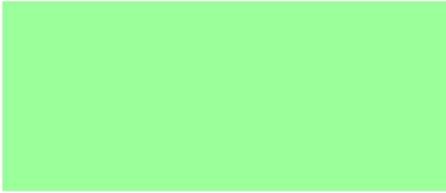




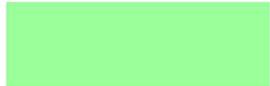
U.S. Citizenship  
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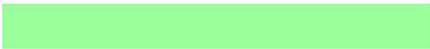
(b)(6)



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:

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 his spouse, that he married his spouse in good faith, and that his spouse battered or subjected him to extreme cruelty during their marriage.

*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.

(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 was born in Jamaica, and claims that he entered the United States as a B-1 nonimmigrant visitor on May 6, 2000.<sup>1</sup> The petitioner married A-A-<sup>2</sup>, a U.S. citizen on April 25, 2001. The petitioner filed the instant Form I-360 on May 6, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character, and that he had married his wife in good faith. The petitioner responded with additional evidence that the director found insufficient. The director then issued a Notice of Intent to Deny (NOID) the petition and requested further evidence of, among other things, the petitioner's residence with A-A-, his good-faith entry into their marriage, and the requisite battery or extreme cruelty. The director indicated that the petitioner provided no response to the NOID, and the director denied the petition accordingly.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*Battery or Extreme Cruelty*

*De novo* review of the evidence submitted below demonstrates that the petitioner established he was battered and subjected to extreme cruelty by A-A- during their marriage. In his initial and second affidavit, the petitioner did not describe any abuse in his marriage. The affidavits from his friends also did not discuss any abuse in the petitioner's marriage.

On appeal, the petitioner submits a new statement indicating that his wife was unfaithful and when he confronted her, she insulted and belittled him. He states that she called him derogatory names whenever they argued. The petitioner recounts that when his cousin, [REDACTED] visited his home, he told him about his marital problems. He states that his wife overheard their conversation, and was angry with him and argued and put her hands in his face and pushed his head back, and slapped him across the face when he told her to stop. He indicates that his wife often hit him to provoke him so that she could call the police if he hit her back. He declares that she threatened to have him deported, and was controlling, checking his phone messages and listening to his conversations. The petitioner recalls that his wife took the money he earned, refused to be intimate, and made him feel worthless. He states that on one occasion she threw his phone and smashed it against the wall and told him she would have him deported. He recounts that one night when he returned home he found the locks on the door changed, and that he was locked out and stayed with a friend for three weeks before finding a place to live.

In addition, the petitioner also submits an affidavit from his cousin, [REDACTED] Mr. [REDACTED] states that he spent the weekend with the petitioner and his wife, and one night A-A- left the house and returned early the next morning. He states that the petitioner told him about A-A-'s affair and she overheard their conversation and became angry, belittling the petitioner and "putting her hand in [the petitioner's] face and pushing him, she called him stupid and slapped him in his face." Mr. [REDACTED]

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<sup>1</sup> The visa page of the petitioner's passport indicates that he was approved as an H-2B nonimmigrant for [REDACTED]

<sup>2</sup> Name withheld to protect individual's identity.

states further that the petitioner refused to call the police because his wife threatened to have him deported. The petitioner submits also a letter from his friend, [REDACTED] stating that the petitioner was at her house for three weeks after being locked out of his home by A-A-.

Upon a full review of all the relevant and credible evidence, the petitioner has demonstrated that he was subjected to battery and extreme cruelty during his marriage to A-A-. The petitioner credibly described in probative detail the battery and extreme cruelty that he endured from A-A- during his marriage. The petitioner also provided an affidavit from his friend that credibly described witnessing first-hand the abuse. The preponderance of the evidence demonstrates that the petitioner's wife subjected him to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Although the petitioner has overcome this ground for denial, additional grounds preclude approval of the petition.

