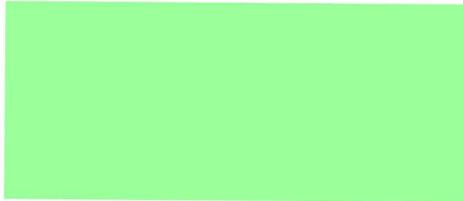


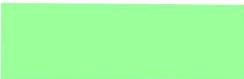


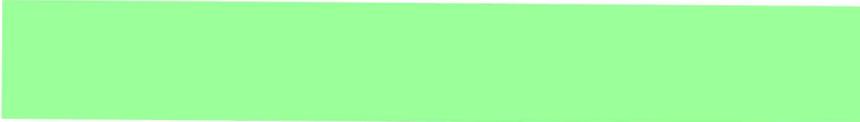
U.S. Citizenship  
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Services

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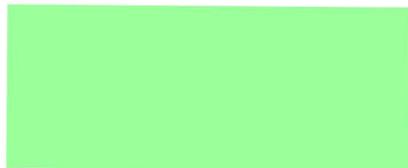
Date: **NOV 03 2014**

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 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, determining that the petitioner did not demonstrate that he resided with his U.S. citizen spouse, that his spouse subjected him to battery or extreme cruelty, and that he entered into a qualifying spousal 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).

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.

(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.

(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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

(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.

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

\* \* \*

(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 Nigeria and first entered the United States on March 26, 1992, as a B-2 nonimmigrant visitor. He married his spouse, S-F-, a U.S. citizen, on March [REDACTED] in [REDACTED] Texas.<sup>1</sup> On July 20, 2006, he was accorded status as a conditional lawful permanent resident, but his status terminated on January 29, 2010. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on September 14, 2009, and divorced S-F- on September [REDACTED]. On this same date, the director issued a Request for Evidence (RFE) of the petitioner's good moral character, and the petitioner timely responded. On January 28, 2010, the director issued a second RFE that, among other things, the petitioner resided with S-F-, that S-F- subjected him to battery or extreme cruelty, and that the petitioner entered into the marriage with S-F- in good faith. The petitioner responded with additional evidence. The director issued a notice of intent to deny (NOID) the petition on August 1, 2012, and ultimately denied the petition for abandonment on December 20, 2012. The petitioner filed a motion to reopen, and the director issued a notice of reopening and new RFE on May 13, 2013. On October 1, 2013, the director again denied the petition for abandonment. The petitioner filed a new motion to reopen, and the director issued a new decision dated October 17, 2013, finding that the petitioner failed to establish that he resided with S-F-, that S-F- subjected him to battery or extreme cruelty, and that he entered into the marriage with S-F- in good faith. 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 S-F-. On the Form I-360 self-petition, the petitioner stated that he resided with S-F- from May 2005 to August 2007, and that their last joint address was on [REDACTED] Texas. However, in response to question number 9 of the Form I-360 self-petition, the petitioner also indicated that he lived on [REDACTED] Georgia from July 2006 to July 2007, during the same period he claimed that he lived with S-F- in Texas. The petitioner did not initially provide an affidavit with his self-petition. Although he provided a utility bill from the City of [REDACTED] Texas that lists his name and S-F-, this bill is dated April 24,

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

2008, and falls outside the period he claimed to have lived with S-F-. The car insurance statements he provided list both of their names, but the one showing evidence of payment is for the period of August 17, 2007 to February 7, 2009, and the other is a renewal billing statement dated July 4, 2008. Both of these post-date the period of time he claimed to have resided with S-F-. The two Internal Revenue Service (IRS) Forms 1040, U.S. Individual Tax Return, are dated 2007 but show the petitioner and S-F- filed separately from their respective locations in Georgia and Texas. Accordingly, none of the initial evidence establishes that the petitioner and S-F- resided together.

