

(b)(6)

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



U.S. Citizenship  
and Immigration  
Services

Date:

OCT 10 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)

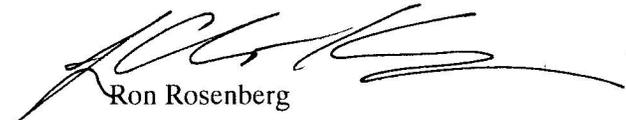
ON BEHALF OF PETITIONER:

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 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 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 his spouse, a United States citizen.

The director denied the petition for failure to establish that the petitioner resided with his wife.

On appeal, the petitioner, through counsel, submits a legal memorandum and an affidavit.

*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 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)(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.

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.

*Facts and Procedural History*

The petitioner is a citizen of Gambia who last entered the United States on March 8, 2001 as a B-2 nonimmigrant visitor. The petitioner married G-W-<sup>1</sup>, a United States citizen, on October 5, 2010 in Minnesota. The petitioner filed the instant Form I-360 self-petition on April 26, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite joint residence. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's sole ground for denial. The appeal will be dismissed for the following reasons.

*Joint Residence*

The director correctly determined that the petitioner did not reside with his wife during their marriage. On the Form I-360, the petitioner indicated that he and G-W- resided together from October 2010 until January 2013. This assertion is inconsistent, however, with multiple statements made by the petitioner in both of his personal affidavits. In his first affidavit, the petitioner recalled that he met G-W- in 2008, they married in October 2010, and he always expressed his desire for her to reside with him but she said she could not because she had to help her roommate pay rent. The petitioner recalled that on one occasion, he and G-W- did not see each other for two months because she claimed she was too busy to begin moving out of her place. The petitioner stated that he and G-W- were together only in public or when she visited him, and she refused to bring her clothes to his house except for a few small things. He recalled that one day in 2011, after not seeing G-W- for two weeks he went unannounced to her apartment in [REDACTED] and met a man she introduced as her roommate of 25 years. The petitioner stated that for the next year, he and G-W- saw each other more often but only met in public or at his apartment and he did not understand why she still would not move in with him.

The petitioner recalled that G-W- filed an immigrant relative petition on his behalf, regarding which they were interviewed by U.S. Citizenship and Immigration Services (USCIS) in July 2012. He stated that the interview did not go well because he and G-W- were asked many questions they could not answer because they did not reside together. The petitioner explained that he wanted desperately to live with his wife but she always made excuses. He stated that in September 2012, an immigration

---

<sup>1</sup> Name withheld to protect the individual's identity.

officer came to his door asking questions about his marriage but the petitioner could not falsely claim that G-W- lived there and he wanted to believe her reasons for not moving in with him were legitimate. The petitioner recalled that in the fall and winter of 2012, his relationship with G-W- further soured and in January 2013, he told her he wanted a divorce. Later, the petitioner learned that USCIS sent immigration officers to G-W-'s house, spoke with her "roommate" whom they determined was her longtime boyfriend, and denied the immigrant petition she filed on the petitioner's behalf.

In his second affidavit, the petitioner added that sometime after the wedding, he and G-W- went to his apartment's leasing office and had her name added to his lease. The petitioner explained that in doing so, he assumed G-W- would move in with him. He recalled how he also added his wife to his utility and cable accounts, both of which he paid along with her cellular telephone bill, and he started a joint bank account as well. The petitioner stated that he very much expected G-W- to reside with him, but she never stayed at his place for more than a few days at a time. He recalled that she often lied about her whereabouts and he eventually learned she was in a longtime relationship with another man. The petitioner's two affidavits provide detailed, probative information demonstrating that he and his wife did not reside together during their marriage.

The petitioner also submitted below the affidavits of his brother and two friends. [REDACTED] the petitioner's brother, stated that he paid the petitioner's rent, but did not indicate that he ever visited the couple after they married or had any knowledge of their marital residence. [REDACTED] stated that after the petitioner married G-W-, he once saw her with another man and she said she did not "sleep home anymore." [REDACTED] stated that the petitioner confided that G-W- did not sleep or stay at his home. None of the affiants described a home shared by the petitioner and his wife, any specific occasion they spent there with the former couple, or otherwise provided probative information concerning the claimed joint residence.

The petitioner additionally submitted joint documents below including a residential lease, a checking account statement, a utility bill and a cable bill. The checking account and billing statements are all dated after the petitioner stated the former couple separated. Although the lease shows that his wife was added on November 1, 2010, the petitioner stated that they never resided together. He explained that he added G-W- to his lease, utility and cable accounts and started a joint bank account all under the mistaken assumption she would move in with him.

On appeal, the petitioner submits an affidavit by his cousin's daughter, [REDACTED] in which she states that G-W- moved in with the petitioner after their wedding and Ms. [REDACTED] saw his wife's clothes, perfume, lotions, and shoes in their apartment. This assertion is inconsistent with the petitioner's own statements that G-W- never moved in with him after they married and refused to bring her clothes to his apartment. Ms. [REDACTED] states that she visited the former couple once or twice a month at the apartment, but she does not describe any particular visit in detail or provide further probative information regarding the alleged joint residence.

Counsel asserts on appeal that the joint residency requirement can be met "even if the joint residency was not continuous and lasted for a few days at a time." Although there is no requirement that a self-petitioner reside with his or her abuser for any particular length of time, they must in fact reside

together. While the petitioner may have intended to reside with G-W- after they married, the 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 petitioner stated in his affidavits that G-W- never moved out of her apartment in [REDACTED] during their marriage. He explained that she only visited him and always made excuses for why she would not move in with him. The petitioner recounted that during their marriage, G-W- remained in a relationship with another man with whom she had been living for 25 years. The record does not establish that the petitioner resided with his spouse after they married.

Counsel also asserts that that it is contradictory to find that the petitioner entered into his marriage with G-W- in good faith and she subjected him to battery or extreme cruelty, but that he did not reside with her. These three eligibility criteria are distinct and must be separately established by a self-petitioner seeking immigrant classification under section 204(a)(1)(A)(iii) of the Act. The preponderance of the relevant evidence does not demonstrate that the petitioner resided with his spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Conclusion*

The petitioner has not overcome the director's ground for denial on appeal. The petitioner has not established that he resided with his wife during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on this ground.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.