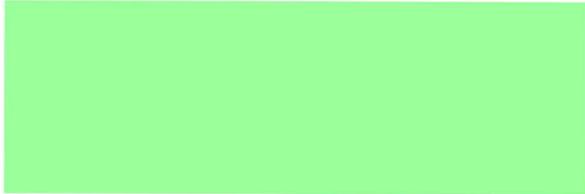


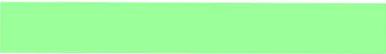


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 17 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:

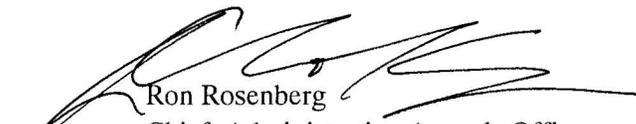


INSTRUCTIONS:

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 Director, Vermont Service Center (“the director”), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 wife during their marriage and that he married her in good faith. On appeal, counsel 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 for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further 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. . . .

(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 Russia who entered the United States on August 18, 2005, as a nonimmigrant visitor. The petitioner married F-A-¹, a U.S. citizen, on September [REDACTED] in [REDACTED] Nevada. The petitioner filed the instant Form I-360 self-petition on April 29, 2013. The director subsequently issued a Request for Evidence (RFE) of the petitioner's shared residence with F-A- and his good-faith entry into the marriage. Through counsel, the petitioner timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The petitioner stated on his Form I-360 self-petition that he resided with F-A- from September 2010 until July 2011 and that the last address at which they lived together was on [REDACTED] California. In his initial statement, the petitioner indicated that he and his wife lived together on [REDACTED], California, from after their wedding until July [REDACTED]. He described the beginning of their life together as very exciting and romantic. He stated, however, that by August 2011, he could no longer afford to pay the rent because they were living beyond their

¹ Name withheld to protect the individual's identity.

budget. The petitioner stated that F-A- moved to her mother's house and that he moved to [REDACTED] where he continues to rent a room from his best friend, [REDACTED]. In response to the RFE, the petitioner stated that he and F-A- lived together from September 2010 until the summer of 2011 on [REDACTED]. He explained that they had planned to move to the apartment on [REDACTED] and even signed a rental agreement, but they never moved to that address together. According to the petitioner, he made mistakes on his self-petition because it was a very stressful marriage and he has trouble concentrating. He also stated that he gave the rental agreement that he and F-A- signed to his attorney in order to show their shared responsibility for paying rent, not to show proof of shared residence, and that he assumed his self-petition was correctly completed. He further stated that he could not get additional documentation from F-A- to show their joint residence.

The petitioner failed to provide any probative details of joint residency with F-A-. For example, he did not describe their apartment on [REDACTED], their shared belongings, or provide any other substantive information regarding his residence with F-A- after their marriage. Although the record contains several letters from the petitioner's friends, including the petitioner's best friend, [REDACTED], they also failed to demonstrate that the petitioner resided with F-A- during their marriage. None of the letters indicated any visit or social occasion with the couple at their apartment or otherwise described the petitioner's joint residence with his wife during their marriage. In addition, the petitioner's contention that he and F-A- lived together on [REDACTED] from September 2010 until the summer of 2011 contradicts the petitioner's Biographic Information Form (Form G-325A) in the record which states that he resided on [REDACTED] from July 2008 until October 2010, and then on [REDACTED] from November 2010 until April 2013.

Although counsel contends that the petitioner's friends did not provide details of the couple's cohabitation because they did not witness every day of their life, a copy of Mr. [REDACTED] driver's license listed his address as the same apartment on [REDACTED] in which the petitioner claimed he jointly resided with F-A-. Mr. [REDACTED] driver's license was issued on December 3, 2009, during the time period when the petitioner also resided on [REDACTED] according to the Form G-325A. However, in these proceedings, neither the petitioner nor Mr. [REDACTED] acknowledged that they lived together in the apartment on [REDACTED].

Copies of bills in the record are addressed only to the petitioner and are dated after July 2011 and, therefore, do not show the couple resided together after their marriage. There is no other relevant evidence in the record and counsel has not submitted any new evidence on appeal, but rather, resubmits documents that were already in the record. Consequently, the preponderance of the relevant evidence does not demonstrate that the petitioner resided with his wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In his initial statement, the petitioner explained that he met F-A- at a friend's party in July of 2010. He briefly recounted that it was easy to talk to her and he instantly fell in love with her. He described going to the beach and the movies with F-A-, and that they had mutual friends. He stated they got married in September in a small ceremony attended by four friends. The rest of his statement describes F-A-'s

mistreatment of him. In response to the RFE, the petitioner submitted a supplemental declaration, stating that he did not remember any more significant facts or events regarding the beginning of their relationship. He asserted he entered the marriage in good faith and intended on having a family with F-A-.

The petitioner did not describe in probative detail the couple's courtship, wedding ceremony, or shared residence and experiences apart from the abuse. Letters from the petitioner's friends and family also failed to provide more information regarding the petitioner's marital intentions. The petitioner's friend, [REDACTED] stated only that he introduced the couple to each other and that they immediately liked each other. Similarly, [REDACTED] stated that the petitioner and F-A- had a lot of fun together and that they got together often, and [REDACTED] described the couple as deeply in love. These letters did not describe, for example, any specific contact with the petitioner and F-A-, any particular visit or social occasion with the couple, or any interactions with the couple that would establish their personal knowledge of the relationship. The preponderance of the relevant evidence does not establish that the petitioner entered into marriage with F-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that he resided with his wife after their marriage or that he entered the marriage in good faith. 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.

ORDER: The appeal is dismissed.