U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: APR 0 2 2015 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 Acting 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 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, determining that the petitioner did not demonstrate that he has a qualifying spousal relationship with a U.S. citizen and is eligible for immigrant classification based upon that relationship. The director also determined that the petitioner had failed to establish that his spouse subjected him to battery or extreme cruelty, that he was a person of good moral character, that he and his spouse resided together, and that he entered into his marriage in good faith.

On appeal, the petitioner submits a brief and additional 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).

An individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she 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) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

In regards to determining a self-petitioner's moral character, section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), provides:

> Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding the petitioner to be of good moral character under subparagraph (A)(iii), A(iv), (B)(ii), or (B)(iii) if the [Secretary] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), 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:

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
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> * * *
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> (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].
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> * * *
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> (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.
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> (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.
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> (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.
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> (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.

As referenced in section 101(f)(8) of the Act, 8 U.S.C. § 1101(f)(8), "[n]o 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 . . . one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43) of this section)."

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.
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> (ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities . . . .
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> (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.

(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.

Pertinent Facts and Procedural History

The petitioner was born in Ghana and last entered the United States as an F-1 nonimmigrant student on May 28, 2005. He married his spouse, D-H-,[1] a U.S. citizen, on , 2006, in Pennsylvania, and they divorced on , 2009. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on May 31, 2013. The director

[1] Name withheld to protect the individual's identity.

denied the petition, finding that the petitioner failed to establish that he has a qualifying spousal relationship with a U.S. citizen and is eligible for immigrant classification based upon that relationship. The director also determined that the petitioner had failed to establish that his spouse subjected him to battery or extreme cruelty, that he was a person of good moral character, that he and his spouse resided together, and that he entered into his marriage in good faith. The petitioner filed a timely appeal.

The petitioner maintains on appeal that the director was required to issue a Notice of Intent to Deny (NOID) before issuing the final decision, and requests that we remand the case for issuance of a NOID and readjudication. The applicable regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides the agency the discretion to issue a request for additional evidence if required initial evidence is not submitted or does not demonstrate the petitioner's eligibility, but does not bind the director to issue an RFE or a NOID. In this case, the director determined that the petitioner's failure to establish a qualifying spousal relationship and corresponding eligibility for immigrant classification precluded approval and that other grounds of ineligibility also applied. Regardless, we review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility for the following reasons.

Qualifying Spousal Relationship and Corresponding Eligibility for Immediate Relative Classification

As noted, the petitioner's divorce from D-H- took legal effect 2009, and he did not file the instant petition until May 31, 2013. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act based on his relationship with D-H- because he was not D-H-'s bona fide spouse within two years of the date he filed this petition.

On appeal, the petitioner does not dispute that the petition was filed more than two years after he and D-H- divorced. Instead, he asserts that he is the beneficiary of an approved Form I-130 petition that remains valid and that the priority date from that petition converts to an approved Form I-360 self-petition. In this case, even if the priority date from the petitioner's Form I-130 petition remains valid, the petitioner must still demonstrate that he meets the eligibility requirements under section 204(a)(1)(A)(iii) of the Act, including establishing a qualifying spousal relationship with D-H- within two years of the filing date of the self-petition. Although U.S. Citizenship and Immigration Services (USCIS) may transfer the priority date of a previously filed immigrant visa petition to a subsequently filed self-petition in certain instances, the petitioner did not cite any statute, regulation or case law that gives USCIS the authority to approve an otherwise unapprovable Form I-360 self-petition simply because the priority date of a prior Form I-130 petition has transferred. *Cf.* 8 C.F.R. § 204.2(h)(2).

The petitioner failed to file the instant self-petition within two years of the legal termination of his marriage to D-H-. Accordingly, he has not demonstrated the qualifying spousal relationship with D-H- and his corresponding eligibility for immediate relative classification, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Joint Residence

On the Form I-360 self-petition, the petitioner asserted that he and D-H- last resided together at an address on , in , Pennsylvania, but did not indicate how long he and D-H- resided together. The petitioner did not initially provide his own affidavit. In support of his petition, the petitioner provided an affidavit from his friend, who stated that he "frequently visited [the petitioner] and ex-wife [D-H-] in their home in [sic] Pennsylvania." Mr. did not describe the marital residence that the petitioner allegedly shared with D-H-, list the address, describe any particular visit, or otherwise include any probative information to establish the petitioner resided with D-H-.

On appeal, the petitioner submits an affidavit in which he claims that he and D-H- resided together at the address on in Pennsylvania beginning in December 2004, but does describe their marital residence. He suggests that D-H- had lied about their date of separation in the divorce proceedings,[2] and that she destroyed much of his evidence regarding their joint residence. Accordingly, the petitioner requests that the agency review his prior immigration applications and petitions.

