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U.S. Citizenship
and Immigration
Services

Date: **NOV 06 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)

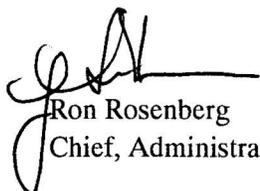
ON BEHALF OF PETITIONER:

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 Vermont Service Center acting 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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with and entered into marriage with his wife in good faith, and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, the petitioner 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 are further explicated in the regulation 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

* * *

(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.

* * *

(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 is a citizen of Lebanon who married C-H-¹, a U.S. citizen, on July [REDACTED] Lebanon. The petitioner subsequently entered the United States on July 26, 2007, on a K-3 visa as the beneficiary of approved Form I-130 and Form I-129F family petitions that C-H- filed on his behalf. The petitioner filed the instant Form I-360 self-petition on May 20, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into his marriage, residence with his wife, and the requisite battery or extreme cruelty. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely filed an appeal.

¹ Name withheld to protect the individual's identity.

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. The petitioner's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons. Beyond the director's decision, the petitioner has also not established his good moral character.²

Joint Residence

The petitioner failed to establish that he resided with C-H- during their marriage. The petitioner stated on his Form I-360 self-petition that he resided with C-H- from May of 2005 to August of 2009. The petitioner submitted [REDACTED] statements that are addressed solely to him at a [REDACTED] address. The 2008 and 2009 Internal Revenue Service (IRS) federal income tax returns completed as "married filing separately" were submitted after the petitioner and C-H- separated and also solely addressed to the petitioner at his [REDACTED] address. The partial copy of the lease, for the [REDACTED] property, does not include a signature page and does not demonstrate that the petitioner resided there with C-H- during their marriage. The photographs show only that the petitioner and C-H- were pictured together on unspecified occasions at locations not identified as the claimed marital residence. The joint bank letter is addressed to the petitioner and C-H- at a different address on [REDACTED] and absent probative testimony, is insufficient to establish that the petitioner and C-H- resided together during their marriage.

Despite these deficiencies, traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). In his first affidavit, the petitioner stated that in May of 2005, C-H- came to [REDACTED] and lived with him and his family. He stated that they got married on July 20, 2005 and that C-H- became pregnant in August of 2005. He stated that with the exception of a trip to the United States in November of 2005, C-H- lived with him until April of 2006 when she left Lebanon to have their baby in the United States. The petitioner stated that C-H- then returned to Lebanon in November of 2006 and stayed until April of 2007. The petitioner later joined C-H- in September of 2007 in the United States. Once in the United States, the petitioner stated that he and C-H- did not immediately move in together because her family did not know about their marriage. The petitioner stated that he moved into his cousin's apartment but did not list the actual address nor did he mention moving to a second location with C-H-. He recounted that C-H- spent part of the week with him and part of the week at her parents' home. The petitioner did not further describe their living arrangements in Lebanon or the United States or their shared belongings and residential routines, sufficient to demonstrate that he resided with C-H- after their marriage. In his second affidavit submitted in response to the RFE, the petitioner reiterated that C-H- traveled back and forth from the United States and Lebanon. The petitioner stated that when he came to the United States in September of 2007, he lived with C-H- at his cousin Stephan's apartment. Again, he did not indicate

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

that he resided with C-H- at any other address nor did he specify the address where he resided with C-H-.