#### *Good-Faith Entry into the Marriage*

*De novo* review of the evidence submitted below and on appeal fails to demonstrate that the petitioner married his spouse in good faith. In his initial affidavit, the petitioner stated that he first met A-A- in a Manhattan subway. The petitioner recounted that he introduced himself and they exchanged numbers, and the next day they talked on the phone. He explained that they dated for three months, going to dances, the movies, parks, and church together before he proposed to A-A-. The petitioner stated that they had a simple wedding at the courthouse in [REDACTED] County in Yonkers, and afterwards had food and drinks at his wife's apartment. He recalled that they had fun together and would "kiss and hug each other every day." The petitioner described how he first met his wife, but failed to describe in probative detail his courtship, decision to marry, marital residences, or shared experiences. In his second affidavit, although the petitioner explains why his name is not on the lease or the utility bill and why he did not have a shared bank account, he provides no further details regarding his good-faith intent.

In addition to his affidavits, the petitioner provided affidavits of his friends. [REDACTED] stated that the petitioner and A-A- invited him to their home on several occasions, and that he has been on family outings and church trips with the couple. However, Mr. [REDACTED] provided no detailed description of any social visit or other occasion with the couple and failed to otherwise establish his first-hand knowledge of the petitioner's good-faith intent. The affidavits from the petitioner's friends, [REDACTED] commended the petitioner's character, but did not discuss the petitioner's relationship with A-A- and provided no probative information of his intentions in marrying A-A-.

The petitioner submitted photographs of himself and A-A- pictured together at their marriage ceremony and on other occasions, but the photographs are undated and he does not describe their significance.

On appeal, the petitioner recounts that while he and A-A- dated they took walks together and after they got married spent time talking with each other. He states that after they moved from Brooklyn, New

York, to Mount Vernon, New York, they often went to a favorite restaurant for breakfast. The petitioner mentions that he enjoyed cooking and would cook for his wife, and would sometimes go to ██████████ in Manhattan with her, and afterwards dine at restaurant and then go to a movie. He recounts that his cousins visited them, on one occasion his wife organized a birthday party for him, and on Valentine's Day in 2002, they spent the day together. He states that they often attended church together. The petitioner generally described a few shared experiences with A-A-, but did not discuss in probative detail his courtship and engagement, decision to marry, marital residences, or shared experiences with A-A-.

The petitioner also submits a letter from his friend, ██████████ and his cousin, ██████████ Ms. ██████████ primarily discusses the problems in the petitioner's marriage, and provides no substantive information about the petitioner's marital intentions. Mr. ██████████ states that he often visited the petitioner and his wife and went to clubs with them, and that in March 2003 they were at a club and he saw the petitioner and A-A- "hugging and kissing." He states also that the petitioner often told him that he loved A-A-. Mr. ██████████ provides only general statements about the petitioner's relationship with his wife but does not share any detailed probative information of the petitioner's good-faith intentions in marrying A-A-.

When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with A-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

*De novo* review of the evidence submitted below and on appeal fails to demonstrate that the petitioner resided with A-A-. On the Form I-360 self-petition the petitioner lists September 2000 until May 14, 2003 as the period that he resided with A-A-, and Mount Vernon, New York, as their last residence together. In his initial affidavit, the petitioner did not discuss his claimed marital residence. Mr. ██████████ stated that he visited the petitioner and A-A- at their home on several occasions, but provided no probative details of any social visit or a description of the claimed marital residence. The affidavits of the petitioner's other friends also did not provide any probative details about the petitioner's marital residence. In his second affidavit, the petitioner stated that after he married, he moved in with his wife, but did not describe his claimed joint residence or any shared residential routines or belongings with A-A-. The photographs of the petitioner and his wife pictured together on two undated occasions are not described as being taken at the claimed marital residence.

On appeal, the petitioner states that they moved from Brooklyn to Mount Vernon, but he again fails to describe in any probative detail his claimed marital residences, shared belongings, or residential routines with A-A-. Mr. ██████████ states that he spent the weekend at the petitioner's home, but provides no probative details of the petitioner's claimed marital residence. Ms. ██████████ indicates that she picked up the petitioner from his home after he was locked out, but also provides no probative information about the claimed joint residence. When viewed as a whole, the preponderance of the relevant evidence fails to demonstrate that the petitioner and his wife resided together, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Conclusion*

On appeal, the petitioner has established that his wife subjected him to battery or extreme cruelty during their marriage. However, the record fails to establish that the petitioner resided with A-A and entered into the marriage with her in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.