In response to the January 28, 2010 RFE, the petitioner provided a short statement indicating that he and S-F- “lived together as husband and wife from the middle of April 2005 through early August 2007,” but he did not indicate where they lived together. In a separate undated, unsigned statement, the petitioner stated that he met S-F- in [REDACTED] when he was visiting a cousin, and that he sold his townhouse in [REDACTED] and moved into S-F-’s home in [REDACTED], Texas around the 13<sup>th</sup> or 14<sup>th</sup> of April [REDACTED] after they married. He indicated that he moved back to [REDACTED] when she ordered him to, but did not state when this occurred. The petitioner provided general affidavits from several of his family members. For example his sister, [REDACTED] stated that the petitioner and S-F- lived at the [REDACTED] residence in [REDACTED] Texas and that she had visited them at that location. His cousin, [REDACTED] stated that he met the petitioner and S-F- at their home, but did not give the address. Neither Ms. [REDACTED] nor Mr. [REDACTED] indicated when they visited the petitioner and S-F-, described the claimed marital residence, or provided any other details to establish that the petitioner and S-F- shared a marital residence in Texas or in Georgia. The petitioner’s uncle [REDACTED] stated he entertained the petitioner and S-F- at his home, but did not indicate that he ever visited their joint residence.

The petitioner also provided a copy of a Form I-130, Petition for Alien Relative, that S-F- filed on his behalf listing a shared marital address on [REDACTED] Texas as of April 22, [REDACTED]. However, this document reflects S-F-’s assertions that they resided together on the date she signed the form, and are not evidence that the petitioner and S-F- resided together. The petitioner resubmitted his 2007 IRS Form 1040, as well as subsequent tax returns and auto insurance documents; however, these all reflect his address in Georgia and the bills and insurance statements fall outside the period of time that he claimed to live with S-F-. Accordingly, these documents do not establish that the petitioner and S-F- shared a residence.

In response to the May 13, 2013 RFE, the petitioner stated that he “never actually resided at . . . [REDACTED] Texas [sic].” Instead, he asserted that the Texas residence was his wife’s address and “where we planned to live once I could change jobs and relocate to Texas,” and that he flew from Georgia to Texas to visit his wife on weekends. This contradicts his earlier claim on the Form I-360 self-petition to have sold his townhouse in Georgia and moved to his wife’s house in [REDACTED] Texas mid-April of [REDACTED]. He did not submit additional documentation, instead referring to evidence of plane flights and phone records that he and S-F- submitted in support of the previously filed I-130 petition. A review of the Form I-130 documentation shows some plane tickets and boarding passes reflecting that the petitioner made the following flights: (1) one round trip from [REDACTED] in March [REDACTED] the week of his wedding; (2) one trip from [REDACTED] in

February 2006; and (3) one trip from [REDACTED] on April 2, 2006. There is no other information showing that he visited S-F- while in [REDACTED] rather than, for example, the cousin he was visiting in [REDACTED] when he first met S-F-. The petitioner also provided phone records showing that he made phone calls to [REDACTED] Texas during his marriage, but none of these documents establish that the petitioner actually visited or resided with his wife.

On appeal, the petitioner again asserts that he never claimed to have resided in [REDACTED] Texas. He does not explain why he indicated in his initial affidavit that he moved into S-F-'s home in [REDACTED] Texas around the 13<sup>th</sup> or 14<sup>th</sup> of April [REDACTED] after their marriage or the listing of this address on his Form I-360. Even apart from this discrepancy, none of the petitioner's friends or relatives describes any particular visit to the petitioner's marital home or otherwise provides any substantive information regarding the petitioner's residence with S-F-. The petitioner's current assertion is that he never resided in [REDACTED] Texas, and that his wife never lived in Georgia. Therefore none of the insurance information, bills or other documentation reflecting both of their names establishes that they resided together. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with S-F-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner's spouse battered him or subjected him to extreme cruelty. The petitioner did not initially provide an affidavit.

In response to the January 28, 2010 RFE, the petitioner stated that his wife was extremely emotionally abusive, and that their relationship "started to sour right about the time I tore up my Achilles heel playing basketball around February 2006." He indicated that his recovery delayed his move to Texas and required months of wearing a boot and physical therapy. According to the petitioner, his wife "started to sour about this" and "to become verbally abusive." The petitioner indicated that his wife would yell, scream, call him names, go out drinking with friends at clubs without him, accepted telephone calls from her ex-boyfriend, got into two car accidents but did not tell him until the car insurance company contacted him, refused to go to marital counseling and instead ordered him to go back to [REDACTED] and eventually left him for another man with whom she had a child. The petitioner provided affidavits from family members who attested that they thought the petitioner and S-F- were happy and were surprised to find out that she had an extramarital affair. None of the affiants described witnessing S-F- committing acts of battery or extreme cruelty against the petitioner.

