

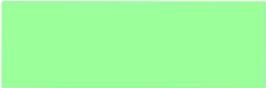


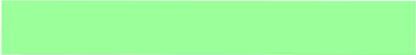
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **SEP 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:

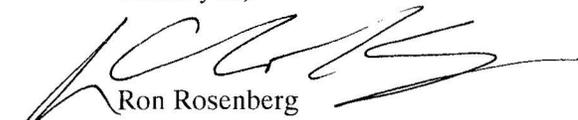
SELF-REPRESENTED

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 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 under 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 a United States citizen. The director denied the petition for failure to establish that the petitioner entered into the marriage with his spouse, a United States citizen, in good faith. On appeal, the petitioner submits additional evidence.<sup>1</sup>

*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 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:

(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.

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<sup>1</sup> The appeal was submitted by an attorney without a valid Form G-28, Notice of Entry of Appearance as Attorney, as required by 8 C.F.R. §§ 103.3(a)(2)(v)(A)(I), 292.4(a). On August 26, 2014, the AAO notified the attorney of this deficiency and requested submission of a new, valid Form G-28 signed by her and the petitioner in order to authorize her appearance on behalf of the petitioner. In response, on September 2, 2014, the attorney submitted a Form G-28 signed by her and another individual, [REDACTED] as the petitioner. [REDACTED] is not the petitioner in these proceedings and the Form G-28 submitted on September 2, 2014 is invalid. Consequently, the attorney cannot be recognized in these proceedings.

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.

\* \* \*

(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.

#### *Facts and Procedural History*

The petitioner, a citizen of Jamaica, entered the United States on April 10, 2002 as a B-2 temporary visitor. He married V-D-<sup>2</sup>, a U.S. citizen, on October 17, 2003 in Florida. The petitioner was last paroled into the United States on February 15, 2006. He filed the instant Form I-360 self-petition on November 22, 2010. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the petitioner's entry into marriage with his spouse in good faith. The petitioner timely responded with further 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). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

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

We find no error in the director's determination that the petitioner did not marry V-D- in good faith, and the evidence submitted on appeal fails to overcome this ground for denial. The petitioner submitted evidence that he and V-D- shared a residence, an automobile insurance policy and a bank and credit card accounts. However, the petitioner submitted no billing statements or other evidence that he and V-D- actually used the joint accounts. 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

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

relevant evidence will be considered.” See 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the affidavits of the petitioner and others do not establish his claim because they contain insufficient information regarding the petitioner’s marital intentions as well as unresolved discrepancies.

In his initial affidavit, the petitioner recounted how he met V-D- in April 2002 while eating lunch with his niece. He stated that V-D- asked him if he was married and he replied that he was not. He recalled that they exchanged contact information, began dating, he proposed marriage, and in October 2003, V-D- told him she could not wait any longer, took him to the courthouse, and they got married. After they were married and moved in together, the petitioner stated he learned for the first time that V-D- had eight children, but he later met them and they came to love each other. Apart from their first meeting and incidents of abuse, the petitioner did not substantively describe any of his shared experiences with V-D- (and any of her eight children) during their courtship or marriage.

In response to the second RFE, the petitioner submitted a second personal affidavit in which he repeated how he met V-D- and again stated that he told her he was not married. The petitioner reiterated that they exchanged contact information, dated, and he proposed marriage. He added that on the day of their wedding, he did not realize they were getting married until they were sitting in the courthouse and he heard their names called. The petitioner recalled that he had been living with his niece, [REDACTED], who was upset by his sudden marriage and he moved out to rent from [REDACTED] so he and V-D- could live together.

In response to the third RFE, the petitioner submitted his third personal affidavit and the affidavits of Ms. [REDACTED] and his niece. In his third affidavit, the petitioner stated that during their courtship and marriage he and V-D- only spent weekends together because of their work schedules. The petitioner did not provide any further information regarding their courtship, wedding ceremony, joint residence, or any of their shared experiences apart from the abuse.

