



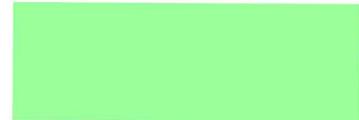
U.S. Citizenship  
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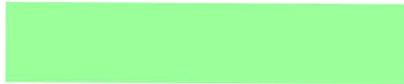


Date: **FEB 20 2014**

Office: VERMONT SERVICE CENTER

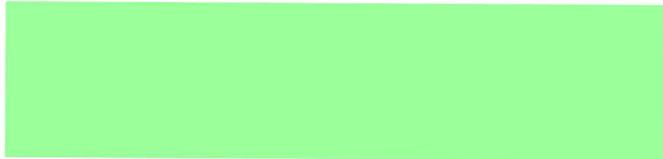


IN RE: Petitioner:



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:

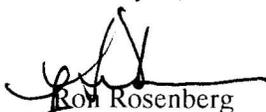


INSTRUCTIONS:

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  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (“the director”), revoked approval of the immigrant visa petition after properly notifying the petitioner, 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 United States citizen spouse.

The director revoked approval of the petition for failure to establish that the petitioner entered into the marriage with his wife in good faith. On appeal, counsel submits a brief and voluminous evidence.<sup>1</sup>

*Relevant Law and Regulations*

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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

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<sup>1</sup> The director served the revocation notice on prior counsel. Despite this procedural defect, however, current counsel filed the appeal, providing additional evidence that the AAO has reviewed and considered in its entirety.

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:

(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.

\* \* \*

(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 Ghana, married S-W<sup>2</sup>, a citizen of the United States, on May 9, 2006. He filed the instant Form I-360 on March 26, 2008 and it was approved on March 18, 2010. The director issued Notices of Intent to Revoke (NOIR) approval of the self-petition on July 24, 2012 and April 8, 2013,<sup>3</sup> and notified the petitioner that his petition may have been granted in error because after a full review of the administrative record, the petitioner failed to demonstrate that he entered into the marriage with his wife in good faith. The director found the petitioner's timely responses insufficient to overcome her proposed ground for revocation, and she revoked approval of the petition on August 12, 2013.

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> The NOIDs issued on July 24, 2012 and April 8, 2013 are identical apart from the date of issuance.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's ground for revocation.

### *Entry into the Marriage in Good Faith*

The director correctly determined that the petitioner failed to establish that he married S-W- in good faith. The relevant evidence in the record below and on appeal consists of: an affidavit from the petitioner; letters from the petitioner and his friends, [REDACTED] employer letters and records; wage statements; residential lease documents; rental receipts; letters from insurance companies; insurance records; letters from the Internal Revenue Service (IRS); tax records; utility and telecommunication letters and invoices; a letter from [REDACTED] social security statements; bank records; court records; a letter from the State of New York Department of Health; and medical records.

The petitioner briefly stated in his first letter that he married his wife on May 9, 2006 at the [REDACTED] and that their relationship changed after their marriage. In his second letter, the petitioner stated that he married his wife in good faith and lived with her at [REDACTED]. In his affidavit, dated May 5, 2013, the petitioner discussed the discrepancy in his documents, but the petitioner did not describe in his letters or affidavit how he met S-W-; his period of courtship, the engagement, and wedding; his joint residence with his wife; or any of his shared experiences with her, apart from the abuse.

[REDACTED] stated in an undated letter that he had known the petitioner and S-W- as a couple for more than three years, and that the petitioner had a loving relationship with S-W-. [REDACTED] briefly stated in his letters that he lived with the petitioner and S-W- since their marriage. He declared that the petitioner and S-W- were in love, but S-W-'s attitude towards the petitioner changed a few months after the marriage. Though the petitioner's friends briefly mention that the petitioner and S-W- were in love, they did not provide complete information and details about the petitioner's relationship with his wife, apart from the abuse, including any observed interactions with them in probative detail.

The petitioner asserted in his second letter that he lived with his wife and [REDACTED] but his assertion is not consistent with the information in the Biographic Information, Form G-325, for S-W- that the petitioner submitted into the record as Exhibit F-3. The petitioner's Form G-325 listed his residence at [REDACTED] from September 2004 until September 2006, and his submitted wage statements and medical record show that address. A bank account statement in the name of the petitioner and his wife shows the [REDACTED] address, but the petitioner's wife's Form G-325 does not reflect that she ever lived at [REDACTED]. Her Form G-325 lists that she resided at [REDACTED] in [REDACTED] from May 2006 to September 2006; [REDACTED] from October 2003 to January 2005; and [REDACTED] from January 2005 to May 2006. Also, the information in the petitioner's wife's Form G-325 is not consistent with [REDACTED] statement in the undated letter that the petitioner and S-W-

rented a room from him at [REDACTED] or with the petitioner's claim in his undated letter that he and S-W- were roommates of [REDACTED]. Thus, the wage statements, bank statements, and medical records do not demonstrate that the petitioner entered into marriage with S-W- in good faith.

