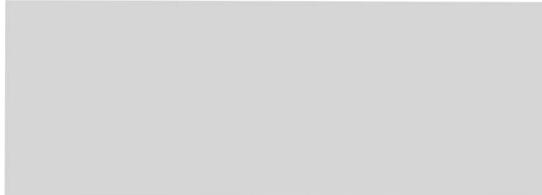




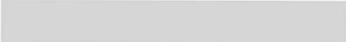
U.S. Citizenship
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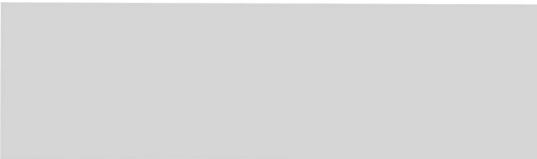
Date: **APR 20 2015**

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:



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 entered into the marriage with his wife in good faith.

On appeal, the petitioner reasserts his eligibility and submits 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).

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:

(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.

* * *

(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 [REDACTED] and entered the United States as a B-1 nonimmigrant visitor on March 19, 2002. He married his U.S. citizen spouse, I-K-, on [REDACTED], 2011, in [REDACTED] Texas.¹ The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on August 2, 2012. On August 15, 2012, the director issued a request for evidence (RFE) of the petitioner's good moral character. The petitioner timely responded. On June 7, 2013, the director issued an RFE that the petitioner entered into his marriage with I-K- in good faith. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility on this ground. The director denied the petition and the petitioner filed an appeal.

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.

Good-Faith Entry into Marriage

On his Form I-360 self-petition, the petitioner indicated that he lived with I-K- from October of 2010 to May of 2012. In his initial statement, the petitioner recounted meeting I-K- on or about July 4, 2010, at the house of a friend in [REDACTED]. He explained that he and I-K- went on a date to "Friday's" the next day, and after two weeks of courtship, he had dinner at I-K-'s house and met her three children for the first time. The petitioner stated that they decided to live together and he moved from New York City to Oklahoma on November 14, 2010. The petitioner indicated that because he did not have a job, he took care of the three children. After their marriage on [REDACTED] 2011, the

¹ Name withheld to protect identity.

petitioner alleges that they decided to move to New York. The petitioner explained that he and I-K- moved to New York in August of 2011, and temporarily left the children in Oklahoma with their grandmother with the intent to send for them at a later date. According to the petitioner, his wife took a night job at [REDACTED] pizza and he worked in an unspecified job during the day. The petitioner indicated that on or about May 12, 2012, he went to his wife's place of employment to get the keys for their apartment, and was surprised when the shift manager told him that his wife had changed to a day shift about two months prior and had already left for the day at 6:30 pm. The petitioner asserted that his wife became angry when she found him waiting outside their apartment the next morning, accused him of spying on her, and scratched his arm. According to the petitioner, I-K- spent the next three weeks going out at night and would not tell him where she had been. The remainder of the petitioner's affidavit focuses on I-K-'s abuse, including her threat to have him deported, and her subsequent abandonment of him. The petitioner did not provide any probative information regarding their courtship, his proposal, their wedding ceremony, or shared marital routines to establish his good-faith entry into the marriage.

The petitioner initially submitted monthly bank statements for August of 2011 to January of 2012, reflecting the name of the petitioner and I-K- at an address in Oklahoma, and one bank statement for the period ending on July 6, 2012, reflecting their names and an address in New York. The petitioner claimed on his Form I-360 self-petition and affidavit that he and I-K- were residing in New York at the time the Oklahoma account statements were issued. Moreover, he asserted that they had already ceased to reside together when the July 2012 New York account statement was issued. In addition, the statements reflect small balances and little activity in any given month. For example, the statement for the period ending on November 3, 2011, shows no transactions, and an ending and beginning balanced of \$4.00; the statement for the month-long period ending on December 6, 2011 shows a single deposit of \$50 and no other transactions; and the statement for the period ending on January 5, 2012 shows three deposits and three withdrawals leaving a balance of \$4.00. These documents are not probative in establishing the petitioner's good-faith intent. Although the petitioner also provided utility bills showing his and I-K-'s names at an address in New York, only one of the statements covers the period in which he claimed to have lived with I-K-. Accordingly, the bank statements and single cable bill do not establish that petitioner entered into his marriage with I-K- in good faith.

In response to the director's June 7, 2013 RFE of shared emotional, economic or domestic bonds, the petitioner provided an affidavit that is nearly identical to his initial affidavit. The petitioner added that he felt lonely when he first left I-K- to prepare for his move from New York to Oklahoma, but did not provide any additional details or insights into his courtship or marriage. The petitioner also submitted affidavits from friends. [REDACTED] explained that he had been friends with the petitioner since their childhood. Mr. [REDACTED] stated that when the petitioner first met I-K- in Oklahoma, the petitioner called Mr. [REDACTED] "several times a day" to tell him how wonderful I-K- was. Mr. [REDACTED] said he first met I-K- when she and the petitioner moved back to New York in August of 2011. Although Mr. [REDACTED] said that he and his wife often met the petitioner and his wife for dinner and got to know her well, he did not describe any specific dinner, conversation, or interaction. Instead, Mr. [REDACTED] described having the petitioner spend the night at his house in May of 2012 and stated that he and his

wife saw scratches on the petitioner's arms the next day.

also stated that he had been friends with the petitioner since they were children, and that the petitioner called him from Oklahoma when he first met I-K- to state that he had met a great lady. Mr. indicated that the petitioner "could not stop loving her like crazy" but that the marriage failed when I-K- cheated on the petitioner with the father of her children. Mr. also stated that he went out to dinner with the petitioner, I-K-, and Mr. on several occasions, but did not describe any particular dinner or evening that he spent with the petitioner and I-K-. Both Mr. and Mr. said that the petitioner loved his wife but did not provide probative details to establish the petitioner's good-faith entry into marriage with I-K-.

On appeal, the petitioner contends that his friends were aware of his state of mind and good-faith intent when he entered into marriage with I-K- based on his telephone calls to them and the dinners they all shared when he and I-K- had moved to New York; however, the petitioner does not describe any of the conversations or dinners in detail, or otherwise provide any additional probative details regarding his relationship with I-K-. For example, the petitioner does not describe any specific dates, meals, or shared marital routines with I-K-. He provides a copy of a one-year lease for an apartment in the , New York that he and I-K- signed. The lease is for a term beginning on December 1, 2011; however, it does not establish that they actually shared a marital life at that address after the lease was signed. The petitioner also provides some mobile phone bills; however, the bills are addressed solely to the petitioner. The petitioner also submits additional gas and cable bills dated June, July, and November of 2012, whose billing periods cover the period after which he claimed to have resided with I-K-. Finally, the petitioner submits an undated letter from the bank to I-K- stating that it had attempted without success to reach her, but does not suggest that she was living with the petitioner or reflect his name on the account. The additional evidence that the petitioner provides on appeal does not establish that he and I-K- shared a marital life, and does not provide any probative details to establish the petitioner's good-faith entry into the marriage.

Although USCIS must consider all credible, relevant evidence of the petitioner's good faith marriage, 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). Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit specific 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, the affidavits from the petitioner and his friends lack probative details of the petitioner's marital relationship. The petitioner has not established by a preponderance of the evidence that he entered into the marriage with I-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to establish that he entered into the marriage with I-K- in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

(b)(6)



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NON-PRECEDENT 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.