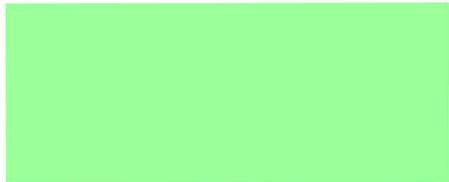


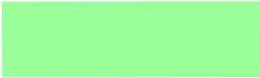


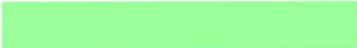
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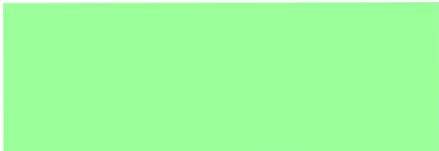
Date: **OCT 24 2014**

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,



Ben 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 resided with and entered into marriage with his former wife in good faith and that she subjected him to battery or extreme cruelty during their marriage.

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

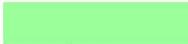
Section 204(a)(1)(J) of the Act further states, in pertinent part:

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 is a citizen of India who entered the United States on September 15, 2008, as a nonimmigrant visitor. The petitioner married N-D-¹, a U.S. citizen, on November [REDACTED], in [REDACTED] Pennsylvania and they were divorced in Pennsylvania on February 10, 2011. The petitioner filed the instant Form I-360 self-petition on January 20, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into his marriage, residence with his wife, and the requisite battery or extreme cruelty. The petitioner, through counsel, 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 timely filed an appeal.

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 had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based upon such a relationship.² The appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the petitioner failed to establish that he resided with N-D- during their marriage based on the relevant evidence submitted below. The petitioner stated on his Form I-360 self-petition that he resided with N-D- from November [REDACTED], to November of 2010, and that the last address they shared was on [REDACTED] in [REDACTED], Pennsylvania. In his one page affidavit, the petitioner stated that he and N-D- both lived at the [REDACTED] address after their marriage in November of [REDACTED] until they separated in November of 2010. He did not further describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with N-D- after their marriage. However, the petitioner's friend, [REDACTED], stated in his notarized letter that the petitioner and N-D-

¹ Name withheld to protect the individual's identity.

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).

moved in with him in at the [REDACTED] in June of 2010. Mr. [REDACTED] also did not provide any further probative details regarding the former couple's living arrangements. In addition, the petitioner submitted the following: a lease for a [REDACTED], [REDACTED], Pennsylvania address beginning February 1, 2010, and ending January 31, 2011; rent receipts made out solely to the petitioner for the [REDACTED] address from March to May of 2010; and joint rent receipts for the [REDACTED] address from June 10, 2010, to November 4, 2010.

In response to the RFE requesting clarification for the inconsistencies regarding the places and dates of the claimed joint residence, the petitioner submitted 2009 and 2010 Internal Revenue Service (IRS) federal income tax returns and transcripts, a joint Peco utility statement, a joint bank statement from [REDACTED], a joint bank statement from [REDACTED] and a joint letter from [REDACTED]. The 2009 tax return, filed on April 9, 2010, lists [REDACTED] as the marital address. The 2010 tax return, completed as married filing separate, was received by the IRS on April 15, 2011, over two months after the petitioner and J-D- were divorced and lists a third address. The [REDACTED] utility statement, dated June 8, 2010, is addressed to the petitioner and N-D- at [REDACTED] but shows the service address as [REDACTED]. The [REDACTED] joint bank statements, for August 14 to September 15, 2010, and [REDACTED], for April 1 to June 30, 2010, are addressed to the petitioner and N-D- at [REDACTED]. The [REDACTED] letter is also jointly addressed but dated December 14, 2010, approximately one month after the petitioner and N-D separated. The director correctly determined that the relevant evidence in the record demonstrated that the petitioner may have maintained multiple, simultaneous residences but did not establish that he shared any of them with N-D-.