With his RFE response, the petitioner included a letter from a licensed psychologist, who stated that the petitioner was experiencing symptoms indicative of clinical depression and panic attack disorder. He recounted the petitioner's descriptions of S-F-'s behavior, stating that the petitioner told him that he "moved out and eventually stayed with his cousin for a while and then relocated back to [REDACTED] in 2006." As discussed, the petitioner subsequently submitted a statement dated June 21, 2013, in which he stated that he never resided with S-F-. The petitioner has never explained why he provided

contradictory information to his psychologist suggesting that he lived with S-F- in Texas until 2006. The inconsistencies in the petitioner's assertions and documentation detract from the credibility of his claims. In addition, his statements and those of his family and psychologist fail to provide probative information regarding S-F-'s claimed battery or extreme cruelty against the petitioner.

On appeal, the petitioner does not further describe the claimed battery and threats or any other specific incidents of battery or extreme cruelty. In this case, the statements of the petitioner, his family, and his psychologist did not discuss S-F-'s behavior in probative detail and do not show that she ever battered him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not provided any additional information on appeal to demonstrate that S-F- subjected him to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) 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 marriage in good faith. As discussed, the petitioner did not initially provide an affidavit. In response to the director's January 28, 2010 RFE, the petitioner submitted a brief statement indicating that he and S-F- "lived together as husband and wife from April 2006 through early August 2007," and a more detailed affidavit in which he recounted his first meeting with S-F- at a bar in [REDACTED] Texas, their first date at the [REDACTED] and their long-distance courtship after he returned to Georgia. Apart from the alleged abuse to which S-F- subjected him, the petitioner did not provide any probative details about his intentions and their time together after their marriage. As discussed, the petitioner provided his 2007 IRS Form 1040, as well as subsequent tax returns and auto insurance documents; however, these all reflect his address in Georgia and fall outside the period of time that he claimed to live with S-F-. His wife's 2007 IRS Form 1040 shows that she resided in Texas and filed separately from the petitioner during that same period. Moreover, the petitioner subsequently indicated in a June 2013 statement that he never resided with his wife; therefore, these documents do not establish his good-faith entry into marriage with S-F-.

On appeal, the petitioner does not provide any additional probative information such as details of his wedding ceremony, joint residence, and shared experiences, other than referring to prior statements about S-F-'s alleged cruelty toward him. Accordingly, the petitioner has not established by a preponderance of the evidence that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Good Moral Character*

As an additional matter, the petitioner has not established his good moral character. Primary evidence of a self-petitioner's good moral character is the self-petitioner's affidavit, which should be supported by local police clearances or state-issued criminal background checks. 8 C.F.R. § 204.2(c)(v). The petitioner did not initially provide evidence to establish his good moral character.

On September 18, 2009, the director requested that the petitioner provide criminal history clearances or records from each place he resided for a least six months during the three-year period prior to filing the petition. The petitioner provided a name check showing that he had no record with the Georgia sheriff's office under only one of his names, whereas his A-file record reveals the use of several other aliases and permutations of his name.

On January 28, 2010, the director issued a second RFE requesting, among other things, an affidavit from the petitioner attesting to his good moral character and criminal history clearances or records from each place he resided for a least six months during the three-year period prior to filing the petition. The director specifically explained that if the petitioner intended to submit name-check clearances, he was required to supply the law enforcement agency with all aliases he had used. The petitioner provided a statement indicating that he had never been arrested, and several name checks from Texas, but failed to provide name checks for all aliases. On this basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14).

On appeal, the petitioner provides no explanation for his failure to provide the requested documents below. Because the petitioner has failed to provide primary evidence of his good moral character in response to the director's RFE, the petition may not be approved. Consequently, the petitioner has not demonstrated that he is a person of good moral character, as required section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not demonstrated that he shared a marital residence with S-F-, that S-F- subjected him to battery or extreme cruelty during the marriage, that he married S-F- in good faith, and that he has good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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). 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.