In her affidavit, Ms. [REDACTED] stated that she was a long-time family friend of the petitioner’s from Jamaica. She recalled that the petitioner called her in 2002 and said he had found love and she wished him well and said she was moving to Florida soon and hoped to attend their wedding, but when she moved to Florida on January 1, 2004, she learned the petitioner had already married. She recalled that the petitioner asked her to rent him a room as V-D- did not feel comfortable at his niece’s home and the petitioner and V-D- moved in to her home on January 2, 2005, and they later rented a second room for V-D-’s young son. The petitioner himself never mentioned residing with V-D-’s son. Ms. [REDACTED] indicated that before the petitioner’s marriage her only interaction with him concerning V-D- was a single telephone call. Ms. [REDACTED] also does not describe in detail any observations of the petitioner and V-D-, apart from the abuse, after their marriage and while they were residing with her.

In her affidavit, Ms. [REDACTED] the petitioner’s niece, confirmed that they met V-D- when the petitioner visited her in Florida in April 2002 and they were eating lunch in Miami. She stated that after the petitioner and V-D- started dating, V-D- would come over nearly every other day, which is inconsistent with the petitioner’s statements that he only saw V-D- on weekends. Ms. [REDACTED] recounted that she was happy for the petitioner but became upset over the circumstances under which he suddenly married and

she lost respect for him. Ms. [REDACTED] recalled the petitioner saying that V-D- told him to remain in the United States, and he relented out of fear that he would lose her as he did his first wife if he returned to Jamaica. Ms. [REDACTED] affidavit primarily discussed her disagreement with the petitioner over his sudden marriage to V-D- and only briefly attributed the petitioner's mistakes to his love for V-D-.

The record shows that the petitioner was previously married on April 25, 2001 and his first marriage was annulled on May 20, 2003, a year after he began dating V-D- and five months before their marriage. While these facts alone do not necessarily discredit the petitioner's claim of marrying V-D- in good faith, his failure to acknowledge his first marriage and the basis for its annulment detract from the credibility of his statements, which present unresolved inconsistencies. In response to the third RFE, the petitioner submitted for the first time a copy of his judgment of annulment from his first wife. As noted by the director, the annulment, filed by his first wife was granted "by reason of the fraud of the defendant [petitioner] in inducing the marriage." The petitioner did not address his fraud as found in the annulment. The petitioner also did not acknowledge that in his first two affidavits, he repeatedly stated that when he met V-D- in April 2002, he told her he was not married.

The petitioner does not resolve this inconsistency on appeal. In his fourth personal affidavit submitted on appeal, the petitioner describes his first marriage and states that his first wife had their marriage annulled because her sister convinced her he only married her for a "green card." The petitioner states that he knew his former spouse was annulling their marriage but was unaware of the specific grounds, which he only learned for the first time when reading the director's denial decision. He claims that the final judgment was mailed to his brother's home and he did not read it. The petitioner's brief statements do not explain why the annulment was granted based upon his fraud and why he did not discuss the breakdown of his first marriage as it relates to his concurrent courtship with V-D-.

The petitioner also states for the first time on appeal that when he met V-D- in April 2002, he was estranged from his first wife and although he initially told V-D- that he was not married, he later told her that he and his first wife were separated and he could not even think about remarrying until their marriage was annulled. The petitioner does not explain why he left out this significant part of the conversation in all three of his earlier affidavits.

On appeal, the petitioner has not resolved the inconsistency in his statements as well as the discrepancies between his statements and those of his niece and landlord. These inconsistencies detract from the credibility of his claim. Even apart from these issues, the affidavits fail to provide a probative account of the petitioner's courtship, marriage, marital residence and other shared experiences (apart from the abuse). When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with V-D- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

The petitioner has not overcome the director's ground for denial on appeal. He has not demonstrated that he entered into the marriage with V-D- in good faith. Accordingly, the petitioner is ineligible for

immigrant classification under section 204(a)(1)(A)(iii) of the Act on this ground.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.