The petitioner also submitted statements from: his father, [REDACTED] his mother, [REDACTED] his sister [REDACTED] his cousins, [REDACTED] and his friend, [REDACTED]. In his statement, [REDACTED] recounted that when the petitioner and C-H- were married in Lebanon, Mr. [REDACTED] gave them a room in his house to live. He also mentioned that when the petitioner moved to the United States, the petitioner and C-H- borrowed an apartment from the petitioner's cousin. [REDACTED] stated that C-H- lived with them every time C-H- came to Lebanon. She described teaching C-H- how to cook and taking her shopping every day. [REDACTED] also described spending a great deal of time with C-H- who lived with them when in Lebanon. The petitioner's parents and sister did not provide any other substantive information sufficient to demonstrate that the petitioner resided with C-H- after their marriage. In their statements, [REDACTED] and his girlfriend [REDACTED] both recounted that the petitioner and C-H- lived in Stephan's apartment before moving to a home on [REDACTED]. They stated that they visited the petitioner and C-H- at both locations but did not describe any particular social visit or otherwise establish their knowledge of the couple's living arrangements. [REDACTED] stated that before the petitioner came to the United States, Mr. [REDACTED] looked at apartments with C-H- but she did not like any of the locations. He stated that the petitioner and C-H- ended up living at the petitioner's other cousin's apartment. [REDACTED] stated that he owned the house on [REDACTED] and allowed the petitioner to live there with C-H-. He described visiting the petitioner once in a while and seeing the petitioner and C-H- watching a movie or playing with their daughter. He did not describe any particular visit or otherwise provide probative details regarding the couple's living arrangements.

On appeal, counsel argues that the petitioner's failure to clearly explain how and when he moved from the [REDACTED] address to [REDACTED] does not mean the director should ignore the statements from the petitioner's cousins and friend. However, counsel fails to explain how the petitioner's testimony and the statements from his family and friends offered sufficient probative details to demonstrate his marital residence with C-H-. Accordingly, the evidence in the record does not establish by a preponderance of the evidence that the petitioner resided with his wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his first affidavit, the petitioner stated that he met C-H- in [REDACTED] Lebanon in summer of 2004 at a downtown café where she was hanging out with friends that he knew. He stated that C-H- looked very pretty, that he was in love, and they started dating. The petitioner introduced C-H- to his family and when she returned to the United States, they kept in touch through electronic mail messages. The petitioner stated he bought C-H- airplane tickets to come back to Lebanon to visit and stay with him. He recounted that after she arrived in June of 2005, he proposed, and the two were wed on July [REDACTED]. He further recounted that he was happy to reunite with C-H- and meet their six-month old daughter when C-H- returned to Lebanon in November of 2006. The remainder of his

affidavit focused on the claimed abuse in the marriage and the petitioner did not probatively describe how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the claimed abuse. In his second affidavit, the petitioner stated that he married C-H- because he loved her. He explained that he was not aware that the petitioner was pregnant when he first met her or that she had a child in January of 2005, approximately six months before they were married. The remainder of the petitioner's affidavit again focused on the claimed abuse and he did not add any substantive information about his marital relationship. The statements from the petitioner's family and friends all claimed to have known the petitioner and C-H- as a loving couple but none discuss their interactions with the couple in any probative detail or otherwise establish their personal knowledge of the relationship.

The director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith entry into the marriage. The photographs show that the petitioner and C-H- were pictured together on various occasions. The petitioner's 2008 and 2009 income tax returns were filed after the petitioner and C-H- were separated. The [REDACTED] printout shows that C-H- had full access to the account effective January 27, 2009. However, the statements are solely addressed to the petitioner and reflect that both cellular telephone numbers on the shared plan were under his name. C-H-'s name only appears on the March and April of 2010 statements after her separation from the petitioner. The bank documents, money transfers, and receipts reflect that the petitioner and C-H- shared some joint finances, but without probative testimony from the petitioner, the evidence failed to establish the petitioner's good faith intent in marrying C-H-. Further, while the petitioner submitted a confirmation of lineage by the Lebanese Jaafarite Charieh Courts confirming that the petitioner was the father of C-H-'s daughter born in wedlock, little evidentiary weight can be given to this decree without further evidence of what the court considered in making this determination.