A review of the petitioner's record shows additional contradictory information. For example, although the petitioner claimed he lived with D-H- at an address on in , Pennsylvania, when he submitted his 2007 Form I-485, Application to Register Permanent Residence or Adjust Status, he included copies of their driver's licenses showing that only the petitioner resided at that address. D-H-'s driver's license was issued on August 5, 2006, more than four months after their marriage, but reflects that she resided at a different address in , Pennsylvania during the time the petitioner claimed she lived with him in Pennsylvania. The record also contains inconsistent payroll documents that were included with the Form I-864, Affidavit of Support, that D-H- filed on behalf of the petitioner. The payroll records are dated in 2006 and 2007 and show that D-H- was living and working in Pennsylvania during the time the petitioner claimed she lived with him in Pennsylvania. Based on the contradictory information that the petitioner has provided regarding his claimed residence with D-H- and the lack of any other probative evidence to show that he and D-H- resided together, the petitioner has not established by a preponderance of the evidence that he shared a joint residence with D-H-.

Extreme Cruelty or Battery

The petitioner did not initially provide an affidavit. Instead, he submitted an April 29, 2011 declaration from his mother, who said that D-H- called her several times on the phone during the

[2] According to the divorce complaint that the petitioner provided with his Form I-360 self-petition, he and D-H- married on 1977, and had been "separated for a continuous period of over two (2) years, to wit, since December 10, 2005." It is unclear why the claimed date of marriage on the complaint is misstated by 20 years, as the petitioner was not even born until 1977. Regardless, the complaint shows that he and D-H- had not resided together since prior to their marriage on , 2007.

course of D-H-'s marriage to the petitioner in order to ask about other women in the petitioner's life. The petitioner's mother asserted that she had to reassure D-H- on one occasion that a photograph of another woman that D-H- had found in the petitioner's belongings was of the petitioner's cousin. Although the petitioner's mother indicated that the petitioner had told her that D-H- had anger problems and subjected him to mental, emotional, and psychological cruelty, the petitioner's mother did not claim to have witnessed any episodes of abuse or extreme cruelty and failed to provide any specific description of the claimed abuse.

The petitioner also submitted several other letters from friends and family; however, these primarily related to his character and work habits. Only [redacted] described witnessing D-H-'s behavior. In his statement dated May 28, 2011, Mr. [redacted] stated that D-H- "had a serious anger problem that I witnessed on several occasions," but he did not describe any of the incidents he claimed to have witnessed or provide any probative details to establish that D-H- battered the petitioner or subjected him to extreme cruelty.

The petitioner submitted a February 14, 2009 psychological evaluation in which his clinician recounted the episodes of alleged abuse that the petitioner described to her. For example, the petitioner asserted that D-H- was jealous of his friendship with other females, and was unhappy when he conversed with them in their Ghanaian dialect. He asserted that D-H- even called the phone numbers on his telephone bill to see if he had been talking to other females, visited him unannounced at three A.M. one day to see if he was sleeping with a friend who was visiting, and that D-H- threw a toy at him during one argument. The clinician concluded by indicting that she believed the petitioner's "claims of spousal abuse due to maltreatment, demeanment [sic], intimidation and physical assault by . . . [D-H-] are founded."

In an undated statement provided on appeal, the petitioner asserts that D-H- became very jealous when his previous girlfriend gave birth to his son and created a set of rules for him to follow. He indicates that she allowed her family to make derogatory statements about his country of origin and that he stopped attending dinners with her family. He maintains that D-H- became more and more jealous of his past female acquaintances including his relationship with his female cousin, that D-H- once threw a glass at him, and that she also attempted to stab him with scissors.

The petitioner asserts on appeal that the director did not fully consider the record of proceeding. Specifically, the petitioner points to his clinician's assessment in the psychological evaluation as evidence that D-H- subjected the petitioner to battery or extreme cruelty. As discussed, we have reviewed this case de novo, including the psychological evaluation. The petitioner's own evidence regarding whether he even resided with D-H- during the period that he claimed she subjected him to battery and extreme cruelty lacks probative information and is contradictory. Further, as it relates to the petitioner's claim of abuse, the statements of the petitioner, his family, and his clinician are not sufficient to show that D-H- battered the petitioner 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). The petitioner has not provided sufficient evidence to demonstrate by a preponderance of the evidence that D-H- subjected him to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The petitioner's record shows the following offenses:

1. On , 2002, the petitioner was arrested by the Pennsylvania Police Department for Open Lewdness. According to a March 24, 2008 Record of Sworn Statement that the petitioner made to USCIS, his arrest was for urinating in public and he was fined. The record contains an October 18, 2007 letter from the Clerk of the Courts indicating that a name search revealed that they have no record on file for the petitioner.

2. The petitioner was arrested under the name in Minnesota on 2005, and charged with Financial Transaction Card Fraud for paying for his hotel room with a stolen credit card. (Case No.). The complaint was denied and he was not prosecuted. The record of the offense was subsequently expunged.

