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

U.S. Citizenship and Immigration Services

(b)(6)

Date: JUL 15 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.

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 sustained.

The petitioner seeks immigrant classification under 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 entered into marriage with his former spouse, a United States citizen, in good faith.

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

Relevant Law and Regulations

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 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 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:

> (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.

Facts and Procedural History

The petitioner, a citizen of , last entered the United States on June 3, 2008 as a J-1 exchange visitor. The petitioner married M-M-[1], a U.S. citizen, on January 19, 2010 in New York and they were divorced on September 11, 2013. Prior to their divorce, the petitioner filed the instant Form I-360 on May 22, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's entry into the marriage in good faith. The petitioner timely responded with further evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to show the requisite good-faith entry into the marriage.

Counsel timely appealed. The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's ground for denial as follows.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal demonstrates the petitioner's entry into his marriage with M-M- in good faith. The petitioner initially submitted: a personal affidavit; affidavits from two friends – one who resided with the petitioner and his former spouse and the other who lived next door; joint checking account statements; a joint income tax return; a residential lease; and personal photographs. In response to the RFE, the petitioner submitted: four new affidavits from friends and neighbors; additional personal photographs; and the petitioner's divorce summons and complaint filed against his former spouse. In addition, the petitioner resubmitted his personal affidavit and the financial documents described above.

In his affidavit, the petitioner provided a credible, detailed account of how he first met his former spouse, their courtship, engagement, joint residence and shared experiences before and after marriage. He recounted how he first saw and developed an interest in M-M- while playing soccer with mutual friends in 2007, always looked for her at ensuing practices and games, and was formally introduced to her during a party. He described their budding friendship and how he became closer to M-M- while

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

teaching her to dribble and spending meaningful time together before he had to leave the United States to comply with the terms of his J-1 nonimmigrant status. He explained how after returning to New York and being reunited in 2008, he and M-M- finally expressed their feelings for one another, and he recounted their courtship, time spent together, his proposal of marriage in December 2009, and how the couple got married the following month. The petitioner described their first months of marriage, how he was initially able to support them both financially through income derived from but how after M-M- filed an immigrant petition on his behalf and he received work authorization, he secured employment as a long distance truck driver to pay their household expenses.

The affidavits of the petitioner's friends also attested to his good faith in marrying M-M-. the petitioner's childhood best friend, stated that he met M-M- before the petitioner married her and described his frequent observations of them as a couple both before and after they married. stated that he and the petitioner are close friends and during a difficult time for Mr. , the petitioner invited him to stay temporarily with him and M-M-. Mr. recalled that the former couple at first seemed happy and utterly in love, but over time an enormous amount of tension grew in the home due to M-M-'s violent behavior. wrote that he and the petitioner are best friends and he was ecstatic when his best friend moved in to the apartment beside him with his then new wife. Mr. provided a credible, detailed account of numerous incidents he witnessed in which M-M- abused the petitioner, including one occasion when he offered to have the petitioner stay with him that night and call the police on his behalf, but the petitioner refused, explaining that he loved M-M- and would never do that to her.

The director nonetheless determined that the petitioner did not marry his former spouse in good faith, finding that the affidavits by the petitioner and his friends and neighbors were general and lacked specific detail. However, in his affidavit, the petitioner provided a credible, detailed account of how he first met his former spouse, their courtship, engagement, joint residence and shared experiences before and after marriage. Mr. , who resided with the petitioner and M-M-, also provided probative credible details concerning the relationship between the former couple and the toll it took on his close friend. He personally observed how they went from a happy couple in love, to living in great tension related to M-M-'s physical and emotional abuse of the petitioner. Mr. who resided next door to the petitioner and M-M-, provided further credible and detailed testimony concerning the petitioner's love for M-M- despite her abuse.

The director discounted the joint checking account statements because they appeared to be "used by one person only" and did not show "the activity commonly associated with maintaining a household such as the paying of rent and utility bills." On appeal, counsel correctly notes that the bank statements reflect a number of common household charges including groceries, cellular telephone, insurance, and purchases at hardware, pharmacy and department stores. Charges made at a variety of restaurants are also consistent with the petitioner's affidavit in which he stated that he and M-M- enjoyed dining out. The statements cover a range of dates during the petitioner's marriage from May 2010 to June 2011 and reflect charges made locally in New York as well as at gas stations and motels across many states, consistent with the petitioner's affidavit in which he explained that he worked as a long distance truck driver. The bank statements additionally reflect charges made close in time together on both the east and west coasts, indicating that the account was used by both the petitioner during his travel for work and his former spouse who remained at their home in New York.

The director also gave no weight to the 2010 income tax return copies initially submitted because they were unsigned and not accompanied by evidence that they were actually filed. On appeal, the petitioner submits a federal income tax transcript from the Internal Revenue Service showing that he and his former spouse jointly filed their 2010 tax return.

The director noted that the residential lease copy, submitted initially and resubmitted in response to the RFE, is unsigned by M-M- and shows that she was added in December 2009 while the petitioner indicated on Form I-360 that he resided with his former spouse from January 2010 to July 2011. In the petitioner's affidavit, he explained that he and M-M- dated for more than a year before he proposed to her in December 2009, and that they were "together all the time," and "could not live apart from each other." The fact that M-M- was added to the petitioner's lease after their engagement in December 2009 is not materially inconsistent with the petitioner's statement on his Form I-360 that they resided together as husband and wife beginning in January 2010 when they were married. Moreover, the director found that the petitioner had resided with his former spouse and the record contains probative evidence of their joint residence.

When considered cumulatively, the preponderance of the relevant evidence submitted below and on appeal, including the petitioner's own detailed affidavit, the affidavits of his friends and neighbors who attest to his good-faith marriage, and documentation of the former couple's joint income tax return, joint checking account and residential lease, demonstrate that the petitioner married his former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

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). On appeal, the petitioner has met this burden. He has overcome the director's ground for denial and demonstrated that he married his former spouse in good faith. Because he has established his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.