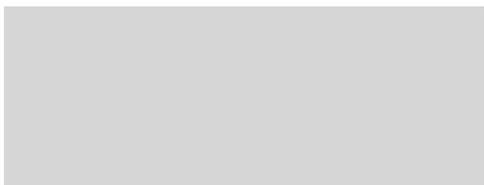


(b)(6)

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



DATE: **APR 08 2015**

FILE #: [REDACTED]

IN RE: 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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 sustained.

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 former spouse.

The director denied the petition for failure to establish that the petitioner resided with his former wife and married her in good faith. On appeal, the petitioner submits a brief.

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, a citizen of Guinea, first entered the United States on August 17, 2002, as an F-1 nonimmigrant visitor. The petitioner married, T-J-, a U.S. citizen, on [REDACTED] in [REDACTED] Illinois. T-J- filed two I-130 immigrant petitions on behalf of the petitioner, both of which were eventually denied. The petitioner filed the instant Form I-360 self-petition on February 22, 2012. The couple divorced on [REDACTED]. The director issued a request for additional evidence (RFE) of joint residence and good-faith entry into the marriage, among other issues. The petitioner timely responded with additional evidence, which the director found insufficient to establish his eligibility. The director subsequently issued a Notice of Intent to Deny (NOID) the petition, to which the petitioner timely responded. The director ultimately denied the petition, and the petitioner timely appealed.

We review these proceedings *de novo*. *De novo* review of the relevant evidence reveals that the petitioner has established eligibility for the benefit sought. The appeal will be sustained for the following reasons.

Joint Residence

The petitioner has established by a preponderance of the evidence that he resided with his U.S. citizen spouse. In his Form I-360 self-petition, the petitioner stated that he resided with T-J- from March 2005 until January 2007; however, the petitioner also stated that he last resided with his spouse in August 2008. In a personal affidavit dated February 3, 2012, the petitioner indicated that he was residing with a roommate when he and T-J- married in [REDACTED]. He recounted that

he subsequently found an apartment on [REDACTED] for him and his wife to share. The petitioner asserted that he signed the lease in February, and the couple began to occupy the residence in March 2005. The petitioner submitted a lease for the [REDACTED] apartment, signed by both he and T-J-, for the period of March 1, 2005 through February 28, 2006. The petitioner also provided photocopies of his driver's license and T-J-'s identification card showing the [REDACTED] address.

In response to the RFE, the petitioner submitted an additional personal affidavit, dated June 26, 2013, in which he described T-J- cooking and babysitting in the couple's apartment, and taking her son and sisters to a playground near the [REDACTED] residence. The petitioner submitted jointly filed federal income tax returns for 2005, 2006, and 2007, listing both the petitioner and T-J- at the [REDACTED] residence. The petitioner also provided an affidavit from his former roommate, [REDACTED] who stated that he and the petitioner were sharing a one-bedroom apartment when the petitioner married his wife. He further stated that the petitioner looked for a new apartment in which to reside with his wife, and that he helped the petitioner move to the new apartment when the petitioner and T-J- moved in together at the [REDACTED] apartment in March 2005.

In the NOID, the director indicated that the submitted documentation did not establish the petitioner's cohabitation with T-J- for the duration of the marriage. The director cited evidence submitted by the petitioner's abusive spouse in support of her Form I-130 petitions, and found the petitioner not credible based on an investigation associated with those petitions. In response to the NOID, the petitioner submitted an affidavit dated January 6, 2014, from [REDACTED] T-J-'s foster mother, attesting to visiting the petitioner and T-J- at their apartment. She further indicated that on occasion, T-J-'s younger sisters would spend the night with T-J- at the apartment. The director denied the petition, relying on his prior adverse credibility finding, based on the Form I-130 proceedings, and discounting much of the relevant evidence.