On appeal, counsel argues that the inconsistencies in the director's decision were minor and that the overwhelming amount of proof submitted by the petitioner clearly showed that he married C-H- in good faith. Counsel submits internet printouts of chat room posts regarding pregnant women who do not look pregnant and women who did not know they were pregnant until they gave birth as evidence that the petitioner did not know C-H- was pregnant when they met and dated. However, the petitioner's affidavits and the statements from his family and friends did not provide substantive information sufficient to overcome the deficiencies of the record. Accordingly, a full review of the evidence submitted below and on appeal fails to establish the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

On appeal, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage. In his first affidavit, the petitioner stated that after he arrived to the United States, he discovered that the petitioner had two children from her previous relationship that she had not told him about. He stated that he was devastated by this betrayal and that he began to be scared of her because she seemed like a different person with secrets. The petitioner recounted that at this same time, C-H-'s behavior toward him changed and she became offensive and controlling. He stated that she made him pay for everything, refused to introduce him to people as her husband, and insulted him. The petitioner further stated that C-H- withheld affection, was unfaithful, and eventually left him, taking

their daughter with her. The petitioner stated that he later discovered that he was not the biological father of their daughter and became depressed as a result of her lies. In his second affidavit submitted in response to the RFE, the petitioner repeated his earlier statements and added that he felt hopeless and depressed when he found out C-H-'s daughter was not his. The petitioner's family and friends, [REDACTED] all state that after the petitioner moved to the United States, the petitioner became sad and depressed because of the way that C-H- treated him and because he found out that he was not the father of C-H-'s daughter. They did not describe whether they witnessed specific incidents of abuse or otherwise establish their knowledge of such abuse. The petitioner's friend, [REDACTED] described one incident where C-H- embarrassed the petitioner at a bowling alley by loudly calling him names. The petitioner's cousin, [REDACTED], described one incident where C-H- threw a glass of soda on the petitioner at his restaurant and then left without him or the baby in their car. [REDACTED] a waitress at the same restaurant, also briefly described this incident. Ms. [REDACTED] Mr. [REDACTED] nor Ms. [REDACTED] further provided probative details about the incidents mentioned or described any other specific incidents of abuse.

In his assessment of the petitioner's mental health, clinical psychologist [REDACTED] Ph.D. diagnosed the petitioner with Major Depressive Disorder and Post-Traumatic Stress Disorder. Dr. [REDACTED] opined that it is amazing that the petitioner "is doing as well as he is doing" but that it should be noted that the petitioner "is an extremely depressed individual who has very little hope and meaning in his life." In his supplemental assessment submitted in response to the RFE and dated January 7, 2011, Dr. [REDACTED] reported that the petitioner's physical and psychological conditions had deteriorated further. He noted that the petitioner reported losing over twenty pounds and also patches of his hair which Dr. [REDACTED] concluded was highly probable as a result of C-H-'s treatment of the petitioner and the breakup of his family. While we do not question Dr. [REDACTED] professional expertise, his assessment conveys the petitioner's statements during his interview with him and provides no further, probative information regarding the claimed abuse. The petitioner also submitted letters from [REDACTED] M.D. who stated that the petitioner is being medicated for depression and [REDACTED], PA-C, who stated that the petitioner is being treated for a hair loss condition that is exacerbated by stress. The petitioner submitted copies of his medicine prescriptions to treat his depression and hair loss condition. These letters and prescriptions show that the petitioner was being treated for depression but did not provide any additional information regarding the claimed abuse.

On appeal, counsel asserts that the director erred in not finding that the petitioner suffered from extreme cruelty at the hands of C-H-. Counsel claims that C-H- exploited and humiliated the petitioner by making him believe that he was the father of her child and by hiding the fact that she already had two other children. However, the petitioner's affidavits and the brief statements that his family and friends submitted below did not discuss C-H-'s behavior in probative detail and do not show that she ever battered or threatened him with violence, psychologically or sexually abused 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). 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.

Good Moral Character

Beyond the director's decision, the petitioner has failed to establish that he is a person of good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit. 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance from each place the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.* The petitioner did not attest to his good moral character in his affidavits submitted below. He submitted a [REDACTED], Ohio Criminal History Record Check Request completed by name only for [REDACTED] County, Ohio but did not submit a local police clearance for Lebanon where he also resided during the three-year period prior to filing his self-petition. Accordingly, the petitioner has failed to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he entered into marriage with his wife in good faith, that they resided together, and that she battered or subjected him to extreme cruelty. Beyond the director's decision, the petitioner also failed to establish his 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the petition remains denied.

ORDER: The appeal is dismissed.