

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: **NOV 05 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:

[REDACTED]

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 Director, Vermont Service Center (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 and the petition will remain denied.

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 spouse.

The director denied the petition on the basis of his determination that the petitioner did not marry his wife in good faith. On appeal, counsel submits a brief.

*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 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 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 is a citizen of Colombia who claims to have last entered the United States in April, 2001, without inspection, admission, or parole.<sup>1</sup> The petitioner married his wife, a U.S. citizen, on December [REDACTED] in Florida. The petitioner filed the instant Form I-360 self-petition on August 28, 2012. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. The director found the petitioner's responses to the RFE insufficient and denied the petition accordingly. On appeal, counsel submits a brief.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility for the following reasons.

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

The relevant evidence fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit, the petitioner stated that he met his wife in 2003 at a holiday dinner. He indicated that they saw each other and "got to know" each other, and eventually formalized their relationship. The petitioner recalled that they moved in together in early 2005, and that his wife was cheerful and attentive. The petitioner indicated that they decided to marry and were wed on December [REDACTED] and then had a honeymoon in Orlando, Florida. In his affidavit in response to the RFE, the petitioner stated generally that he married his wife for love. The petitioner did not describe in probative detail how he met his wife, their courtship, engagement, wedding, or any of their shared experiences, aside from the alleged abuse.

The petitioner submitted affidavits from friends. [REDACTED] stated that he believed the petitioner and his wife entered into marriage in good faith. [REDACTED] indicated that he knew the petitioner and his wife, and that they fell in love and got married. He added that the petitioner and his wife were always together and looked very happy. [REDACTED] recalled that the petitioner was a loving

<sup>1</sup> On his Form I-360 self-petition, the petitioner indicated that he entered the United States on April 13, 2001. In his affidavit, the petitioner stated that he entered the United States on April 10, 2001.

husband and a provider. [REDACTED] indicated that she met the petitioner's wife and that after a short courtship they were married. She added that she believes they had an honest and true marriage. [REDACTED] stated that the petitioner accompanied his wife to the salon where she worked, and that they looked like they loved each other. [REDACTED] recounted that he knew the petitioner's wife and that he attended their wedding. Mr. [REDACTED] also indicated that he spent time with the petitioner and his wife and that he believed the marriage was honest and could sense that they loved each other. None of these affidavits describe the affiants' observations in probative detail or provide any other substantive information regarding the petitioner's interactions and relationship with his spouse prior to and during their marriage. The director correctly concluded that these affidavits were insufficient to demonstrate that the petitioner married his wife in good faith.

The petitioner also submitted a lease listing his wife as a permitted occupant in his apartment, but the lease does not provide any specific information regarding the petitioner's intentions in entering his marriage, and is dated after the petitioner indicated that he had separated from his wife and was no longer living with her. The petitioner submitted joint checking account statements, and although he explained in his affidavit in response to the RFE that he paid most of his bills with cash, the statements show a low balance and do not contain sufficient activity to show that both he and his wife used the account. Similarly, the bill showing that the petitioner and his wife purchased one cellular telephone does not show that the petitioner entered into his marriage in good faith. The photographs of the petitioner and his wife on a few unspecified occasions are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. The petitioner's income tax returns for 2006, 2008, 2009, and 2010, which show his filing status as "single," despite being married and allegedly living with his spouse during these same years, also fail to support a claim of his good faith intentions when entering into his marriage. The evidence overall, without probative testimony regarding the relationship, is insufficient to establish the petitioner's intentions upon entering into the marriage.

On appeal, counsel claims that because the director found that the petitioner was the victim of domestic abuse, he should infer that the marriage must have been in good faith or the petitioner would not have lived with his wife. The statute and regulations do not suggest such an inference, and each qualifying factor must be established separately. Counsel also contends that the petitioner has met his burden of proof because the immediate relative petition his wife filed on his behalf was approved. However, the statutory provisions and benefits procured through sections 204(a)(1)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner's wife was the petitioner in the alien relative petition filed on the petitioner's behalf and bore the burden of proof in the prior Form I-130 adjudication, in which she was required to establish her citizenship and the validity of the marriage. In contrast, in this case, the petitioner bears the burden of proof to establish that he entered the marriage in good faith. Section 204(a)(1)(A)(iii)(I)(aa); 8 C.F.R. §§ 204.2(c)(1)(i)(H), (ix). As previously discussed, the relevant evidence is insufficient to demonstrate his entry into the marriage in good faith and other than referencing the Form I-130 submitted by his wife, the petitioner did not present any further evidence for consideration on appeal. As such, the petitioner has not established that he married his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

On appeal, the petitioner has not established that he entered into the marriage in good faith. 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.