U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-T-S-

DATE: DEC. 4, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. APPLICABLE 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 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.
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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.

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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> (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.
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> (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.

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(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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner was born in Nigeria and last entered the United States on January 23, 2005, as a B-2 nonimmigrant visitor. He married, S-S-, a U.S. citizen, on 2006, in Maryland.[1] The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on August 22, 2011. On August 29, 2011, the Director issued a request for evidence (RFE) of the Petitioner's good moral character, and the Petitioner timely responded. On November 27, 2012, the Director issued an RFE that, among other things, the Petitioner resided with S-S- and that he entered into marriage with her in good faith. The Petitioner responded with additional evidence which the Director found was insufficient and denied the petition on these two grounds. The Petitioner filed a timely appeal. On August 21, 2015, we issued a Notice of Derogatory Information and Intent to Dismiss (NOID) advising the Petitioner of contradictory information in his administrative record and providing him with the opportunity to respond. The NOID and information contained within are incorporated here by reference. The Petitioner timely responded to our NOID.

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal and in response to the NOID, does not establish the Petitioner's eligibility.

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

III. ANALYSIS

A. Joint Residence

The Director correctly determined that the preponderance of evidence submitted below did not establish that the Petitioner resided with S-S-. On the Form I-360, the Petitioner stated that he resided with S-S- from October 13, 2006, to May 10, 2011, and that their last joint address was on Maryland.

In the August 11, 2011 affidavit that the Petitioner submitted with the petition, he asserted that he and S-S- resided together in after their marriage and moved to Maryland in 2010 but did not probatively describe their residences, specific dates of residence at each address, shared belongings, and marital routines other than as it generally related to the claimed abuse. He further indicated that S-S- "packed out" of the residence on after he sought a protective order against her on 2011. The Petitioner claimed that S-S- began to subject him to battery and extreme cruelty beginning in 2010, after they had moved to the residence. The Petitioner provided a copy of a Temporary Protective Order (TPO) which he obtained against S-S- and which reflects that he advised the court that S-S- resided with him from January 2010 until 2011, the time during which he claimed that they resided together on The Petitioner did not provide a second personal affidavit in response to the Director's RFE. The statements submitted on the Petitioner's behalf, although generally asserting that the Petitioner and S-S- lived at the claimed marital addresses, did not provide any specific and detailed description of any residence.

The Petitioner also initially provided cable bills, telephone bills, and credit card statements for various months from August 2010 to August 2011. However, only the cable bills are addressed to the Petitioner and S-S- at their claimed joint residence. Moreover, several documents were issued after May of 2011, including an August 2, 2011 letter from the bank stating that the Petitioner shared a checking account with S-S-.

The marriage certificate submitted by the Petitioner indicates that S-S- provided a address and the Petitioner provided a Maryland address when they applied for their marriage license on October 20, 2006. Based on the information on the marriage certificate, the Petitioner and S-S- were not living together as of October 13, 2006, as he had claimed on the Form I-360 petition.

The Petitioner submitted a residential lease for an address on Maryland for a two-year period beginning February 1, 2010. According to the lease, their landlord was O-A-.[2] The Petitioner provided rent receipts with consecutive numbering for the period of February 2010 to July of 2011, all signed by "O-A-," and all reflecting that he and S-S- paid the rent

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

in cash. The Petitioner asserted that he and S-S- separated in of 2011, yet the landlord's rent receipts reflect both of their names well after the date of separation.

In response to the RFE, the Petitioner provided additional, earlier leases bearing his name and that of S-S-. The first lease is for an address on from January 1, 2007, to December 31, 2007. The second lease is for an address on from January 25, 2008, to January 25, 2009.

On appeal, the Petitioner asserts that he resided with S-S- from their wedding until May 2011, when he sought the TPO.

The Petitioner's administrative record contains additional documents that he provided in other immigration-related proceedings and which reflect information that contradicts his assertions in this Form I-360 proceeding. According to a 2007 Form G-325A, Biographic Information, the Petitioner indicated that he resided at an address on from October 2006 to January 10, 2007, the date he signed the form, and at an address on Maryland from September to October of 2006.

