



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: NOV 07 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:

SELF-REPRESENTED

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 Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 because the petitioner failed to establish that he: (1) has a qualifying relationship with a U.S. citizen; (2) entered into the marriage in good faith; (3) resided with his former spouse; and (4) was subjected to battery or extreme cruelty during the marriage. The director further determined that the petitioner failed to overcome the bar to approval of the petition under section 204(c) of the Act, due to his entry into a prior marriage for the purpose of evading the immigration laws.

On appeal, the petitioner submits a statement 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.

An alien whose marriage to a U.S. citizen has terminated may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(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.

* * *

(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.

* * *

(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 Kenya who was admitted to the United States on March 29, 2007 as a nonimmigrant business visitor. The petitioner's marriage to his first wife, J-K-, terminated in a divorce in Kenya on January 2, 2005.¹ He married his second wife, D-S-, a U.S. citizen, on November [REDACTED] in Texas and their marriage terminated in a divorce on August [REDACTED] in Texas. The petitioner married his third spouse, C-L-, a U.S. citizen, on September [REDACTED] in Texas. His marriage to C-L- was annulled on February 9, 2012 in Texas.

The petitioner filed the instant Form I-360 on February 29, 2012 based on his marriage to C-L-. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's shared residence with C-L-, his good faith entry into the marriage and the requisite battery or extreme cruelty. The director also requested that the petitioner submit evidence to overcome the determination that he is subject to the section 204(c) of the Act bar to the approval of an immigrant petition. The petitioner, through former 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 filed a timely appeal.

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 initial affidavit, dated February 21, 2012, the petitioner stated that he met C-L- at a shopping mall. He recounted that they started dating and during their courtship he met C-L-'s three children. The petitioner stated that he and C-L- wed on September [REDACTED]. The remainder of his affidavit focuses on the alleged abuse. The petitioner did not probatively describe how he first met C-L-, their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

¹ Names withheld to protect the individuals' identities.

The petitioner submitted below several photographs of himself and C-L-, which are of little probative value because they are undated and taken at unspecified locations. The petitioner also submitted below a letter from C-L- in which she stated that she dated the petitioner for six months prior to their marriage. She recounted that after their marriage she moved into the petitioner's residence. She did not, however, provide any probative details of their courtship, wedding, joint residence and shared experiences. The petitioner also submitted a letter from [REDACTED] who stated that he is C-L-'s friend and he also calls himself her cousin. He indicated that he socialized with the petitioner and C-L- at their residence and they visited him at his home. However, Mr. [REDACTED] did not describe any social interaction with the couple in probative detail. In addition, the petitioner submitted letters from his friends, [REDACTED], who spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering into his relationship with C-L-.

In response to the RFE, the petitioner submitted a letter from his physician, [REDACTED] MD, who stated that he has been receiving medical care at [REDACTED] for HIV/AIDS since 2010. Former counsel asserted in her rebuttal to the RFE that the petitioner and C-L- "shared a very strong bond" because they are both HIV positive. Counsel did not, however, provide a supplemental affidavit from the petitioner in which he discussed his good-faith intentions in entering the marriage with C-L-. The director correctly determined that the relevant evidence did not establish the petitioner's good-faith entry into the marriage.

On appeal, the petitioner asserts that since he and C-L- had the same health status they could understand each other. He states that they helped each other with taking medications and diet. He states that C-L- moved into his home and he spent time with her children. The petitioner recounts in a one-sentence statement that he and C-L- went to the movies, cooked, went to the park and restaurants. The petitioner's brief description of his shared experiences and courtship with C-L- fails to provide any probative details to establish his intentions in entering the marriage. The petitioner submits another affidavit from C-L- in which she claims that she married the petitioner "in good faith out of love." Her one-sentence statement speaks of her marital intentions, and fails to provide substantive information of the petitioner's good-faith intentions in entering the marriage. Accordingly, the preponderance of the evidence does not establish that the petitioner entered into marriage with C-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with C-L-. On the Form I-360, the petitioner stated that he lived with his wife from September 2011 to October 2011 and that their last joint address was a home on [REDACTED] in Dallas, Texas. In his affidavit, the petitioner does not describe his home with C-L- or their shared residential routines. [REDACTED] stated that they visited the petitioner and C-L- at the couple's home on Loganwood Drive, but neither of them describes their visit(s) in any probative detail. The photographs of the couple are also not identified as having been taken at any specific residence that the petitioner shared with his wife.

