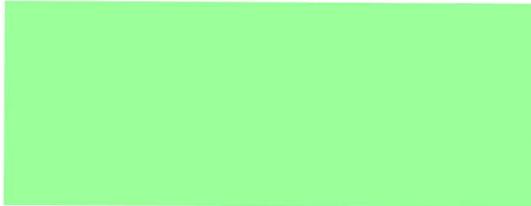




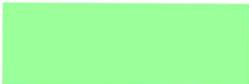
U.S. Citizenship
and Immigration
Services

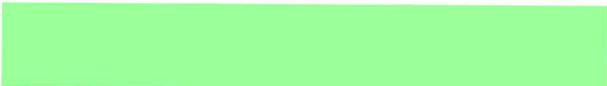
(b)(6)



Date: **SEP 18 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:

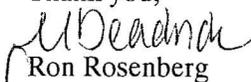


INSTRUCTIONS:

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 a United States citizen.

The director denied the petition for failure to establish that the petitioner resided with his spouse, was battered or subjected to extreme cruelty by his spouse, and entered into the qualifying relationship in good faith.

On appeal, the petitioner submits a brief and previously provided evidence.

Applicable Law

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).

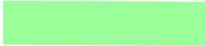
Section 204(a)(1)(J) of the Act states, in pertinent part:

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 explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 was born in India and entered the United States on January 30, 2008, as a B-1 nonimmigrant visitor. He married his second spouse, T-S-,¹ a U.S. citizen, on July 15, 2011, in Du Page County, Illinois. He filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 2, 2012. The director subsequently issued a Request for Evidence (RFE) that, among other things, the petitioner resided with T-S-, that she subjected him to battery or extreme cruelty, and that he entered the marriage in good faith. The petitioner timely responded, but the director found the response insufficient to establish the petitioner's eligibility on these grounds and denied the petition. The petitioner filed a timely 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, and we will dismiss the appeal for the following reasons.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with his second spouse. On the Form I-360, the petitioner stated that he resided with T-S- from November 2011 until March 2012, and that their last joint address was on [REDACTED] IL. The petitioner provided an affidavit in which he stated that he was living in Chicago when he married T-S- on "July [REDACTED]" [sic], and "[a] couple of days later we moved in together." The November 2011 date he claimed they began living together on the Form I-360 self-petition contradicts the July 2011 date that he provided in his affidavit. The petitioner did not describe the apartment he shared with T-S- or, for example, their shared belongings and residential routines, or otherwise provide any substantive information regarding their marital residence.

¹ Name withheld to protect the individual's identity.

The petitioner provided a copy of a marriage certificate showing that he resided in [REDACTED] Indiana on July [REDACTED], the day he married T-S-, and a copy of a lease agreement for an apartment on [REDACTED] [REDACTED] showing that he and T-S- were permitted to occupy it from November 21, 2011. The information on the marriage certificate and the lease agreement is inconsistent with the claims in the petitioner's affidavit that he was living in [REDACTED] when he married, and that he and T-S- began living together a few days after their July [REDACTED] marriage. He provided photographs of him with T-S- but they are undated and there is no indication that they were taken at their shared marital residence.

In response to the RFE, the petitioner submitted a second affidavit in which he stated that he had low income and therefore did not have credit cards or other evidence reflecting his shared marital residence. While the petitioner advised that "[t]he few assets/accounts we had were shared jointly," he did not include evidence of any assets or accounts he shared with T-S-. The petitioner asserted that he had already described their shared marital routines, including T-S-'s drug use, and that because he worked long hours he had no friends who could provide additional information to support his assertions. He did not proffer any additional details about the marital residence he claims to have shared with T-S-.

On appeal, the petitioner again asserts that he is unable to provide additional information because he had little income, no credit cards, and worked long hours during his marriage and therefore had no friends to provide affidavits. In his appeal brief, the petitioner states that he entered the United States on February 2, 2008, met and fell in love with T-S-, and married her in July 2009. However, this new statement contradicts his claim on the I-360 self-petition, his Form I-94, and his marriage certificate, all of which show that he entered the United States on January 30, 2008, and married T-S- on July 15, 2011.

