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U.S. Citizenship
and Immigration
Services

Date: **OCT 30 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

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, and married her in good faith.

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.

* * *

(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.

* * *

(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 Ghana, and entered the United States as a B-1 nonimmigrant visitor on July 22, 2003. The petitioner married C-A-¹, a U.S. citizen on May [REDACTED]. The petitioner filed the instant Form I-360 on April 5, 2013. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's residence with his wife, and good-faith entry into their marriage. The petitioner responded with additional evidence that the director found insufficient and the director denied the petition.

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

Good-Faith Entry into the Marriage

The petitioner failed to demonstrate that he married his spouse in good faith. In his affidavit, the petitioner recounted that he first met C-A- at a friend's Mother's Day barbeque in 2007. He indicated that they fell in love and decided to live together. The petitioner explained that they moved to [REDACTED] Minnesota, along with C-A-'s father and her three-year-old son. The petitioner stated that he was excited when C-A- became pregnant, and telephoned his father about the news. He indicated that after two months his wife complained about feeling sick and not having the means to support a baby, and against the petitioner's protests C-A- decided not to have the baby. In the petitioner's response to the RFE, he indicated that he liked C-A- because she was nice to him. He explained that on one occasion she came to his home and cleaned his laundry, and on other occasions

¹ Name withheld to protect individual's identity.

told him not to waste his money taking her to a restaurant or bar. The petitioner stated that after six months they decided to move in together, that they married on May 16, 2008, and in four years lived in three different houses. The petitioner did not provide further details about how he met his wife, his courtship, decision to marry, engagement, marriage ceremony, joint residences, and shared experiences with his wife apart from the abuse.

Additionally, the petitioner also submitted an affidavit from C-A-. Although C-A- stated that her marriage to the petitioner was "legal, real, and sincere," she does not provide any substantive information about her relationship with the petitioner to demonstrate that he married her in good faith. She does not discuss how they met, their courtship, decision to marry, or any of their shared experiences.

The petitioner also submitted additional letters. [REDACTED] C-A-'s father, stated that the petitioner met C-A- in 2007, and he was a witness at their wedding. He indicated that for four years he lived with the petitioner and C-A-, and the petitioner "took care of the house and he took care of the bills" and that the petitioner's "marriage was true and real." Mr. [REDACTED] makes only general observations about the petitioner and C-A- as a couple, and provides no further probative information about the petitioner's good-faith intent. [REDACTED] the petitioner's friend and co-worker, stated that he was aware that the petitioner dated C-A- and planned to marry her. He stated that he was invited to their wedding, but did not attend and visited the petitioner's home for social events. He stated that he knows of the marital relationship between the petitioner and his wife, and that they "got married to each other for love and affection," but does not provide any substantive information of the petitioner's good-faith intent in marrying C-A-. The petitioner's friends, [REDACTED] indicated that they visited the petitioner's home, but provided no substantive information about the petitioner's intentions in marrying. Finally, [REDACTED], a reverend with [REDACTED] confirmed that the petitioner and his wife received marital counseling in 2008, but he also provided no probative information of the petitioner's good-faith intent.

Regarding joint documentation, the petitioner submitted joint utility bills, past-due rent notices, a wedding invitation, and a card. Although these documents demonstrate a shared marital address they provide no probative information of the petitioner's marital intentions. The November 23, 2007 Macy's purchase receipt is not a joint document and is dated six months before the petitioner's marriage. The petitioner also submitted a [REDACTED] checking account agreement that shows the petitioner as his wife's trustee, but the document is unsigned and shows that it was opened on November 23, 2011, which is six months after the petitioner's June 2011 separation from his wife. Additionally, the petitioner submitted a two-year lease agreement for July 2009 to July 2011 for a [REDACTED] home, and the eviction documents for that residence. The petitioner also submitted copies of photographs of himself and C-A- pictured together and with other people on their wedding day and on two other occasions. The copies of the photographs are dark and difficult to examine, and the petitioner did not explain the significance of the events in the undated photographs. Although the petitioner submitted a joint lease agreement and photographs and documents that establish a shared mailing address, without a detailed, probative description from the petitioner of his relationship with C-A-, the preponderance of the relevant evidence fails to establish his good-faith intent in marrying C-A-.

