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

(b)(6)

Date: DEC 19 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 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, married her in good faith, and was subjected to battery or extreme cruelty by her. 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 an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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 explained in 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.

(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 entered the United States on June 19, 2005, as a nonimmigrant visitor. The petitioner married R-J-[1], a U.S. citizen, on , 2011, in New York. The petitioner filed the instant Form I-360 self-petition on July 9, 2013. The acting director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residence with R-J-, his good-faith entry into the marriage, and R-J-'s battery or extreme cruelty. Through counsel, the petitioner timely responded to the RFE with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and counsel filed the instant appeal.

We conduct appellate review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The evidence overcomes some, but not all, of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The record shows that the petitioner and R-J- resided together after their marriage. On the petitioner's Form I-360 self-petition, he stated that he resided with his wife from 2011 until 2012 and that the last address at which they lived together was on New York. In the petitioner's initial affidavit, dated July 3, 2013, he stated that when he met R-J-, he was living on and that she moved in with him on 2011, the day before they registered their marriage. He described seeing each other mostly at night due to their work schedules and that he took care of the household chores and the cooking. The petitioner explained that in January 2012, they moved to an apartment on . In response to the RFE, counsel reiterated that the couple lived on from 2011 until January 2012 when they moved to an apartment on Sapphire Street. On appeal, the petitioner submitted an additional affidavit attesting to the fact that he and R-J- lived on together after they married and stayed there until January 2012 when they moved to He explained that his self-petition erroneously listed the address instead of the address as the last address at which they lived together.

Documentation in the record supports the petitioner's contention that he lived with his wife on as well as on A letter from confirmed that the couple rented a room in his apartment on from 2011 until January 2012 for $300 per month. Mr. submitted an additional affidavit on appeal, reiterating that the couple leased a room in his apartment on and that after they moved to , he personally visited them in their new residence several times. The record also includes a copy of a lease for the

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

apartment from January 2012 until January 2014. In addition, the record contains a cell phone service agreement that lists both of the couple's names and indicates bills were sent to them at their address. Moreover, the couple's 2011 joint income tax return listed their address and copies of joint bank account statements are addressed to the couple at their address. Therefore, the record supports the petitioner's contention that the couple resided together on and on . Accordingly, the petitioner has established by a preponderance of the evidence that he resided with his wife 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.

Entry into the Marriage in Good Faith

In his initial statement, the petitioner gave a probative, credible, and detailed account of how he first met R-J-, their courtship, and shared experiences. He described meeting R-J- at a restaurant, specific activities they shared together, and their intimate relationship. He recounted celebrating their birthdays and meeting each other's friends and families. He stated that he asked friends and relatives for their opinions about marrying R-J-, and described buying a ring for her and proposing marriage to her. On appeal, the petitioner submitted an additional statement describing his marital intentions. He recounted that after registering their marriage, they underwent a religious marriage at the mosque where R-J- converted to Islam. The petitioner's statements provide probative details of his good-faith intent in marrying his wife. Affidavits from the petitioner's friends, , and described personally observing that the couple was in love and affectionate with each other. also attested to how happy the couple was during their religious marriage at the mosque. Moreover, the record contains an Islamic Certificate of Marriage as well as relevant photographs, cards, joint income tax returns, and bills. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with R-J- 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

The appeal cannot be sustained, however, because the petitioner has not established that he was battered or subjected to extreme cruelty by R-J- during their marriage. In the petitioner's initial affidavit, he recounted R-J- becoming addicted to drugs and alcohol. He claimed she spent all of the money in their bank account, stopped talking to him, refused to have sex with him or demanded money for sex, and disappeared for days at a time. He contended she yelled at him and that she threatened to poison his food, hire people to harm him, and have him deported. He briefly recounted that she once hit him with her purse and that during another incident, she tried to scratch his face. On appeal, the petitioner reiterates his previous assertions and claims, among other things, that R-J- regularly assaulted and battered him, and attempted to extort money from him.

The petitioner's affidavits failed to describe in probative detail any particular incident of 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). Although

affidavits from the petitioner's friends, , and described personally observing R-J- when she was under the influence of drugs, nonetheless, they did not provide any additional details to support the petitioner's claim that he was regularly assaulted and battered, or that he was subjected to any other behavior that amounted to extreme cruelty. The present record does not demonstrate that R-J-'s drug and alcohol use resulted in an ongoing cycle of battery or extreme cruelty against the petitioner. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that R-J- subjected him to battery or any other behavior that constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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 established that he resided with his wife during their marriage and entered the marriage in good faith. However, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage. 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.

ORDER: The appeal is dismissed.