The petitioner also contends that U.S. Citizenship and Immigration Services (USCIS) has sought evidence of his joint residence with T-S- based on an impermissibly high standard by requiring evidence in the form of utility receipts and insurance policies. These forms of evidence are suggested in the regulation at 8 C.F.R. § 204.2(c)(2)(iv), but are not required evidence. The director mirrored the regulatory language in his RFE, suggesting that evidence of eligibility "may include" these forms of evidence.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "affidavits or any other type of relevant credible evidence of residency may be submitted." 8 C.F.R. § 204.2(c)(2)(i). In this case, however, the documents and affidavits submitted by the petitioner are inconsistent and detract from the credibility of his claim to have shared a joint residence with T-S-. In his first affidavit, he claimed to have lived in [REDACTED] at the time of their marriage in July of [REDACTED] and to have moved in with T-S- a few days after their marriage. However, he submitted a marriage certificate showing that he lived in Indiana at the time of their July [REDACTED] marriage and a lease that permitted him and T-S- to occupy the claimed marital residence beginning on November 21, 2011. He now claims on appeal to have entered the United States on February 2, 2008, and to have married his wife in July of [REDACTED] but his previously submitted evidence establishes that he entered the United

States on January 30, 2008, and married his wife in July of [REDACTED]. In addition to these unresolved discrepancies, the petitioner's affidavits lack any substantive description of his residence with his wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In his first affidavit, the petitioner said that T-S- changed shortly after their marriage in [REDACTED] and began to drink heavily and to party with her friends. He stated that when he questioned her, she verbally abused him using racial epithets and various derogatory terms. The petitioner asserted that T-S- threatened to beat him when she saw him giving directions to a woman on the street. He added that he threatened to call the police "when she got violent," but did not describe a specific incident of violence. The petitioner asserted that T-S- "[w]ould throw anything within reach at me" and once broke his glasses when she slammed the door in his face. As further evidence of her controlling nature, he indicated that T-S- left their apartment to visit her mother the day before his initial immigration interview and never came home to attend the interview with him. He stated that he eventually ended their relationship in July of 2012. The petitioner's description of the alleged battery consists of a brief statement that fails to include any probative details.

The petitioner included an August 3, 2012 psychiatric evaluation. The evaluation conveys the petitioner's claims, but does not provide additional probative information about specific incidents of battery or extreme cruelty.

In response to the RFE, the petitioner submitted a second affidavit in which he asserted that T-S- subjected him to extreme mental cruelty. He described an instance of claimed physical abuse, including one when he alleged she was high and began "screaming, scratching and going crazy" after he said he did not have \$250 to give her. The petitioner recounted other instances of claimed cruelty, explaining that she stayed away from home without telling him where she was, threatened to call "the immigration police," and one time went to a party rather than going out with him for dinner. The petitioner did not provide any probative details about these incidents. He asserted that "[o]ne [sic] the day of my initial interview for immigration, she said that she just meet [sic] a friend of hers and come for the interview but left the apartment and never returned." This contradicts his claim in the initial affidavit that T-S- left their apartment to visit her mother the day before the interview and never returned. The petitioner provided a revised psychiatric evaluation that is on letterhead but does not include additional details beyond those provided in the first psychiatric evaluation.

On appeal, the petitioner again asserts that T-S- subjected him to extreme cruelty by becoming violent and throwing objects at him, abusing him emotionally, demanding that he pay for her alcohol, and constantly threatening to have him deported or to call the police. He asserts that he married his wife in July of 2009, and "in late 2009, she pushed [the petitioner] around and physically assaulted him to the point where he had to call the police." This contradicts the information on his marriage certificate showing that he married T-S- in July of [REDACTED] and his prior claims that she began to abuse him shortly after marriage in [REDACTED].

