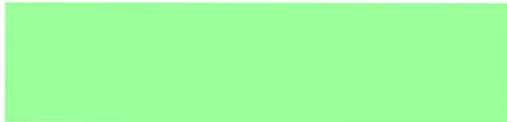


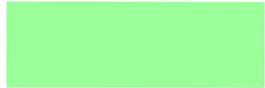


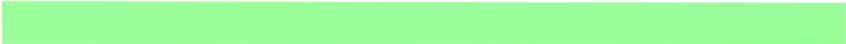
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: NOV 19 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:

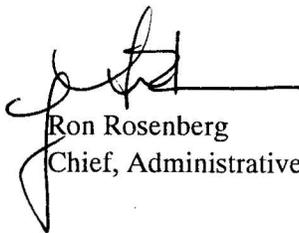
SELF-REPRESENTED

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,



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 he is a person of good moral character.

On appeal, the petitioner submits a brief.

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:

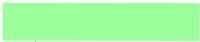
In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight 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.

* * *

(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.

* * *

(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. . . . 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 Nigeria who claimed he entered the United States on August 2, 2001, without inspection, admission, or parole. The petitioner married A-W-¹, a U.S. citizen, on August [REDACTED] in [REDACTED] Pennsylvania. The petitioner filed the instant Form I-360 self-petition on April 15, 2013. The director subsequently issued two Requests for Evidence (RFE) of the petitioner's good-faith entry into his marriage, residence with his wife, and his good moral character. The petitioner responded to the RFEs 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.

We review these proceedings *de novo*. A full review of the record, including the brief submitted on appeal, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the petitioner failed to establish that he resided with A-W- during their marriage based on the relevant evidence submitted below. The petitioner stated on his Form I-360 self-petition that he resided with A-W- from February of 2005 to October of 2012. In his affidavit, the petitioner stated that he met A-W- at a New Year's Eve party and asked her to move in with him at his [REDACTED] New York address about a month and a half later. The petitioner then stated that they moved to [REDACTED], Pennsylvania in January of 2007 where they continued to reside after they were married on August [REDACTED]. The petitioner recounted that they were happy until A-W- changed suddenly in October of 2012 and the petitioner was forced to return to New York. The petitioner did not further describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with A-W- during their marriage.

The petitioner also submitted affidavits from his friend, [REDACTED] and his mother-in-law, [REDACTED]. In her affidavit, Ms. [REDACTED] stated that she visited the petitioner and A-W- at their home in [REDACTED], Pennsylvania. She did not further describe any specific residential visits, observations, or otherwise provide probative details regarding the couple's living arrangements. In her affidavit, Ms. [REDACTED] stated that she resided with A-W- and the petitioner after immigrating to the United States in April of 2008. She did not further describe the petitioner and A-W-'s residential routines or provide any other substantive information sufficient to demonstrate that the petitioner resided with A-W- during their marriage.

¹ Name withheld to protect the individual's identity.

The petitioner also submitted: a copy of A-W-'s driver's license showing the [REDACTED] Pennsylvania address; joint utility, [REDACTED] and bank statements; and photographs of the petitioner and A-W- at their wedding and other unidentified occasions. A-W-'s driver's license is evidence that A-W- resided at the [REDACTED] Pennsylvania address but does not demonstrate that the petitioner and A-W- resided there together during their marriage. In addition, with the exception of one bank statement dated the month that the petitioner and A-W- separated, the remaining bank, utility, and [REDACTED] statements are all dated after the petitioner and A-W- separated. The photographs show only that the petitioner and A-W- were pictured together on their wedding day and other unspecified occasions at locations not identified as the claimed marital residence.

On appeal, the petitioner argues that the director was incorrect to discount [REDACTED] affidavit under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) as the mother of the abusive spouse. The petitioner also contends that the director "implicitly agreed" in her denial that had Ms. [REDACTED] affidavit been considered, the petitioner's marital residence with A-W- would have been established. The director's decision does not itself reference section 384 of IIRIRA although it was cited in the second RFE requesting additional evidence to show that the petitioner resided with A-W- after their marriage. To the extent that the director indicated that Ms. [REDACTED] affidavit could not be considered in making a determination regarding whether the petitioner and A-W- resided together during their marriage, that portion of the decision is withdrawn. However, the petitioner nonetheless failed to demonstrate that he shared a marital residence with A-W- even taking into consideration Ms. [REDACTED] affidavit. The petitioner, Ms. [REDACTED] and Ms. [REDACTED] affidavits did not provide any substantive information regarding the petitioner and A-W-'s living arrangements. As the petitioner did not address on appeal the deficiencies of the record below, the record does not establish by a preponderance of the evidence that the petitioner resided with his wife during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner did not establish that he married A-W- in good faith. The majority of the joint utility, bank, and [REDACTED] statements submitted below are dated after the petitioner and A-W- separated and do not demonstrate that the petitioner and A-W- shared any fiscal responsibilities during their marriage. The partial copy of a [REDACTED] bank statement does not demonstrate that both the petitioner and A-W- accessed the account for regular, marital expenses. The photographs show that the petitioner and A-W- were pictured together at their wedding and on several other occasions but absent probative testimony, do not demonstrate that the petitioner married A-W- in good faith.

Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In the petitioner's affidavit, he stated that he first met A-W- at a New Year's Eve party for 2005, they started dating, and

then moved in together in mid-February of 2005. He then stated that approximately two years later, they moved to Pennsylvania and were later married on August [REDACTED]. The petitioner recounted that he and A-W- had been happy together for almost eight years until October [REDACTED] when A-W- physically assaulted him and kicked him out of their home. The petitioner did not further describe their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse.

In her affidavit, Ms. [REDACTED] stated that she spent time with the petitioner and A-W- before and after their marriage and that she was an eyewitness that the petitioner did not marry A-W- to evade immigration laws. Ms. [REDACTED] the petitioner's mother-in-law, stated in her affidavit that the petitioner was nice and caring to A-W-. Ms. [REDACTED] also stated that she knew for a fact that the petitioner did not marry A-W- for the purpose of evading immigration laws. Neither Ms. [REDACTED] nor Ms. [REDACTED] described any interaction with the couple in probative detail or otherwise provided information establishing their personal knowledge of the relationship. More importantly, the affidavits from Ms. [REDACTED] and Ms. [REDACTED] are nearly identical in format, wording and tone, which calls into question the veracity of each affiant's statements.

On appeal, the petitioner asserts that section 384 of IIRIRA does not apply to Ms. [REDACTED] affidavit as indicated in the director's decision. He further asserts that the director implicitly agreed that he demonstrated his good faith intentions in marrying A-W- because had Ms. [REDACTED] affidavit been considered, the director would have determined that the petitioner met his burden. To the extent that the director indicated that Ms. [REDACTED] affidavit could not be considered in making a good faith marriage determination, that portion of the decision is withdrawn. However, the petitioner nonetheless failed to demonstrate his good faith marital intentions because the affidavits submitted below, including his own testimony, did not provide substantive information sufficient to demonstrate that the petitioner married A-W- in good faith. Accordingly, a full review of the evidence in the record, including the petitioner's brief on appeal, fails to establish the petitioner's good-faith entry into his marriage with A-W-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) provides that evidence of a petitioner's good moral character is his own personal statement and local police clearances or state issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case during the period beginning in April of 2010 and ending in April of 2013).

The petitioner did not submit an affidavit attesting to his good moral character. The petitioner initially submitted incomplete record searches of the New York City Police Department, case financial information for the petitioner's criminal docket in [REDACTED] Pennsylvania, and court documents from Massachusetts. In response to the first RFE, the petitioner submitted a letter from the [REDACTED] Pennsylvania Adult Probation and Parole Services stating that the petitioner's probation/parole has been successfully completed. The petitioner also submitted: a copy of a [REDACTED] Massachusetts Police narrative; a copy of a summons from a trial court of Massachusetts dated March [REDACTED], showing that the petitioner was charged with attempt to commit a crime and conspiracy; and a

copy of the petitioner's court-appointed counsel stating that the petitioner is scheduled for a jury trial on December [REDACTED]. The director found this to be insufficient evidence to establish his good moral character and issued a second RFE for the dispositions of the petitioner's arrests in Pennsylvania, New York, and Massachusetts. The petitioner then submitted documents from the trial court of Massachusetts dismissing the charges of disorderly conduct, conspiracy, forgery, knowingly receiving stolen property, and resisting arrest. The documents showed, however, that as of August [REDACTED], the charges of attempt to commit a crime and conspiracy remained open against the petitioner.

On appeal, the petitioner asserts that he is a person of good moral character and that all the court charges cited in the various documents submitted have been dismissed. The petitioner argues that he has "never been convicted by any court of law of competent jurisdiction for any crime" and that as a matter of law under section 240(b)(2) of the Act, it is the burden of U.S. Citizenship and Immigration Services (USCIS) to show that he is not a person of good moral character.² The petitioner is mistaken. Section 204(a)(1)(A)(iii) is the governing provision for the instant self-petition and places the burden of showing his good moral character on the petitioner. Here, the petitioner has not explained the circumstances surrounding any of his arrests nor has he submitted a disposition for all of his arrests. Consequently, the petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, and has not overcome this ground for denial.

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 he is a person of 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.

² The petitioner incorrectly cites to section 240(b)(2) of the Act which pertains to the various forms in which removal proceedings may take place.