



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **NOV 26 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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (“acting 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 former U.S. citizen spouse.

The acting director denied the petition for failure to establish that the petitioner resided with his ex-wife during their marriage and was subjected to battery or extreme cruelty by her during their marriage. In addition, the director found that the petitioner failed to establish that his first marriage was not entered into for the purpose of circumventing immigration laws, that he entered the marriage underlying this self-petition in good faith, and was eligible for a bona fide marriage exemption from the provisions of section 204(g) of the Act. 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 for an abused spouse 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)(1), which states, in pertinent part:

- (i) (A) Is the spouse of a citizen or lawful permanent resident of the United States [and]
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act [and] section 204(g) 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 or the self-petitioner’s child, 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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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 explained in 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 Kenya who entered the United States on December 2, 2001, as a nonimmigrant visitor. On April [REDACTED] the petitioner married his first wife, K-W-¹, in [REDACTED] Massachusetts, and the marriage ended in divorce on October [REDACTED]. On June 22, 2009, the petitioner was served with a Notice to Appear for removal proceedings before the [REDACTED] Massachusetts, Immigration Court. The petitioner married D-E-², a U.S. citizen, on December [REDACTED] in [REDACTED] Massachusetts. The petitioner filed the instant Form I-360 self-petition on September 12, 2011 based on battery or extreme cruelty by D-E-. The petitioner's marriage to D-E- ended in divorce on December [REDACTED]. The acting director subsequently issued two Requests for Evidence (RFE's) and two Notices of Intent to Deny (NOID's) to which the petitioner, through his prior counsel, timely responded with additional evidence. The acting director found the evidence insufficient to establish the petitioner's eligibility and denied the self-petition. The petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The petitioner has overcome some, but not all, of the acting director's grounds for denial and the appeal will be dismissed for the following reasons.

Section 204(c) of the Act and the Petitioner's Marriage to K-W-

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 [Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the [Secretary of Homeland Security] 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

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

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) (permitting United States Citizenship and Immigration Services [USCIS] to rely on any relevant evidence in the record, including evidence from prior USCIS proceedings). 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 shows that the petitioner married his first wife, K-W-, on April [REDACTED] Massachusetts. On December 27, 2005, K-W- filed a Form I-130, Petition for Alien Relative on behalf of the petitioner. On March 31, 2009, USCIS issued a NOID, stating that, among other things: there were discrepancies between the addresses K-W- listed on her Massachusetts driver's license and identification card compared to her Form G-325A; the lease K-W- submitted for the couple's residence on [REDACTED] appeared to be fraudulent because the landlord's name was represented as "[REDACTED]" and public records showed that the petitioner's brother, [REDACTED] was the owner of the property; joint income tax returns were unsigned and included no evidence they were submitted to the IRS; and there were significant discrepancies between K-W-'s and the petitioner's testimony during their two interviews for the Form I-130 petition. The Form I-130 relative petition was denied on June 22, 2009 for abandonment as no response was submitted to the NOID. The petitioner's marriage to K-W- ended in divorce on October [REDACTED]

On December [REDACTED] the petitioner married D-E- and subsequently filed the instant Form I-360 self-petition. The acting director issued two NOID's for the instant self-petition, requesting evidence to establish that the petitioner's prior marriage to K-W- was not entered into for the purpose of circumventing immigration laws. In response, the petitioner submitted additional declarations. According to the petitioner, he met K-W- in the summer of 2004 through his friend [REDACTED]. He described their first date and spending time together with her two sons. He explained that they got married at city hall on April [REDACTED] and that "[o]nly [his] brother sister-in-law [REDACTED] [sic]" attended the wedding. He recounted having a party the following weekend with approximately thirty people in his brother's basement. On appeal, the petitioner contends that his marriage to K-W- was legitimate and submits additional documents.

The petitioner's statements do not provide probative details of the couple's courtship, wedding ceremony, shared residence, or experiences. In addition, the petitioner failed to address what appears to be a fraudulent lease for the couple's claimed residence on [REDACTED] which is owned by his brother, [REDACTED]. Although the record includes an affidavit from [REDACTED] as well as an affidavit from his brother, [REDACTED], neither addresses the petitioner's marriage to K-W-. An affidavit from the petitioner's friend, [REDACTED], did not describe in detail any specific contact with the petitioner and K-W-, any particular visit or social occasion with the couple, or any other interactions with the couple that would establish his personal knowledge of the relationship. Although the petitioner's friend, [REDACTED], briefly recounted having dinner with the couple one time and that they seemed to be in love, Mr. [REDACTED] did not provide substantive information regarding the couple's relationship or the petitioner's marital intentions. Although the petitioner claimed that approximately thirty friends and family members attended the party following the couple's wedding, there are no affidavits from individuals who attended the event.