Upon de novo review of the record, the preponderance of the relevant evidence demonstrates that the petitioner resided with his wife. The statute does not require the petitioner to establish that he resided with his spouse for the entirety of a lease, or the marriage. Rather the petitioner must demonstrate that he resided with her for some period of time while the couple was married. Notwithstanding the inconsistencies noted by the director, the petitioner's affidavits provide a credible account of his and his wife's joint residence beginning in March 2005. They are supported by leases in both parties' names, joint tax returns, and affidavits from the petitioner's friend and his former mother-in-law. In his June 26, 2013 affidavit, the petitioner indicated that his wife went back and forth to Iowa beginning in 2007, and removed all of her items from the apartment in 2008. In his February 2, 2012 affidavit, the petitioner described his attempts to reconcile with his wife after her departure, assisted by T-J-'s foster mother. The petitioner stated that T-J- initially agreed to return once she could make arrangements for her son's schooling, but ultimately did not return to the marriage. In an affidavit dated January 6, 2014, T-J-'s foster mother, [REDACTED] recounted T-J-'s frequent visits to [REDACTED] after she moved to Iowa, and discussed her efforts to reunite T-J- with the petitioner during those visits. Thus, the fact that T-J- maintained a lease with the petitioner through 2009 is not inconsistent with the petitioner's representations regarding the couple's

attempted reconciliation. When viewed in the aggregate, the preponderance of the relevant evidence establishes that the petitioner resided with his wife as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The petitioner has also established by a preponderance of the evidence that he entered into his marriage in good faith. In his initial affidavit, dated February 2, 2012, the petitioner recounted meeting T-J- through a classmate's July 4th party in 2003. The petitioner indicated that his classmate, [REDACTED] the sister-in-law of T-J-'s foster mother, invited him to her family's July 4th celebration and introduced him to T-J- at the event. He stated that he subsequently saw T-J- at other family gatherings to which [REDACTED] invited him. The petitioner submitted joint leases in the names of him and T-J-; cable bills dated from 2007 to 2009 in T-J-'s name for service at the [REDACTED] apartment; and photographs of the couple's wedding ceremony and reception, and the couple together on other occasions. The petitioner also submitted numerous joint checking account statements; however, the statements do not show that more than one person used the account.

In response to the RFE, the petitioner provided an additional personal affidavit, dated June 26, 2013, in which he described the couple's 18-month courtship. He also recounted experiences that the couple shared early in their marriage, including T-J- cooking Nigerian food under her mother's instruction, and receiving out-of-town family members for visits. The petitioner discussed regular activities that the couple did together, such as grocery shopping, clothes shopping, dining at restaurants, and seeing each other at the park when the petitioner was on his way home from school. The petitioner also described arguments that the couple had in their shared residence related to which television channel to watch, and the appropriate volume at which to listen to music. In addition, the petitioner submitted jointly filed federal income tax returns for 2005, 2006, and 2007; and a letter from his prior roommate, [REDACTED] recounting that T-J- would frequently visit the apartment, and that [REDACTED] would occasionally go to dinner and spend the holidays with the petitioner and T-J- during their courtship. [REDACTED] also indicated that he was present at the couple's engagement, and described helping the petitioner move into the [REDACTED] apartment after the petitioner and T-J- married. In response to the NOID, the petitioner submitted an affidavit from T-J-'s foster mother, [REDACTED] in which she recounted that the petitioner and T-J- met at a 4th of July barbecue at her home in 2003. She described the couple's courtship, indicating that the petitioner spent time at her home with her and T-J-, took T-J- and her son out to dinner and to movies. She attested to the petitioner spending numerous holidays and special occasions with T-J- and her family. She also described her attempt to help the couple reconcile when the relationship began to deteriorate.

De novo review of the relevant evidence establishes that the petitioner entered into his marriage with T-J- in good faith. The director erred in finding that minor discrepancies noted during the petitioner's I-130 interview with his abusive spouse, and speculation regarding those proceedings, outweigh the credible evidence submitted by the petitioner in support of the instant Form I-360 self-petition. The director correctly noted that the joint checking account statements, which do not indicate that the account was used by more than one person, do not demonstrate that the couple shared financial ties. However, such a demonstration is not a requirement for the instant petition, as 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 relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). Here, the petitioner credibly described the couple’s courtship, shared residence, and experiences. Affidavits, photographs, and other joint documentation also support the petitioner’s claims. The petitioner has therefore established by a preponderance of the relevant evidence that he married his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

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). On appeal, the petitioner has met this burden. He has overcome the director’s grounds for denial and demonstrated that he resided with his wife during their marriage and that he married her in good faith. Because he has established his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.