The petitioner initially submitted a letter from the Texas Department of Public Safety addressed to C-L- at the [REDACTED] residence in regard to the issuance of her Texas driver's license/identification card. The director correctly determined that this letter is undated and therefore insufficient to establish a shared residence. On appeal, the petitioner submits a copy of C-L-'s Texas identification card, which shows that it was issued on February 10, 2012, after the couple's separation and annulment. In addition, he submits collection notices from [REDACTED] County addressed to C-L- at the [REDACTED] address, but those statements are also dated several months after the couple's annulment.

The petitioner in his initial statement recounted that on October 17, 2011, one-month after his marriage to C-L-, he had an argument with her that resulted in the breakdown of their marriage and separation. He recounted that he picked up C-L- from her "old" apartment as she was still in the process of moving to his house. The petitioner submitted a Dallas Police Department incident report related to this event, which provides that the petitioner and C-L- could not come to an agreement over living arrangements and C-L- was given a ride home. C-L- recounted the statement the petitioner submitted with the Form I-360 that after this event she returned to her "old" apartment and the petitioner returned to his home alone. The Immigration and Nationality Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The relevant evidence indicates that C-L- had her own residence and the Loganwood Drive residence was not her principal, actual dwelling place. Accordingly, the record does not establish that the petitioner resided with C-L-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record also does not establish that C-L- subjected the petitioner to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In his initial affidavit, the petitioner recounted that after his marriage to C-L-, he learned that she abused drugs and had "a troubled past with the law." He recounted that on October 17, 2011, he was driving when C-L- hit him, threatened him and called him names. The petitioner stated that he called the police and learned that C-L- had a criminal history of prostitution, forgery and drug possession. He stated that he decided to end his marriage after this event. The petitioner failed to probatively describe the alleged battery and extreme cruelty in his marriage and the police incident report only provides that C-L- "was aggressive." No other information on the petitioner's injuries or the claimed abuse is indicated in the incident report.

In her affidavit submitted below, C-L- recounted that during the October 17, 2011 incident she hit the petitioner with a bottle and threatened to harm him. Her brief description of this incident lacks probative details of the claimed abuse. [REDACTED] recount that the petitioner informed them of the alleged abuse, but none of them discusses their knowledge of the abuse in probative detail or their observations of the effects of the abuse on the petitioner. In addition, [REDACTED] stated that after the incident he advised the petitioner to run a background check on C-L- and upon conducting the check, the petitioner was "shocked" to learn about her criminal history. The director correctly determined that this statement is in

conflict with the petitioner's assertion that the police officer on the scene of the incident showed him C-L-'s background check and he was at that time "shocked" to learn about her criminal history. The director also correctly noted that in [REDACTED] affidavit he emphasized that C-L- showed no regret and was "proud" of her actions. C-L-, however, stated in her affidavit that she regretted her action and attempted reconciliation with the petitioner prior to the annulment. The lack of probative details and failure to provide a consistent, credible account of the circumstances surrounding the alleged incident of abuse detracts from the credibility of the claim.

In response to the RFE, the petitioner submitted the results of a background check that he had conducted on C-L-. The background check shows that C-L- was convicted of crimes related to prostitution, forgery and drug possession several years prior to her marriage to the petitioner. The petitioner has failed to demonstrate a causal connection between the prior convictions of C-L- and the alleged abuse.

The petitioner also submitted in response to the RFE a psychological evaluation, dated August 21, 2013, from [REDACTED], a counselor with [REDACTED]. Ms. [REDACTED] stated that during the evaluation, the petitioner recounted that his previous two spouses physically assaulted him, insulted him in front of others, called him names, threatened him, isolated him, sexually assaulted him and controlled him financially. The psychological evaluation only discusses in general terms the abuse that the petitioner claims occurred during his previous two marriages and it does not discuss any specific incidents of battery or extreme cruelty. The evaluation indicates that the petitioner suffered several forms of abuse, including sexual assaults, isolation and financial control, which the petitioner does not himself mention in his affidavit. The director correctly determined that the psychological evaluation is of little value as credible, probative evidence of the alleged abuse.

