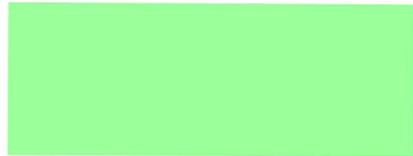


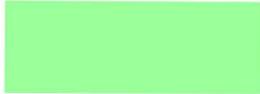
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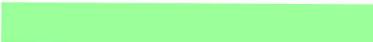
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Date: **NOV 12 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:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 had failed to establish that he married his wife in good faith and resided with her. On appeal, the petitioner submits 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.

* * *

(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.

* * *

(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 Guatemala who claims to have entered the United States in 2000 or 2002 without inspection, admission, or parole. The petitioner married his wife, a U.S. citizen, on April 4, 2012, in Georgia. The petitioner filed the instant Form I-360 self-petition on June 29, 2012. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and that he and his wife resided together. The director found the petitioner's response to the RFE insufficient and denied the petition accordingly. On appeal, the petitioner submits an affidavit and additional evidence.

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.

Joint Residence

The relevant evidence submitted below fails to demonstrate that the petitioner resided with his wife. On the Form I-360 self-petition, the petitioner claimed that he last lived with his wife on [REDACTED] Drive in Georgia, and that they resided together from March 2011 to June 2012. In his affidavit dated August 8, 2013, the petitioner mentioned that he and his wife lived with another couple, but did not describe his and his wife's home or shared residential routines in any detail, apart from the abuse. In his affidavit on appeal, the petitioner indicated that he and his wife moved in together on

March 17, 2011 at the [REDACTED] address, and that he left the residence on May 28, 2012. The petitioner again failed to describe his and his wife's shared residence or residential routines in any detail.

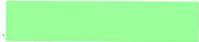
On appeal, the petitioner also submitted a receipt from [REDACTED] dated April 26, 2012. The receipt lists a different address on [REDACTED] for the petitioner's wife, even though he claims that he was living with her on [REDACTED] at that time. Given this discrepancy, the evidence submitted, without probative testimony of joint residence, does not demonstrate by a preponderance of the evidence that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence also fails to demonstrate the petitioner's entry into his marriage in good faith. In his affidavit, the petitioner indicated that his marriage was happy at first and that he was in love with his wife. He stated generally that he married his wife in good faith. 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 abuse. The petitioner also submitted his marriage certificate, but while the certificate showed that he was legally married, it does not reflect his intentions in entering into the marriage.

On appeal, the petitioner submits another affidavit in which he states that he met his wife on February 10, 2003, at a discotheque and that he was attracted to her so they danced and exchanged telephone numbers. He indicates that they went dancing again and started dating. He recalled that on one occasion they went to Louisiana and stayed in a motel; the petitioner submits the receipt for the hotel in Louisiana. The petitioner stated that he left his wife there and returned home and was sad to spend the holidays alone.

On appeal, the petitioner also submits photographs of him and his wife, [REDACTED] receipts showing that he sent his wife money, and retail receipts. The photographs of the petitioner with his wife on a few unspecified occasions are not accompanied by any explanation of their significance. The [REDACTED] retail receipts indicate that the petitioner sent his wife money and purchased items ranging from shoes to toddler apparel, but do not shed any light on the petitioner's intentions in entering into marriage with his wife. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage. In his affidavits, the petitioner briefly describes meeting his wife and a trip to Louisiana, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. Similarly, the photographs and receipts do not demonstrate the petitioner's interactions with or feelings for his wife during their courtship or marriage. When viewed in the aggregate, the relevant evidence submitted below is insufficient to demonstrate the petitioner's entry into the marriage in good faith. Accordingly, the record here is insufficient to show that the petitioner entered into marriage with his spouse 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 or that he resided with his wife. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.