On appeal, counsel asserts that evidence shows an overlap in addresses because N-D- did not like the location of her first residence with the petitioner and wanted to move to a different location.³ However, this explanation was not mentioned in the petitioner's affidavit submitted with the self-petition and the petitioner did not submit a personal affidavit or any other evidence on appeal addressing the inconsistency. Absent probative testimony from the petitioner clarifying his residential history, little weight can be given to the evidence submitted below. Accordingly, the record does not establish by a preponderance of the evidence that the petitioner resided with his former 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

The director correctly determined that the petitioner failed to establish that he married N-D- 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 two joint bank account statements, a 2009 IRS income tax return and transcript that he and N-D- jointly filed, a 2010 tax return and transcript completed as married filing separately, and a joint [REDACTED] bill. This evidence shows that the petitioner and N-D- shared some finances for part of their marriage. The petitioner also submitted rent receipts and a lease agreement that conflict with the petitioner's affidavit regarding his marital

³ In the psychological evaluation prepared by [REDACTED] submitted below, Ph.D., Dr. [REDACTED] stated that the petitioner and N-D- first resided in [REDACTED] Pennsylvania before moving to [REDACTED] Pennsylvania and then moving again into a duplex owned by N-D-'s father.

residences with N-D-. As such, the evidence is insufficient to establish that the petitioner resided with N-D- during their marriage and likewise does little to establish that the petitioner married N-D- in good faith.

Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). In his affidavit, the petitioner stated that his relationship with N-D- was great and they were happy for six months before their relationship began to suffer. He did not describe in any detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. The notarized letters from the petitioners' friends also did not contain probative details regarding the petitioner's intentions in marrying N-D-. [REDACTED], and [REDACTED] all stated that they spent time with the petitioner and N-D- socially and thought they made a good couple. Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED] further stated that they attended the petitioner and N-D-'s wedding and that the couple had a happy marriage. None of the petitioner's friends described any particular visit or social occasion in probative detail or otherwise provided further information establishing their personal knowledge of the relationship.

On appeal, counsel asserts that contrary to the director's determination, the petitioner clearly submitted enough evidence to establish that he married N-D- in good faith. However, the petitioner's affidavit and the letters from his friends did not provide any probative and detailed information about the petitioner's marital intentions to overcome the deficiencies of the record. 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.

Battery or Extreme Cruelty

The director correctly determined that the petitioner failed to establish that N-D- subjected him to battery or extreme cruelty. Licensed psychologist, Dr. [REDACTED], stated that he met with the petitioner for one session. Dr. [REDACTED] opined that there was "no sense that there was any agenda" on the petitioner's part and stated that N-D-'s behavior became increasingly abusive six months into the marriage. While we do not question Dr. [REDACTED] professional expertise, his evaluation conveyed the petitioner's statements and did not provide any substantive information regarding the claimed abuse. Nor did he explain the basis of his determination that the petitioner's depression resulted from the claimed abuse.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include... other forms of credible relevant evidence." *See* 8 C.F.R. § 204.2(c)(2)(iv). Here, the petitioner submitted a one page affidavit asserting that he was mentally and physically abused and suffered from depression because of it. He stated that N-D- had a drug problem, stole money from him, and insulted him in front of others. He did not, however, provide

probative details regarding any specific incidents of battery or extreme cruelty. The submitted affidavits from the petitioner's friends likewise did not provide any probative details regarding specific incidents of abuse.

On appeal, counsel asserts only that the evidence clearly shows that the petitioner was abused. However, counsel does not demonstrate how the evidence submitted provided any substantive information about the claimed abuse. Accordingly, the preponderance of the relevant evidence does not establish that the petitioner's former wife subjected him to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

A petitioner who is divorced must file his self-petition within two years of the divorce date and demonstrate a causal connection between the divorce and his or her spouse's battery or extreme cruelty. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, beyond the director's decision, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he entered into marriage with N-D- in good faith and that they resided together. The petitioner has also failed to demonstrate that his former spouse battered or subjected him to extreme cruelty and, therefore, the petitioner cannot establish that he had a qualifying relationship with his former wife and that he was eligible for immediate relative classification based upon such a relationship. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 and the petition remains denied.

ORDER: The appeal is dismissed.