The Petitioner subsequently provided a Form G-325A dated July 24, 2010, in which he asserted the following regarding his claimed residences:

Address of Residence	Resided From:	Resided To:
	09/2006	10/2006
	10/2006	01/2010
	04/2008	02/2010
	02/2010	Present

The Petitioner's administrative record also contains a Form EOIR 42-B, Application for Cancellation of Removal, dated October 17, 2014, on which he asserted that he lived at the same addresses, but during different periods of time:

Address of Residence	Resided From:	Resided To:
	09/2006	12/31/2007
	01/01/2007	01/24/2008
	01/25/2008	01/31/2010
	02/01/2010	Present

The above Forms G-325A reflect that the Petitioner has made contradictory assertions regarding his claimed dates of residence at three of his prior claimed addresses during the period in which he claims to have resided with S-S-. These claims are also inconsistent with the leases he submitted as well as his claim on the Form I-360 that he began residing with S-S- on October 13, 2006, and his subsequent statement that they began residing together in after their marriage.

In addition, according to agency records, on November 13, 2014, U.S. Citizenship and Immigration Services (USCIS) Immigration Officers (IOs) visited the Petitioner's home on Maryland and found that he was living at that address with O-A-, his purported landlord. Both the Petitioner and O-A- confirmed to the IOs that O-A- was the mother of the Petitioner's son, who was born on , and that all three resided together at the The Petitioner advised the IO who questioned him that he lived at the with S-S- from January of 2009 through the beginning of 2010, and that he had been in a romantic relationship with O-A- since 2010. This contradicts the Petitioner's claims on his Form I-360 and accompanying statements to have resided with S-S- at until May of 2011, because he acknowledged to the OIs that he resided with O-A- for at least a portion of the period that he previously claimed to have been residing with S-S-, and it also contradicts his claim to have resided with S-S- until May of 2011. The Petitioner additionally misrepresented O-A- as his landlord on the lease agreement and rent receipts during a period of time that he was living with her and their son.

In our NOID, we advised the Petitioner of the contradictory information in his administrative record and provided him with a period of 33 days in which to respond. In response, the Petitioner advised that he and S-S- lived on "[o]n October 13, 2006," and that she "sometimes went to stay with her mother." He does not explain why neither of them listed the address on their marriage license if they were already living together. He further recounted that in April 2008, they both moved to the address on and provided two change of address notices issued by USCIS to the Petitioner and to S-S-, respectively. The Petitioner provides no additional probative details of any of the claimed marital residences from October 2006 to May 2011.

In response to our NOID, the Petitioner also explains that he "had wrongly filled the [F]orm G-325A with incorrect dates but the fact is that the address we lived at are correct." He does not explain which Form G-325A he allegedly filled out incorrectly or indicate which dates are actually correct.

With respect to the rent receipts, the Petitioner claims that he obtained them from his landlord and "had no clue about it." He asserts that he was the only tenant and that is why the receipts were consecutively numbered. He does not explain why he misrepresented O-A- as his landlord on the lease and rent receipts during a period of time that he was living with her and their son, or why O-A- issued receipts to the Petitioner and S-S- when O-A- was living with the Petitioner but S-S- was not. The Petitioner asserts that he did not remember telling the IOs who visited him that he had lived with S-S- at from January 2009 through the beginning of 2010 and denied telling them that he had been in a romantic relationship with O-A- since 2010, instead claiming that he donated sperm to O-A- after he and S-S- agreed to help her.