The petitioner's and his wife's Form G-235 indicated that they resided together at [REDACTED], from September 2006 to December 2007, and resided together at [REDACTED] in [REDACTED] from December 2007 to March 2008. The petitioner's employer stated in the letter, dated April 29, 2013, that the petitioner submitted a change of address form reflecting his move to [REDACTED] in October 2006. [REDACTED] stated in the letter, dated August 1, 2012, that the petitioner and his wife lived at [REDACTED] from September 1, 2006 to November 30, 2007, but a lease agreement made on September 1, 2006 between [REDACTED] is the sole occupant at apartment [REDACTED]. A new lease agreement was made on February 1, 2007 between [REDACTED], the petitioner, and S-W-, who are all listed as the occupants at apartment 708. The record contains a rent receipt from [REDACTED] indicating that the petitioner paid rent by check on December 5, 2006. The remaining invoices and receipts from [REDACTED] are only in the name of [REDACTED]. Even if the evidence of lease agreements, rental invoices and receipts, and letters from the petitioner's employer and [REDACTED] demonstrate that the petitioner shared a joint residence with his wife at [REDACTED], the fact of a joint residence is not sufficient to establish the petitioner's good faith in marrying S-W-.

The insurance information, bank account records, wage statements, income tax records, a protective order, and letters do not demonstrate that the petitioner married his wife in good faith. The record contains a [REDACTED] letter, dated August 10, 2012, stating that the automobile insurance policy listed the petitioner and his wife as residents in the same household, but the letter indicated that the petitioner had the policy for only a brief time, from July to November 2007. The bank statements in the name of the petitioner and his wife show the [REDACTED] addresses, but they reflect that the bank account had few transactions and at most \$98.83, indicating that the petitioner and his wife did not use the bank account for shared savings or expenses. The wage statements from [REDACTED] the petitioner's employer, indicated that his wages were deposited into a bank account, but the submitted bank records do not show any deposits from his employer. The 2005 tax record predates the petitioner's marriage to S-W-, and the tax return for 2009 covers a period in which the petitioner and his wife were separated. The court records indicate that the petitioner sought a temporary protective order and a peace order against his wife. The record also contains several letters (including some from the Internal Revenue Service) and telecommunications invoices in the name of the petitioner and his wife as well as a few other documents addressed to either the petitioner or his wife at the [REDACTED] address, and the remaining documents are dated after the petitioner's separation from his wife. The [REDACTED] indicates that the petitioner's wife was the petitioner's beneficiary. However, without a probative account from the petitioner or his friends regarding the petitioner's marital relationship, tax information and records, an insurance policy, a temporary restraining order, and documents that reflect a joint address are not sufficient to establish the petitioner's good faith in

marrying his wife. The petitioner did not describe how he met S-W-, his courtship and wedding, or any of his shared experiences with his wife, apart from the abuse. His friends do not provide complete information and details about the relationship of the petitioner and S-W-, apart from the abuse.

On appeal, the petitioner submits income tax transcripts for 2006 to 2009 showing the petitioner's filing status as married filing separately; a letter from his employer, dated August 26, 2013, stating that the petitioner included his wife on his life insurance policy and named her as beneficiary from 2006 until February 2008; and wage statements reflecting the petitioner's life insurance payments. However, the record lacks probative statements from the petitioner or his friends regarding the petitioner's marital relationship, and income tax transcripts and a life insurance policy showing that the petitioner's wife is his beneficiary are not enough to demonstrate the petitioner's good-faith entry into marriage.

On appeal, counsel argues that the director erred by analyzing the relevant evidence solely to determine if the petitioner entered into marriage with his wife in good faith, rather than analyzing the evidence to determine whether the petitioner and his wife shared a marital residence. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other. Section 204(a)(1)(A)(iii)(I)(aa) of the Act specifically requires the petitioner to establish that "the marriage . . . was entered into good faith by the alien." Section 204(a)(1)(A)(iii)(II)(dd) of the Act requires the petitioner to establish that he "has resided with the alien's spouse or intended spouse." Thus, the statutory requirements of good faith entry into the marriage and joint residence are separate from each other, and a petitioner must separately establish both requirements.

Counsel asserts that the director did not apply the correct burden or standard of proof of "any credible evidence." In adjudicating the self-petition, the consideration of any relevant, credible evidence is not a burden or standard of proof, but an evidentiary standard. A self-petitioner must demonstrate his or her eligibility by a preponderance of the evidence, the standard that applies to all immigrant visa petitions. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). U.S. Immigration and Citizenship Services (USCIS) has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). In this case, the preponderance of the relevant evidence fails to demonstrate that the petitioner's entry into marriage with his wife was in good faith. We have discussed the deficiencies in the petitioner's joint documents, and the record lacks a probative account of the petitioner's courtship, wedding, shared residence or other shared experiences with S-W-. The letters of his friends are brief and lack substantive information and detailed knowledge of the petitioner's marital relationship, particularly the petitioner's intent upon entering into his marriage. Without probative information from the petitioner or his friends of the petitioner's relationship with his wife, the relevant evidence is not sufficient to show the petitioner's good faith in marrying S-W-.

Counsel contends that the director erred by not considering the relevant evidence in the aggregate and petitioner's affidavit explaining the discrepancies in the evidence. The determination of what

evidence is credible and the weight accorded such evidence is within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). Even though the director's decision failed to mention every piece of the petitioner's evidence by name, she considered all of the evidence and did not err in her determination that the petitioner did not establish that he entered into marriage with his wife in good faith. We have explained the deficiencies in the relevant evidence, 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.

In these proceedings, 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, 375 (AAO 2010). He has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed. Approval of the petition remains revoked.