The petitioner also contends on appeal that USCIS discounted the evaluation of his psychiatrist. The psychiatrist diagnosed the petitioner with post-traumatic stress disorder, major depressive disorder, and generalized anxiety disorder based upon the claims relayed to him by the petitioner. However, this evaluation does not establish that the actions of T-S- constituted battery or extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not further describe the alleged battery or any other specific incidents of battery or extreme cruelty.

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.” 8 C.F.R. § 204.2(c)(2)(iv). As discussed, the petitioner’s own statements contain numerous inconsistencies and contradictory claims, including his claim regarding the reason T-S- failed to attend his immigration interview, and whether T-S- began to abuse him in [REDACTED]. To the extent that the petitioner requests that the agency rely on his statements, his own contradictory assertions undermine the credibility of the statements and therefore do not establish that T-S- battered him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In addition, the brief statements of the petitioner did not discuss his wife’s behavior in probative detail and do not show that she ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). When viewed in the aggregate, the relevant evidence is insufficient to establish that T-S- subjected the petitioner 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.

Good-Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner’s entry into his marriage with T-S- in good faith. On the Form I-360 petition, the petitioner asserted that he lived with T-S- from November 2011 to March of 2012. In his initial affidavit, the petitioner briefly described his courtship, explaining that he met T-S- through a friend in early summer of 2009 but did not provide an approximate day or month. He mentioned a single date and meal that he and T-S- ate at Chipotle, explaining that they lived in separate states, mainly courted by telephone, and married on “July [REDACTED] [sic].” The petitioner attested that he and T-S- began to live together a few days after their marriage.

The petitioner provided a copy of a marriage certificate showing he wed T-S- on July [REDACTED] and undated photographs taken at one or more unknown locations. He also provided a lease agreement for the apartment he claimed to have shared with T-S- on [REDACTED] for a term beginning on November 21, 2011. As previously discussed, the November 2011 occupancy date permitted on the lease contradicts the petitioner’s initial claim that he and T-S- began to live together within days of their marriage. Given the contradictory claims and information regarding their relationship, these documents do not establish that the petitioner entered into his marriage in good faith.

In response to the RFE, the petitioner submitted an affidavit in which he described his relationship with T-S-, again focusing mainly on incidents of abuse. He included an updated evaluation from his psychiatrist, but it did not include any additional details relating to the petitioner's good-faith entry into the marriage with T-S-.

On appeal, the petitioner provides a brief but no additional probative information such as details of his courtship with T-S-, their wedding ceremony, joint residence, and shared experiences. The petitioner again asserts that the director held him to an impermissibly high standard, seeking evidence of bank statements and insurance policies. Again, these forms of evidence are suggested in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), but are not required evidence. The director offered these as examples of evidence of a good-faith marriage. Regardless, we have considered all of the evidence below and on appeal, including the petitioner's statements. To the extent that the petitioner discusses his courtship and marriage on appeal, his new statements about his relationship with T-S- contradict his previous claims and evidence. For example, he claims to have married T-S- in July of 2009 and details an incident of abuse in "late 2009." This contradicts the statements in his Form I-360 self-petition, prior affidavits, and marriage certificate, which collectively indicate that he married T-S- on July [REDACTED] after which he alleged that she began to abuse him.

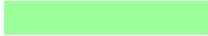
The petitioner asserts that the director failed to give sufficient weight to the petitioner's statements and evidence. USCIS must consider all credible, relevant evidence of the petitioner's good-faith marriage, but the determination of what evidence is credible and the weight accorded that evidence lies within the Agency's sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i), (vii). In this case, the petitioner's statements and evidence contain unresolved contradictions regarding the year he met T-S-, the date of his marriage, and the dates and location of his residence both during his courtship and after his marriage that detract from the credibility of his claimed good-faith entry into the marriage. In addition, his statements fail to provide probative information regarding his courtship, wedding, marital residence, and experiences, apart from the abuse. The petitioner has not established by a preponderance of the evidence that he entered into marriage with T-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he resided with T-S-, that she battered him or subjected him to extreme cruelty, or that he entered into their marriage in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

(b)(6)



Page 9

NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.