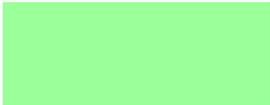


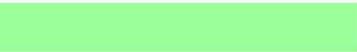


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 20 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:

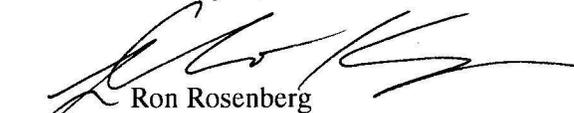


INSTRUCTIONS:

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 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 former spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his former wife in good faith.

On appeal, the petitioner, through counsel, 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 a self-petition for immigrant classification 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:

(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. . . .

(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 entered the United States on April 10, 2006, as a nonimmigrant on temporary assignment to the [REDACTED]. The petitioner married L-W-¹, a U.S. citizen, in [REDACTED], Maryland on April [REDACTED] and they were divorced in North Carolina on November [REDACTED]. The petitioner filed the instant Form I-360 self-petition on June 20, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other

¹ Name withheld to protect the individual's identity.

things, the petitioner's entry into marriage with L-W- in good faith. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Beyond the director's decision, the petitioner has also not established that he is a person of good moral character.² The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that he married L-W- in good faith based on the relevant evidence submitted below. The petitioner submitted unlabeled photographs of what appears to be his wedding and several other unidentified occasions, the significance of which the petitioner did not explain. The petitioner also submitted four joint bank account statements and 2006 and 2007 Internal Revenue Service (IRS) income tax return transcripts showing he and J-W- jointly filed. The bank statements and tax transcripts show that the petitioner and J-W- shared some finances for part of their marriage. Three rent receipts, a lease agreement and eviction notice also show that they resided together for approximately two years in Maryland. The petitioner has not, however, provided a probative account of his marital intentions and these documents alone do not establish his claim.

In his first declaration, the petitioner stated that he was introduced to L-W- over the telephone by his cousin. The petitioner stated that he and L-W- maintained a long distance relationship through telephone calls, text messages and letters for approximately 11 months before he arrived in the United States in April of 2006. The petitioner recounted that they had a rapid connection, immediately got married so they could be physically intimate, and did things that couples do together. He did not describe in any detail their courtship, wedding ceremony, shared residence and experiences apart from the abuse. In his second declaration, the petitioner repeated his earlier statements and added that he fell in love with L-W- because they shared the same views. The petitioner recounted that after he arrived, L-W- took him to places and introduced him to her family. The petitioner did not further provide any substantive information about his relationship with L-W- to demonstrate his marital intentions.

The letters from the petitioners' friends also did not contain probative details regarding the petitioner's intentions in marrying L-W-. [REDACTED] both stated that they personally knew the petitioner and L-W- as a couple and that they were affectionate towards each other as any normal couple. Neither described any particular visit or social occasion in probative detail or otherwise provided further information establishing their personal knowledge of the relationship. [REDACTED] stated that he attended the petitioner's wedding to L-W- and that they visited each other at their

² 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).

respective homes. He briefly listed activities that they did together but did not describe any particular visit or social occasion in probative detail or otherwise establish his personal knowledge of the relationship.

On appeal, the petitioner submits copies of one voided check, one check carbon copy and one additional monthly statement from their joint bank account in 2009, which further document their shared finances at that time, but do not demonstrate that the petitioner entered the marriage in good faith. The petitioner also submits a third personal declaration and a second letter from [REDACTED]. In his declaration, the petitioner describes how he proposed and recounts traveling to visit relatives with L-W-. He does not provide any further, probative and detailed information about his marital intentions. The letter from Mr. [REDACTED] repeats his earlier statements and also does not provide relevant and substantive information about the petitioner's relationship with L-W-. When viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal does not demonstrate that the petitioner entered into marriage with his former wife in good faith, 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 includes 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 June of 2009 and ending in June of 2011). The petitioner submitted an affidavit attesting to his good moral character and a report dated June 6, 2011, showing that no record existed for the petitioner in the [REDACTED]. However, the petitioner stated and the record shows that he also resided in North Carolina during the relevant period. Although the petitioner stated that he submitted a police clearance report from North Carolina, there is none in the record. The petitioner's affidavit and Maryland [REDACTED] clearance report are insufficient to establish his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he entered into marriage with his former wife in good faith. In addition, beyond the director's decision, the petitioner has not established 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.

ORDER: The appeal is dismissed.