident of battery or other behavior that would constitute extreme cruelty as that term is defined under the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In addition, the petitioner's description of the couple's [REDACTED] 2010 argument is not supported by the police report in the record. According to the police report, K-I- "began to have an asthma attack and [the petitioner] called 911 and asked for EMS and an officer." The

police report stated that there were no marks or bruises on either the petitioner or K-I- and made no mention of K-I- pulling out a knife as the petitioner claimed. To the extent counsel contended below that there is an arrest warrant against K-I- for child abandonment, the record shows that it was actually K-I- who accused the petitioner of child abandonment. Therefore, the petitioner's statements lack probative details to establish that K-I- subjected him to battery or any other behavior that included actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established by a preponderance of the relevant 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.

### *Qualifying Relationship*

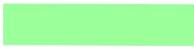
Beyond the director's decision, the petitioner has not established he has a qualifying spousal relationship with a U.S. citizen.<sup>2</sup> The petitioner did not provide evidence of his wife's U.S. citizenship status as required by 8 C.F.R. § 204.2(c)(2)(ii). A search of relevant U.S. Citizenship and Immigration Services (USCIS) records failed to provide any evidence of K-I-'s U.S. citizenship. See 8 C.F.R. § 204.1(g)(3). Moreover, the petitioner stated in his Form I-360 self-petition that he had previously been married. However, the petitioner has not provided proof of the termination of his first marriage as required by 8 C.F.R. § 204.2(c)(2)(ii). Consequently, the petitioner has failed to demonstrate that he has a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to section 204(a)(1)(A)(iii)(II)(aa), (II)(cc) of the Act.

### *Good Moral Character*

Also beyond the acting director's decision, the petitioner has not established his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in [REDACTED] 2008 and ending in [REDACTED] 2011). In the instant case, the petitioner provided a copy of a computer printout from the Georgia Crime Information Center showing that on [REDACTED] 2009, the petitioner was convicted of driving with a suspended or revoked driver's license and sentenced to twelve months of probation. The printout further shows that on [REDACTED] 2013, the petitioner was again convicted of driving without a valid license and sentenced to twelve months of probation. The petitioner does not address his good moral character in any of his statements and does not discuss his convictions and whether he successfully completed the terms of his sentence. Furthermore, according to the petitioner's Form G-325A, he lived in [REDACTED] Florida, from February 2010 to March 2011. However, the record does not contain any police clearance or criminal background

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<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).



check from Florida. Accordingly, the petitioner has failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

Although the petitioner has established that he jointly resided with K-I- during their marriage and that he married her in good faith, he has not established that she subjected him to battery or extreme cruelty, that he has a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immediate relative classification, and his good moral character. 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. 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.