On appeal, the petitioner submits a discharge summary, dated February 4, 2014, from [REDACTED] in which she opines that the petitioner "continues to experience issues with creating and maintaining boundaries, trust and processing unresolved past abuse." Her summary does not provide any details on specific incidents of abuse that the petitioner claims he suffered during his marriage to C-L-.

In her affidavit submitted on appeal, C-L- states that she has taken anger management therapy and counseling and knows that "this issue" has affected the petitioner physically, mentally and emotionally. Her second affidavit fails to provide any additional details on the alleged abuse.

On appeal, the petitioner asserts that his documentation does not contain inconsistencies and should be considered probative evidence of his claim. A full review of the evidence fails to demonstrate any error in the director's decision. The petitioner in his affidavit fails to probatively describe the alleged abuse and the police incident report does not indicate that he was subjected to battery or extreme cruelty. In addition, his supporting affidavits lack probative details and the director correctly determined that they contain inconsistent statements regarding the alleged abuse. The psychological evaluation is written in general terms about the petitioner's two prior marriages and it lists several types of abuse that the petitioner does not mention in his own affidavit. Accordingly, the petitioner has not established that C-L- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Section 204(c) of the Act

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). U.S. Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Where there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Id.* at 387.

The record reflects that on March 2, 2009, the petitioner and his second spouse, D-S-, were interviewed at the USCIS Dallas, Texas Field Office in connection with a Petition for Alien Relative (Form I-130) that D-S- filed on behalf of the petitioner. In the RFE, the director stated that the record reflects that during the interview, the petitioner and D-S- had several conflicting statements. D-S- testified at the

interview that she and the petitioner stopped at a store to purchase their wedding rings while they were on the way to the courthouse for their marriage ceremony. The petitioner, however, testified that he purchased a wedding ring for D-S- as surprise and presented it to her at the courthouse. The petitioner stated that his cousin, [REDACTED] attended the wedding ceremony while D-S- stated that [REDACTED] is her husband's friend. The petitioner and D-S- also had differing accounts of the petitioner's activities the day before the interview, specifically the name of the church the petitioner had visited, the time he attended church services and with whom. USCIS officers also conducted a site visit to the apartment building the petitioner claimed he resided at with D-S- and neither of them was home. The apartment manager was shown a photograph of D-S- and the manager stated she did not recognize D-S- as the woman who resided with the petitioner. The director concluded that this evidence indicated that the petitioner engaged in marriage fraud in an attempt to gain an immigration benefit.

In response to the RFE, former counsel discussed the petitioner's explanations for the discrepancies in his testimony and the derogatory information obtained during the site visit. Counsel, however, made assertions based on her conversations with the petitioner and she did not obtain a signed statement or any other explanatory evidence from the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted in response to the RFE, affidavits from [REDACTED] and [REDACTED] Ms. [REDACTED] stated that she is D-S-'s mother and she first met the petitioner in April 2007 when the couple was dating. She opined in a one-sentence statement that the petitioner "loved his wife, and stepson and they shared good memories." Ms. [REDACTED] did not further discuss her observations of the couple or provide any other probative information to establish her personal knowledge of the relationship. [REDACTED] stated that he is the petitioner's brother and he stayed with the petitioner and D-S- for two weeks in April 2008. [REDACTED] also stated that he visited the petitioner and D-S- on several occasions, including one visit in July 2008. Both Mr. [REDACTED] and Mr. [REDACTED] indicate in nearly identical statements that they witnessed the petitioner and D-S- "cook together, kiss, hold hands, go shopping together" and live a happy/joyful life. The lack of probative details and nearly identical descriptions in these two affidavits detract from their credibility as substantive evidence of the affiants' personal knowledge of the petitioner's good-faith marriage to D-S-.