On appeal, the petitioner submits a new personal statement. He explains that he could not open a joint checking account with his wife in 2008 because he did not have a social security card, and that the Macy's receipt is for a gift that C-A- purchased for him on his birthday while they were dating. Although the petitioner explains the lack of joint documentation, his statements do not probatively describe his first meeting with his wife, their courtship, decision to marry, and engagement, and shared routines and experiences apart from the abuse. Similarly, the letters from the petitioner's friends, Mr. [REDACTED] and Mr. [REDACTED] lack detailed, substantive information regarding the petitioner's courtship, engagement, and marital relationship to establish his good-faith entry into the marriage. Therefore, the petitioner has not established by a preponderance of the evidence that he entered into marriage with C-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with C-A-. On the Form I-360 self-petition, the petitioner stated that he lived with C-A- from December 2007 until June 2011 and that their last joint address was on [REDACTED] Minnesota. In his affidavit and statement, the petitioner claimed that he initially moved in with C-A-, her son, and father at their home at [REDACTED]. After that home went into foreclosure in June 2009, the petitioner indicated that they then moved to the home on [REDACTED] where not long after they moved, the police came to their house because a neighbor complained about noise. The petitioner recounted that he and his wife hung pictures in their home and had discussions about their neighbors. The petitioner provides no further detailed description of his marital residences, joint belongings, or shared residential routines with C-A-.

The petitioner submitted letters from his friends that indicated that they visited the petitioner's home, picked up the petitioner at his home, and helped the petitioner move to his home, but do not identify any of the petitioner's marital addresses, provide any specific details about visits to the petitioner's home, or any substantive information about the petitioner's marital residence. Although Mr. [REDACTED] stated that he lived with the petitioner and C-A- during their marriage, he does not describe where he resided in any of the claimed marital residences, identify the addresses, and describe the petitioner's shared belongings with C-A-, and their common residential routines. The letters from [REDACTED] and [REDACTED] discuss only the abuse in the petitioner's marriage and provide no probative information of joint residence.

The petitioner submitted jointly addressed documents such as a collection notice, an invoice, and past-due rent notices. Additionally, the petitioner provided copies of photographs of the petitioner and his wife pictured together on two occasions but which are undated and not identified as being taken at the petitioner's marital residences. Although the petitioner submitted some joint documentation, a joint lease agreement for the [REDACTED] address, and eviction complaint filed June 28, 2011 for that residence, in the absence of a detailed description from the petitioner or a probative account from his friends or Mr. [REDACTED] of the petitioner's marital residences, evidence of a shared address, when considered together, is not sufficient in demonstrating that the petitioner and his wife resided together from December 2007 until June 2011, as stated in the Form I-360.

On appeal, the petitioner asserts that his former landlord, Mr. [REDACTED] has personal knowledge that he lived with C-A- because Mr. [REDACTED] made repairs to the petitioner's home, cut down a tree, and garnished the petitioner's wages in February 2012 because C-A- did not pay her father's share of the rent. In his letter, Mr. [REDACTED] states that "[s]ometime in 2009-2011" he met the petitioner and his wife and "they introduced themselves as husband and wife." He stated that they signed a two-year lease for property that he owns. Mr. [REDACTED] states further that "[a]fter about 1-year, they had trouble paying their rent and [he] had to evict them. There was never any question as to their status, they presented and acted as a married couple." Contrary to the petitioner's statement, Mr. [REDACTED] letter indicates only that the petitioner and his wife signed a lease agreement together, and that the rent was late and eviction documents were filed. Mr. [REDACTED] does not further describe his interactions with the couple or provide any specific details about their residence, including the fact that C-A-'s father resided with them.

The petitioner also submits additional joint documents showing the claimed marital address such as utility invoices and credit card statements. However, without a detailed description from the petitioner or a probative account from his friends or Mr. [REDACTED] about the petitioner's marital residence, a signed lease agreement, membership cards, documents showing a joint address, and undated photographs are not sufficient to establish that the petitioner and C-A- shared a marital 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 not established that he resided with C-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.