3. On 2006, the petitioner was arrested by the Pennsylvania Police Department and charged with various offenses relating to retail theft of alcohol. On , 2007, all charges were withdrawn with the exception of the charge of Receiving Stolen Property. Proceedings were suspended with no further penalty, and the petitioner was admitted to an Accelerated Rehabilitative Disposition program for a 12-month probationary period and ordered to pay restitution in the amount of $788.53. (Case No.). On 2007, his probation was terminated.

4. On 2010, the petitioner pled guilty and was convicted in the of conspiracy to make, possess, and cash counterfeit payroll checks in violation of 18 U.S.C. § 371, a felony punishable by up to five years of incarceration. (Case No.). He was sentenced to time served and ordered to pay restitution of $43,645.98.

The petitioner's conviction for conspiracy to commit an offense against the United States (making, uttering, or possessing a counterfeit security document) in violation of 18 U.S.C. § 371 was an aggravated felony. On appeal, the petitioner does not contest that he was convicted of an aggravated felony. Instead, he contends that the director failed to consider equities in the petitioner's favor and that the petitioner's conviction is waivable under section 212(h) of the Act. Section 212(h) of the Act sets forth inadmissibility waiver provisions for certain offenses. However, the issue in this proceeding is the petitioner's eligibility to receive immigrant classification as an abused spouse of a U.S. citizen pursuant to section 204(a)(1)(A)(iii) of the Act, not his admissibility to the United States.

The implementing regulations at 8 C.F.R. § 204.2(c)(1)(vii) provide that 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. Section 101(f)(8) of the Act, 8 U.S.C. § 1101(f)(8), prescribes that no person shall be found to have good moral character if he or she at any time has been convicted of an aggravated felony. The petitioner's felony conviction of a violation of 18 U.S.C. § 371, was an aggravated felony, in this case defined under section 101(a)(43)(M)(i) of the Act, 8 U.S.C. § 1101(a)(43)(M)(i) and section 101(a)(43)(U) of the Act, 8 U.S.C. § 1101(a)(43)(U), as conspiracy to commit an offense that "involves fraud or deceit in which the loss to the victim or victims exceeds $10,000." The petitioner was convicted of conspiracy to make, possess, and cash counterfeit payroll checks and sentenced to time served and restitution in the amount of $43,645.98. Accordingly, the petitioner was convicted of an aggravated felony, which precludes a finding of his good moral character pursuant to section 101(f)(8) of the Act.

The petitioner has not shown that his conviction for an aggravated felony is waivable. Section 237(a)(2)(A)(vi) of the Act, 8 U.S.C. § 1127(a)(2)(A)(vi), only provides a deportability waiver for aliens convicted of an aggravated felony who have been granted a full and unconditional pardon by the President of the United States or by a state Governor. The USCIS does not have the authority to grant such a pardon and the record does not indicate that the petitioner has received such a pardon. Consequently, the "waiver authorized" by section 237(a)(2)(A)(vi) of the Act is not "waivable with respect to the petitioner" in this case under section 204(a)(1)(C) of the Act. The present record thus fails to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good-Faith Marriage

The petitioner did not initially provide a statement with his Form I-360 self-petition. He provided statements from his mother and but apart from their general assertions regarding the alleged abuse, these individuals did not describe any specific visits with the petitioner and D-H-, discuss the petitioner's shared marital routines with D-H-, or provide any insight into the petitioner's relationship with D-H- that would establish his good-faith entry into the marriage.

On appeal, the petitioner states that he and D-H- met in 2002 when they were both college students. He indicates that they began to date in 2004, and that D-H- moved into his residence in Pennsylvania. He indicates that he was hesitant to marry, but that she pressured him into their marriage. Apart from describing the battery and extreme cruelty to which she allegedly subjected him, the petitioner does not provide probative information regarding his intentions at the time he entered into marriage with D-H-. The petitioner does not, for example, describe his marriage proposal to D-H-, indicate whether anyone else was present either during the marriage ceremony or for a post-wedding celebration when he married D-H-, or include any probative details about their shared marital routines apart from the abuse.

The petitioner contends on appeal that he was not required to establish his good-faith entry into marriage with D-H- by clear and convincing evidence. The petitioner cites to numerous unrelated cases relating to Form I-130 petitions and suggests that his previously approved Form I-130 petition is sufficient evidence of his good-faith entry into marriage. We have not applied a "clear and

convincing" standard of evidence to the petitioner's evidence in this matter and, as discussed, prior approval of a Form I-130 does not establish the petitioner's eligibility for this immigrant classification. *See INS v. Chadha,* 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002). In the case of the Form I-130, D-H- was the petitioner and the affected party in that proceeding, therefore any determinations regarding good-faith entry into the marriage attached to her own intentions rather than those of the petitioner in the instant matter. The petitioner's statements and those of his friend and mother do not provide probative information regarding his courtship, wedding, marital residences, and experiences with D-H-. The petitioner consequently has not established by a preponderance of the evidence that he entered into marriage with D-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.