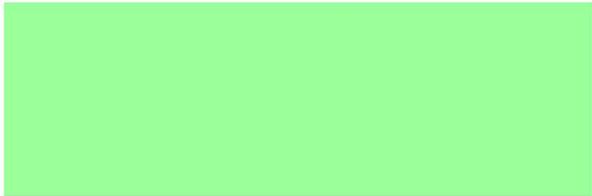


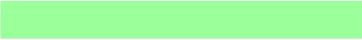


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **SEP 30 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)

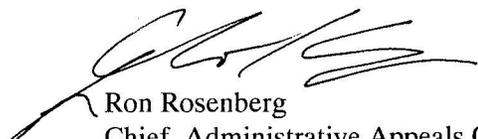
ON BEHALF OF PETITIONER:  


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 Director, Vermont Service Center (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 and the petition will remain denied.

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 on the basis of his determination that the petitioner had failed to establish that he married his wife in good faith. On appeal, counsel submits a letter and new 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 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

\* \* \*

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 212(a)(2). . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

\* \* \*

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

\* \* \*

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2), includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

Regarding the eligibility requirement to show that the petitioner has entered into a good faith marriage, 8 C.F.R. § 204.2(c)(1) states:

(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.

### *Facts and Procedural History*

The petitioner is a citizen of Ghana who entered the United States on March 21, 2008, as a nonimmigrant visitor. The petitioner married his wife, a U.S. citizen, on November 18, 2010, in Maryland. The petitioner filed the instant Form I-360 self-petition on September 21, 2012. The director subsequently issued two Requests For Evidence (RFE) of the petitioner's good-faith entry into the marriage and his good moral character. The director found the petitioner's response to the RFEs insufficient and denied the petition accordingly. On appeal, counsel submits a letter, two affidavits, and copies of previously submitted evidence. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility for the following reasons.

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

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his statement dated June 20, 2012, the petitioner indicated that he got married on November 18, 2010, and that he and his wife lived happily. In his statement dated August 5, 2013, the petitioner recalled that he met his wife in June, 2009, at the mall and they started talking and exchanged telephone numbers. They started dating and were married after a year of dating. In a letter to his attorney dated May 8, 2013, the petitioner noted that their joint checking account did not show much activity because neither he nor his wife worked, and their friends supported them. The petitioner did not describe in probative detail how he met his wife, their courtship, engagement, wedding, or any of their shared experiences, aside from the abuse.

The petitioner submitted affidavits from friends. [REDACTED] indicated that she attended the petitioner and his wife's marriage ceremony. [REDACTED] stated that the petitioner and his wife moved in with him. [REDACTED] recalled that she was invited to the petitioner's wedding but she was unable to attend. She also spent Thanksgiving dinner at their residence in 2010, and the petitioner introduced everyone to his wife. [REDACTED] stated that the petitioner was legally married to his wife. [REDACTED] indicated that she witnessed their marriage ceremony and that they moved in with her after the ceremony. She also stated generally that their marriage was legitimate. These affidavits do not describe the affiants' observations in probative detail or provide any substantive information regarding the petitioner's interactions and relationship with his spouse prior to and during their marriage. The director correctly concluded that these affidavits were insufficient to demonstrate that the petitioner married his wife in good faith.

The petitioner submitted two joint checking account statements and photographs of himself and his wife. The checking account statements have a low balance and do not contain sufficient activity to show that both he and his wife used the account. The photographs of the petitioner and his wife at their wedding and on one other unspecified occasion are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. This evidence, without probative testimony, is insufficient to establish the petitioner's intentions upon entering into the marriage.

On appeal, the petitioner submits two affidavits from friends. [REDACTED] indicates that the petitioner looked in love and kept telling him how much he loved his wife after they married. [REDACTED] states that the petitioner advised him of his marriage to his fiancée. The petitioner also submits two letters that counsel claims were previously filed, but that were not previously part of the record. [REDACTED] indicates that she met the petitioner and his wife at a family gathering. [REDACTED] states that she was at the petitioner and his wife's wedding ceremony and that she dined with them after the ceremony. None of the affiants provides any detail or probative description of the petitioner and his wife's interactions or relationship, apart from the abuse, and counsel himself acknowledges that Ms. [REDACTED] and Ms. [REDACTED] statements are "brief and lacking in descriptive detail."

The relevant evidence submitted below and on appeal does not establish that the petitioner married his wife in good faith. In his affidavits, the petitioner briefly describes meeting his wife and states that they dated and were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. Similarly, the affidavits from his friends are general and do not discuss in probative detail their observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. When viewed in the aggregate, the record does not demonstrate, by a preponderance of the evidence, that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Good Moral Character*

Beyond the decision of the director, the petitioner also fails to demonstrate his good moral

character.<sup>1</sup> The petitioner did not discuss his moral character in either of his statements and consequently failed to submit primary evidence of his good moral character as required by 8 C.F.R. § 204.2(c)(2)(v). Although he submitted a clear criminal background check from the Maryland Department of Public Safety and Correctional Services, the check is dated October 10, 2012, and the record indicates that the petitioner was convicted of a crime in [REDACTED] 2012. In his September 10, 2013 letter, counsel stated that the petitioner pled guilty to misuse of a social security number and was scheduled for sentencing in [REDACTED] 2013. Public records show that on [REDACTED] 2013, the petitioner was convicted of Misuse of a Social Security Account Number under Title 42, Section 408(a)(7)(B) of the United States Code (U.S.C.) and was sentenced to eleven months imprisonment.<sup>2</sup> The petitioner's offense is a crime involving moral turpitude. His conviction and imprisonment bar a finding of his good moral character under subsections 101(f)(3) and (7) of the Act.

On appeal, counsel asserts without legal support or analysis that the petitioner's offense is not a crime involving moral turpitude. However, several federal circuit courts of appeals have held that misuse of a social security number is a crime involving moral turpitude. See *Guardado-Garcia v. Holder*, 615 F.3d 900 (8th Cir. 2010) (misuse of a social security number under 42 U.S.C. § 408(a)(7)(B) is a crime involving moral turpitude). See also *Lateef v. Department of Homeland Security*, 592 F.3d 926 (8th Cir. 2010) (misuse of a social security number under 42 U.S.C. § 408(a)(7)(A) is a crime involving moral turpitude); *Hyder v. Keisler*, 506 F.3d 388 (5th Cir. 2007) (same).<sup>3</sup>

The petitioner failed to submit primary evidence of his good moral character as required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). While this petition was pending, the petitioner was convicted of a crime involving moral turpitude and sentenced to eleven months of imprisonment. The record indicates that the petitioner has been imprisoned for over six months pursuant to his conviction and sentence. Subsections 101(f)(3) and (7) of the Act consequently bar a finding of his good moral character, which is required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

### Conclusion

On appeal, the petitioner has not established that he entered into the marriage in good faith. Beyond the decision of the director, the petitioner also did not establish that he is a person of good moral character.

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<sup>1</sup> A 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).

<sup>2</sup> United States District Court, District of Maryland, Case Number [REDACTED]

<sup>3</sup> Like 42 U.S.C. § 408(a)(7)(A), 42 U.S.C. § 408(a)(7)(B), under which the petitioner was convicted, involves an intent to deceive indicative of a crime involving moral turpitude. See *Guardado-Garcia v. Holder*, 615 F.3d at 902 (such intent renders 42 U.S.C. § 408(a)(7)(B) a crime involving moral turpitude). See also *Matter of Correa-Garces*, 20 I. & N. Dec. 451, 454 (BIA 1992) (falsely representing a social security account number with an intent to deceive is a crime involving moral turpitude).

He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons. 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.