In addition, the petitioner submitted the following relevant documentation: the couple's driver's licenses reflecting a joint address; evidence that the couple were on two apartment leases; utility bills in the petitioner's name only; renters and personal property insurance for the couple; warehouse relator membership cards for the couple; a vehicle certificate of title and registration showing the couple as co-owners of a vehicle; a joint automobile insurance policy; an unsigned joint tax return for 2010; an amended joint tax return for 2008 and corresponding Internal Revenue Service (IRS) letter related to the refund on the return; bank statements from the couple's joint checking account and copies of two checks; and undated photographs of the couple. This evidence shows that the petitioner and D-S- had some joint finances and were photographed together on unspecified dates. However, the petitioner failed to provide any testimony regarding his courtship and marriage to D-S-. The record does not

contain a description of how he first met D-S-, their courtship, wedding ceremony, shared residence and their shared experiences. The director correctly determined that the petitioner's evidence was insufficient to overcome the bar to approval of the petition under section 204(c) of the Act.

On appeal, the petitioner addresses the inconsistencies in his testimony and the derogatory information obtained during the site visit. The petitioner contends that the immigration officer did not clarify if he was asking about the wedding rings or engagement ring. He states that in his culture, a member of his tribe can be considered a cousin, regardless of their blood relationship. He claims that he went to morning service at his mother-in-law's church and attended mid-day service at his church alone. In regard to the site visit, the petitioner contends that he and D-S- were frequently at work and had limited contact with the apartment leasing office and he did not interact with the property manager of the apartment building. The petitioner's brief assertions do not overcome the derogatory evidence in the record. The USCIS site visit findings state that both the petitioner's neighbor and two apartment complex employees recognized a photograph of the petitioner, but they did not recognize D-S- as an individual who resided with him. The record also reflects that the petitioner and D-S- gave inconsistent statements about rings that were taken to the courthouse for the wedding ceremony, undermining the petitioner's assertion that he was confused if the immigration officer was asking about the wedding rings or engagement ring.

A full review of the record does not show any error in the director's determination. The record reflects that the petitioner was photographed with D-S- on unspecified dates and the couple shared some joint finances. However, the petitioner failed to provide any testimony regarding his shared life with D-S-, including how they first met, their courtship, wedding ceremony, shared residence and their shared experiences. The discrepancies in the petitioner's testimony and derogatory information obtained during the USCIS site visit combined with the petitioner's failure to provide any testimony of the bona fides of his second marriage is substantial and probative evidence that the petitioner's marriage to D-S- was entered into for the purpose of evading the immigration laws. Approval of the instant petition is consequently barred pursuant to section 204(c) of the Act.

Eligibility for immigrant classification

Beyond the director's decision, the petitioner has also failed to demonstrate that he is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act because he is subject to the bar to the approval of his petition under section 204(c) of the Act.² Consequently, the petitioner has not demonstrated that he is eligible for immigrant classification as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Qualifying Relationship

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).

The director stated in error that the petitioner does not have a qualifying marriage because he failed to comply with the provisions of section 204(c) of the Act. As discussed, a self-petitioner is required to comply with the provisions of section 204(c) of the Act to establish eligibility for immigrant classification. See 8 C.F.R. § 204.2(c)(1)(iv). Nevertheless, the record reflects that the petitioner does not have a qualifying relationship with C-L- because his marriage to C-L- was annulled, or voided, in Texas on February 9, 2012, twenty days prior to the filing of this petition. See Tex. Family Code Ann. §§ 6.102-6.111 (West 2012)(grounds for annulment of voidable marriages); *Christoph v. Sims* 234 S.W.2d 901 (Tex.Civ.App. 1950)(marriage is a contract that is rendered invalid in an annulment).

Even if the petitioner's marriage was not voided and he instead terminated his marriage through a divorce, he would still be unable to establish a qualifying relationship with a U.S. citizen. An alien who has divorced an abusive U.S. citizen may still self-petition if the alien demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the U.S. citizen spouse. See Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between the termination of his marriage and such battery or extreme cruelty. Consequently, even if the petitioner's marriage to C-L- had terminated in divorce and not been annulled, the petitioner would be unable to demonstrate that he has a qualifying relationship with a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

Conclusion

On appeal, the petitioner has not established that he: (1) has a qualifying relationship with a U.S. citizen; (2) is eligible for immigrant classification based on that relationship; (3) entered into marriage with his former wife in good faith; (4) shared a residence with his former spouse; and (4) that his former spouse subjected him to battery or extreme cruelty. Approval of this petition is further barred by section 204(c) of the Act. 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.