The Petitioner provides a new Form EOIR-42B, with an entirely new set of claimed dates of residence that does not match his prior leases, Form EOIR-42B, and 2007 and 2010 Forms G-325A:

Address of Residence	Resided From:	Resided To:
	03/2006	10/2006
	10/2006	04/2008
	04/2008	02/2010
	02/01/2010	Present

Although the Petitioner has submitted some documentation which lists him and S-S- at the claimed marital address, the Petitioner himself has not provided a probative and detailed discussion of their shared residences during their marriage. The statements submitted on the Petitioner's behalf also contain only general statements regarding the Petitioner's and S-S-'s addresses without providing substantive details of their actual residence together. Based upon this reason alone, the record is not sufficient to establish that the Petitioner resided with S-S-. However, in addition to providing insufficient evidence to establish his joint residence with S-S-, the Petitioner has not resolved the contradictory information in his administrative record and, in response to our NOID, presents additional inconsistent claims regarding his dates of residence during the time he claimed to have shared a marital residence with S-S-. Accordingly, the Petitioner has not established by a preponderance of the evidence that he resided with S-S-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Good-Faith Entry into Marriage

The Petitioner indicated that he met S-S- at a club called in Maryland on 2010, where S-S- was celebrating her birthday with friends. He briefly described their courtship, wedding, and subsequent claimed marital life together and provided evidence, such as affidavits from friends, who asserted that they had spent time with the Petitioner and S-S- after their marriage. However, neither the Petitioner nor the individuals who submitted statements on the

Petitioner's behalf provided specific discussions of shared occasions together, interactions between the Petitioner and S-S- that demonstrated their feelings and intentions toward each other in marriage, or any other probative details about their relationship to establish that the Petitioner entered into the marriage in good-faith.

The Petitioner also provided documents such as lease agreements, rent receipts, and shared accounts as evidence of their alleged life together. However, as discussed above, the Petitioner's administrative record contains inconsistent evidence relating to the dates and the locations that the Petitioner claims to have resided with S-S-, as well contradictory information regarding when he began to share romantic relations with and live with O-A- and ceased living with S-S-. With respect to his relationship and birth of a child with O-A- during the period that he claimed to be living with S-S-, the Petitioner asserts that he did not remember telling the IOs he had lived with S-S- at from January 2009 through the beginning of 2010. He also denied telling them that he had been in a romantic relationship with O-A- since 2010, but does not provide any additional information resolving the contradictory evidence or to establish his good-faith entry into marriage with S-S-. Accordingly, the Petitioner has not established by a preponderance of the evidence that he entered into marriage with S-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

C. Battery or Extreme Cruelty

Beyond the Director's decision, based on our *de novo* review of the record, the Petitioner has not established that S-S- subjected him to battery or extreme cruelty.[3] In his August 11, 2011 affidavit, although the Petitioner described several instances of battery and extreme cruelty, he claimed that those instances began in 2010, after he and S-S- both moved to the residence. The Petitioner provided a copy of a TPO which he obtained against S-S- which reflects that he similarly advised the court that the alleged abuse occurred during the time which he claimed to have resided with S-S- on The Petitioner also provided an evaluation from a licensed clinical social worker, who confirmed that the Petitioner recounted to him that S-S- became abusive toward the Petitioner beginning in February of 2010, after they had moved to the residence. Based on the Petitioner's assertions to the licensed clinical social worker, the licensed clinical social worker concluded that the Petitioner was "the victim of an extreme form of spousal abuse" while he resided with S-S- in Maryland.

As discussed above, however, the Petitioner's evidence regarding his residence with S-S- is both insufficient and inconsistent and does not establish that he shared a marital residence with S-S-. The record also contains contradictory information resulting from statements that the Petitioner made to

[3] An application or 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

IOs who visited him at the address. Specifically, during that site visit the Petitioner was found to be living with O-A-, and the Petitioner indicated that he had shared romantic relations with O-A-, fathered a child with her, and shared a residence with her during the time that he claimed S-S- resided with him and subjected him to battery and extreme cruelty. The Petitioner denies remembering or making these assertions to the IOs but, as discussed above, provides additional contradictory claims regarding his claimed residence with S-S-. These contradictory claims and assertions undermine the credibility of his claims. Consequently, the Petitioner has not established, by a preponderance of the evidence, that S-S- subjected him to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not demonstrated that he shared a marital residence with S-S-, that he entered into marriage with S-S- in good faith, and that she subjected him to battery or extreme cruelty. 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). 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.

ORDER: The appeal is dismissed.

Cite as *Matter of B-T-S-*, ID# 11537 (AAO Dec. 4, 2015)