Furthermore, *de novo* and independent review of the petitioner's administrative file reveals substantial and probative evidence that the petitioner married K-W- to evade the immigration laws. See *Matter of Rahmati*, 16 I&N Dec. at 539. As the acting director specified in the NOID for the Form I-130 petition, the petitioner and K-W- gave differing answers to basic questions including who resided with them, where they received mail, and whether they had health insurance. Although the petitioner attempts to explain some of the discrepancies on appeal, and the record includes copies of joint bank account statements and bills addressed to the couple at the [REDACTED] address, the petitioner has not provided evidence regarding his courtship, wedding ceremony, shared residence and experiences with K-W- either through his own probative, detailed statement or from other individuals who have personal knowledge of the relationship, and he has not provided an explanation for what appears to be a fraudulent lease agreement. Consequently, the preponderance of the relevant evidence does not show that the petitioner entered into marriage with K-W- in good faith and not for the purpose of circumventing immigration laws. Section 204(c) of the Act therefore bars approval of the instant self-petition.

Battery or Extreme Cruelty by D-E-

The petitioner's initial declaration, dated August 30, 2011, and his subsequent statements submitted in response to the RFE's and NOID's, contained credible and detailed statements describing specific incidents that amount to extreme cruelty by D-E-. The petitioner probatively described calling the police on January 11, 2010, after discovering that his apartment door was unlocked and items were missing from his apartment. He recounted that two weeks later, he discovered that D-E- had forged checks from his business account and he informed the police. According to the petitioner, D-E- was responsible for the apartment robbery and the forged checks. He described how D-E-, her aunt, and an unidentified man repeatedly threatened him to drop charges against D-E-. Specifically, the petitioner detailed how D-E- called him multiple times a day for weeks, saying that she was looking for some guys to "jump" him and beat him up if he did not drop the charges against her. He stated he stopped answering the phone, changed the locks to his apartment, changed his cell phone number, and could not sleep for weeks. He also recounted that D-E- confronted him in the parking lot of his apartment building and described that he feared she had brought other people with her, as she had threatened

numerous times. According to the petitioner, the next day, he saw that the windshield of his car was shattered and concluded that D-E- must have been responsible. He explained that he was terrified when he saw D-E- in the parking lot, particularly considering that the judge in the criminal case against D-E- had issued a stay away order and she ignored it. He stated that he is still scheduled to testify against her in the criminal proceeding, but that he moved to a new, gated apartment building and finally feels safe again.

A psychological evaluation diagnosed the petitioner with Post-Traumatic Stress Disorder, Anxiety with Panic Attack Symptoms, and Major Depression as a result of D-E-'s systematic pattern of abusive and controlling behaviors, including, but not limited to stealing from him and denying it, threatening him, and yelling and swearing at him. The petitioner's brother, [REDACTED] described how D-E- frequently called the petitioner to threaten him and explained that the petitioner was very frightened of her. Police reports and court documents in the record confirm the petitioner's account of events and show that D-E- was charged with three felonies and three misdemeanors, and was ordered to stay away from and have no contact with the petitioner.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) describes extreme cruelty to include being the victim of any act or threatened act of violence which threatens to result in physical or mental injury, as well as acts that may not initially appear violent, but that are a part of an overall pattern of violence. In the instant case, the petitioner has provided credible and significant details regarding repeated threats of violence and physical harm from D-E- herself as well as her family. Upon a full review of all the relevant evidence, the petitioner has demonstrated by a preponderance of the evidence that D-E- subjected him to extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The acting director's decision to the contrary will be withdrawn.

Entry into the Marriage with D-E- in Good Faith

In his initial statement, the petitioner gave a probative, credible, and detailed account of how he first met D-E-, their courtship, and shared experiences. He explained meeting D-E- through a friend at a bowling alley. He described talking to her all night and their first date. He recounted meeting her aunt and brothers, and introducing her to his parents. He also described specific activities they shared together, that they talked on the telephone every day, and that they knew early in their relationship that they wanted to get married. He stated that D-E- bought her wedding dress online and described in probative detail their wedding at his brother's house. The record also includes relevant photographs and an affidavit from the petitioner's brother, Nelson, who recounted when he first met D-E-, attested to the couple's love and affection for each other, and described their wedding. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with D-E- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The acting director's decision to the contrary will be withdrawn.

Section 204(g) of the Act

The record in this case indicates that the petitioner was in removal proceedings at the time of his marriage. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes, in pertinent part:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status . . . by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien’s right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien’s status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien’s right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien’s admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(Emphasis added).

Although the petitioner established his good-faith entry into his marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has not provided clear and convincing evidence that his marriage is bona fide under the heightened standard of proof required by section 245(e)(3) of the Act. At the time the petitioner married D-E- in December [REDACTED] he had already been served with a Notice to Appear in removal proceedings. The petitioner did not reside outside of the United States for two years after their marriage; thus, he remains subject to the bar at section 204(g) of the Act. *See* 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A).

The regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B), states, in pertinent part:

(B) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

- (1) Documentation showing joint ownership of property;
- (2) Lease showing joint tenancy of a common residence;
- (3) Documentation showing commingling of financial resources;
- (4) Birth certificate(s) of child(ren) born to the petitioner and the [abused spouse];
- (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or
- (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate

eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

In this case, the petitioner’s initial statement and photographs of the wedding, while relevant and probative, do not clearly and convincingly establish that the petitioner married D-E- in good faith. The affidavit from the petitioner’s brother, [REDACTED] also does not provide clear and convincing evidence of the bona fides of the petitioner’s marriage. [REDACTED] affidavit does not contain “complete information and details explaining how [he] acquired his . . . knowledge of the marriage” as required by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B)(5), but rather, provided minimal probative information regarding the petitioner’s intent in marrying D-E-. For example, [REDACTED] described meeting D-E- in 2009, but did not discuss how or where he met her. [REDACTED] also stated he saw the couple about every two weeks, but he only briefly mentioned going to a sports bar on one occasion. Therefore, the petitioner has not established by clear and convincing evidence that he married D-E- in good faith. Accordingly, he has not established his eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act and section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

As the acting director concluded, the petitioner is also not eligible for immediate relative classification based on his marriage to D-E-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explained in the regulation at 8 C.F.R. § 204.2(c)(1)(iv), because he has not complied with, nor is he exempt from, sections 204(c) and 204(g) of the Act.

Joint Residence with D-E-

The petitioner stated on his Form I-360 self-petition that he resided with D-E- from September 2009 until January 2010 and that the last address at which they lived together was on [REDACTED] in [REDACTED], Massachusetts. In his initial declaration, he stated that he met D-E- in August of 2009 and asked D-E- to move in with him in September 2009. He claimed that D-E- completed a lease application in order to be added onto his lease, but she did not qualify because of her poor credit rating. He explained that since they were going to get married, D-E- moved in anyway. According to the petitioner, D-E- did not move in many of her belongings except for her clothes because he had a two-bedroom apartment and already had everything they needed. In response to the NOID’s, the petitioner reiterated that because of D-E-’s poor credit history, she could not be added to his lease or any of the household bills. He stated that the only documentation he could provide was a copy of an automobile insurance policy, which misspelled D-E-’s name but listed her address at [REDACTED] and one credit union statement. According to the petitioner, the cable company could not add D-E-’s name to the bill, but could only combine their names and, therefore, their joint cable bills were

addressed to “Robert [D-E].” On appeal, the petitioner repeated his previous explanations and submitted additional documentation.

The petitioner failed to provide probative details of joint residency with D-E-. For example, he did not specifically describe the couple’s apartment, their shared belongings, or provide any other substantive information regarding his claimed residence with D-E- during their marriage. To the extent the petitioner claims he submitted all the documentation he could provide, traditional forms of joint documentation are not required to demonstrate a self-petitioner’s joint residence and a self-petitioner may submit “affidavits or any other type of relevant credible evidence of residency.” See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i) and (iii). Nonetheless, statements from two of the petitioner’s brothers, [REDACTED] failed to provide any additional information regarding the petitioner’s joint residence with D-E- during their marriage. They did not, for instance, describe any visit, interaction, or social occasion with the couple at their apartment or otherwise address the couple’s joint residence. The cable bills and car insurance statements in the record do not contain D-E-’s correct name and, therefore, are of little probative value in establishing that the petitioner resided with D-E-. None of the photographs in the record are identified as having been taken in the couple’s apartment. Although the record contains D-E-’s completed application for an apartment, dated September 15, 2009, she did not list the petitioner’s name, but rather, represented that no other individuals would reside in the apartment with her. Similarly, the petitioner’s lease indicated that he was the only resident in the apartment and that there were no additional residents. In any event, there is no evidence D-E-’s rental application was ever submitted or rejected as claimed or an explanation as to why she could not be listed as a resident despite the fact that she could not be considered a co-tenant because of her financial problems. Although the record contains joint bank account statements and a copy of D-E-’s Massachusetts Identification Card that lists the petitioner’s [REDACTED] address, when viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that he resided with D-E- during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

Beyond the director’s decision, the petitioner has not established his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.³ The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner’s good moral character is an affidavit from the petitioner, accompanied by 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 September 2008 and ending in September 2011).

³ 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 petitioner provided a copy of a computer printout from the Massachusetts Department of Criminal Justice Information Services showing that on March [REDACTED] the petitioner was convicted of negligently operating a motor vehicle. The documents show that he was placed on administrative supervision and ordered to complete a national safety driving course. The petitioner does not address his good moral character in any of his statements and provides no discussion of his conviction and whether he successfully completed the terms of his sentence. Similarly, the statements from the petitioner's brothers and friends do not attest to the petitioner's character. Accordingly, the petitioner has failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

Approval of the instant petition is barred pursuant to section 204(c) of the Act, and the petitioner has failed to rebut the section 204(c) finding and establish that he entered into his previous marriage with K-W- in good faith. The petitioner also failed to establish that he is exempt from the bar to approval of his petition under section 204(g) of the Act, and is eligible for immediate relative classification based on his previous marriage to D-E-. He has also not established his residence with D-E- during their marriage and his good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.