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

(b)(6)

U.S. Citizenship and Immigration Services

Date: JAN 0 7 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 Ghana and entered the United States as a B-2 nonimmigrant visitor on October 13, 2002. He married his U.S. citizen spouse, T-W-, on January , Maryland.[1] The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on April 30, 2013. On September 6, 2013, the director issued a request for evidence (RFE) that, among other things, the petitioner entered into his marriage with T-W- 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 a timely 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

Although the petitioner's marriage certificate indicates that he married T-W- in January of on his Form I-360 self-petition, the petitioner indicated that he lived with T-W- from August of 2007 until June of 2012. In his initial accompanying statement, the petitioner recounted meeting T-W- on December at a party in Maryland. He explained that he soon met T-W-'s children and that they all went out to The petitioner stated that he sent balloons and flowers to T-W- on February , for her birthday and that they both realized they were in love on March after celebrating the petitioner's birthday. According to the petitioner, they dated for about a year before they decided to get married. After the marriage, the petitioner alleged that T-W- moved in

[1] Name withheld to protect identity.

with him, and initially left her daughter to live with T-W-'s mother, but that the daughter also eventually moved in with the petitioner and T-W-. The petitioner asserted that after six months, T-W- began to complain about the apartment being crowded although they did not have enough money to move to a larger space. The petitioner explained that after a year, T-W- moved her belongings and went to live with a friend, and that although he persuaded her to return after a few months, they continued to fight. The remainder of the petitioner's affidavit focuses on T-W-'s abuse, including her repeated threats to have him deported or to not follow through with his green card application. The petitioner asserted that "we were both never happy in the marriage due to all these issues we have been having from the time we moved in together." The petitioner did not provide any probative information regarding their courtship, his proposal, their wedding ceremony, or shared marital routines other than their arguments to establish his good-faith entry into the marriage.

The petitioner included affidavits from his friend and from family members. The petitioner's friend, described having witnessed T-W- tear the petitioner's shirt to prevent him from going out to celebrate his birthday with Mr. The petitioner's aunt, provided a December 2012 affidavit in which she described witnessing T-W- hit the petitioner with a telephone and another affidavit from 2006 in which she attested that the petitioner's marriage to T-W- was bona fide. Although Ms. attested that the petitioner and T-W- resided with her, she did not describe the petitioner's marital routines or interactions with T-W-, apart from episodes of abuse that she claimed to have witnessed or heard. The petitioner provided an affidavit from T-W-'s mother, who stated that her daughter's marriage to the petitioner was bona fide. She did not provide any details showing how she came to that conclusion or to establish that the petitioner entered into marriage with T-W- in good faith.

The petitioner also submitted bank statements for September 2010 to January of 2011, and for October of 2012. Although the statements reflect the name of the petitioner and T-W- at an address on Maryland, the petitioner also submitted copies of several U.S. savings bonds that he purchased in September, October, and November of 2010 and which show that he resided at a different address in Maryland during that same period. The petitioner also submitted a lease agreement showing that he and T-W- rented an apartment on Maryland in June of 2006 and single utility statement from September of 2006. It is noted that the petitioner's record of proceeding contains a previous Form G-325A, Biographic Information that the petitioner signed on October 15, 2010. Although the petitioner listed his residences since October 2002, he did not claim to have ever resided at an address on Accordingly, the lease agreement and single utility statement are insufficient to establish that petitioner entered into his marriage with T-W- in good faith.

In response to the director's September 6, 2013 RFE of shared emotional, economic or domestic bonds, the petitioner provided an affidavit that is nearly identical to his initial affidavit. The petitioner did not provide any additional details or insights into his marriage, apart from more details about his wife's abusive treatment of him. For example, the petitioner stated that on March 20, 2010, his friend, Mr. came over to visit the petitioner. According to the petitioner, while he and Mr.

were watching television, his wife hit the petitioner with a lighted candle. The petitioner also submitted affidavits from friends. said that he had been friends with the petitioner for eight years and had visited the petitioner and T-W- at their apartment "on numerous occasions," but did not describe their apartment or any specific visit. Instead, Mr. described witnessing T-W- knock the petitioner down during an argument when they were all on vacation. Mr. also provided a new affidavit in which he described witnessing T-W- hit the petitioner with a lighted candle when Mr. visited the petitioner. The petitioner, his friends, and his family provided no additional probative details to establish the petitioner's good-faith entry into marriage with T-W- other than as it relates to the claim of abuse.

On appeal, the petitioner resubmits previously provided evidence and a new affidavit in which he contends that he does not have additional evidence of his good-faith entry into marriage with the T-W- because she had poor credit and "we couldn't get anything in both our names." The petitioner does not provide any additional probative details regarding their relationship in his affidavit. For example, the petitioner does not describe any specific dates or shared marital routines apart from descriptions of T-W-'s abusive behavior and threats "to put a stop to [the petitioner's] immigration process."

On appeal, the petitioner also asserts that U.S. Citizenship and Immigration Services (USCIS) should find that he entered into his marriage in good faith because the agency already found that he had submitted evidence establishing that T-W- battered or subjected him to extreme cruelty. However, each criterion is distinct and a petitioner must separately establish that he or she has satisfied all of the statutory and regulatory criteria in order for USCIS to approve the petition. 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, however, the petitioner has provided contradictory information regarding his claimed residence with T-W-. These discrepancies detract from the credibility of his evidence. Moreover, the affidavits from the petitioner, his friends, and aunt lack probative details of the petitioner's marital relationship. The petitioner has not established by a preponderance of the evidence that he entered into her marriage with T-W- 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 T-W- in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.