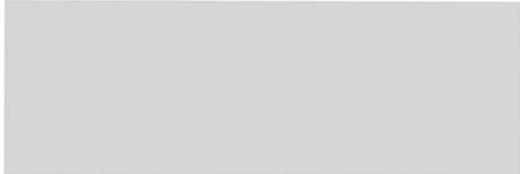




**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: JUL 13 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [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:



INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting Director (the director) denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petitioner has requested that the matter be withdrawn, and the appeal with therefore be dismissed based on its withdrawal. The AAO will also enter a separate administrative finding of willful material misrepresentation.

The petitioner seeks immigrant classification under 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. 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).

The director denied the petition based on the petitioner's failure to establish that he entered into marriage with his U.S. citizen spouse in good faith. The petitioner timely appealed the decision, submitting a brief and additional evidence. We review these proceedings *de novo*. Our initial review of the record revealed several apparent misrepresentations and irregular documents. On November 6, 2014, we issued to the petitioner a Notice of Derogatory Information and Intent to Dismiss Appeal (NOID) detailing numerous inconsistencies in the evidence, here incorporated by reference.

The petitioner responded to the NOID, but has since requested that the matter be withdrawn. We hereby acknowledge the petitioner's stated wish to cease all further adjudication. A withdrawal may not be retracted and may not be refused. 8 C.F.R. § 103.2(b)(6); *Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976). The instant appeal will therefore be withdrawn. However, in light of the fraudulent documents submitted by the petitioner in these proceedings, we provide the below explanation for our administrative finding of willful material misrepresentation.

Relevant Law

A material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. See *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Pertinent Facts and Procedural History

The petitioner, a citizen of Canada, last entered the United States on April 23, 2007 on a nonimmigrant employment visa valid until August 21, 2009. The petitioner divorced his first spouse in Nevada on [REDACTED] 2010, and married A-A-¹, a U.S. citizen, on [REDACTED] 2010 in [REDACTED] California. He filed the instant Form I-360 self-petition on September 12, 2011. The director subsequently issued two Requests for Evidence (RFEs) of the petitioner's good-faith entry into marriage, among other issues. The petitioner timely responded to the second RFE with additional evidence. Based on a review of the entire record of proceeding, the director found that the evidence did not establish eligibility for the benefit sought and denied the petition. The petitioner subsequently appealed the director's decision.

Our initial review of the record revealed several apparent misrepresentations and irregular documents. On November 6, 2014, we issued the petitioner a NOID detailing the inconsistencies in the evidence and advising the petitioner that he bears the responsibility to resolve any inconsistencies in the record. The petitioner responded to the NOID on December 8, 2014 with a personal statement, a letter from counsel, a copy of e-mail correspondence between the petitioner and his prior representative, and a copy of the prior representative's business card.

Based on a full review of the record, as supplemented on appeal and in response to our NOID, we hereby detail the petitioner's material misrepresentations with respect to the following eligibility criteria for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Joint Residence

Several documents submitted by the petitioner to demonstrate his joint residence were the subject of our November 6, 2014 NOID. With his initial Form I-360 submission, the petitioner provided a License and Certificate of Marriage for him and A-A- listing their respective addresses as an apartment on [REDACTED] California at the time of their license application and marriage on May 7, 2010. In response to the director's RFE, the petitioner submitted a residential lease, in his and A-A-'s names, indicating tenancy at the [REDACTED] residence from May 15, 2010 to May 1, 2011. In support of a Form I-485, Application for Adjustment of Status, filed simultaneously with the instant Form I-360 self-petition, the petitioner provided a Form G-325, Biographic Information, signed on May 10, 2010, claiming residency at the [REDACTED] address between January 2010 and May 2010. In the November 6, 2014 NOID, we informed the petitioner that public records indicate that the [REDACTED] address at which he claimed to have resided with his spouse corresponds to a commercial mailbox store, and that there is no residential apartment at that address.

² Although we have entered an administrative finding of willful material misrepresentation, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the petitioner may be found inadmissible at a later date if he subsequently applies for admission into the United States or applies for adjustment of status to permanent residency. *See* sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).

In response to the NOID, the petitioner submitted a personal statement, dated December 4, 2014, in which he claims that he was advised by a prior legal representative that he could utilize a mailbox address on his immigration forms. The petitioner does not deny signing the Form G-325 indicating that he resided at the [REDACTED] address, but claims that it was prepared for a previous immigration application, and that his prior representative did not have his permission to submit it with the instant Form I-360 self-petition. The petitioner does not provide the actual address at which he and A-A- purportedly resided, nor does he acknowledge or provide an explanation for the fabricated lease for the [REDACTED] address. The petitioner submits a partial copy of e-mail correspondence between him and his prior representative that indicates that the petitioner provided the lease to his prior representative.

In the NOID, we also advised the petitioner that public records show that A-A- was served with a notice of unlawful detainer for a residence in [REDACTED] California during the period that the petitioner claims to have resided with her in [REDACTED]. The petitioner did not acknowledge or respond to this information. In addition, we informed the petitioner that the utility bills that he provided in his and A-A-'s names with the [REDACTED] address show a "service address" in [REDACTED], California. In his statement submitted in response to the NOID, the petitioner does not explain why he and A-A- would have paid for utilities at an address in [REDACTED] California. The petitioner also did not explain why there are no public records associating him with any California address during the period he claims to have resided with A-A-; yet, he submitted utility bills, a cable bill, a bank statement, and an automobile insurance policy with the [REDACTED] address. The petitioner further did not address why his vehicles have been continuously registered at his [REDACTED] New York address.

Good-Faith Entry Into the Marriage

In support of his claim that he married A-A- in good faith, the petitioner submitted joint documentation including the fabricated [REDACTED] apartment lease and utility bills using the [REDACTED] address for service at a [REDACTED] residence, discussed above. The petitioner also submitted a low resolution photocopy of a cable bill in the names of both the petitioner and A-A- with the [REDACTED] address. As the petitioner has not established that he resided with A-A-, it is not apparent that they shared cable television service for which they were jointly responsible. Further, the petitioner claims that he contacted the cable company, and although the customer service representatives could see that he and A-A- had a joint account with the same residential address, they could not provide the petitioner with any documentation due to "system error" where the account would not "match up." The petitioner did not state the residential address at which he and A-A- shared cable television service, and the cable bill that he submitted lists only the [REDACTED] address, which could not have had associated cable service because it is not a residential address.

Further, the petitioner provided a partially illegible low-resolution photocopy of an automobile insurance policy in A-A-'s name, listing him as a driver, at the [REDACTED] address. In the NOID, we notified the petitioner that his vehicles have been continuously registered at his [REDACTED] New York address. The petitioner did not provide insurance documentation for those vehicles, or

provide any explanation as to why he did not register them in California where he claims to have resided.

In a personal statement dated March 12, 2014, submitted on appeal, the petitioner referenced the fraudulent lease and stated that he does not have proof of rent payments because they were made in cash. He further stated that A-A- paid the bills using her personal credit card. The petitioner appears to have made untrue statements regarding the couple's rent payments and bills, as he has not established that the couple ever resided together.

Battery and Extreme Cruelty

With his initial Form I-360 submission, the petitioner provided a psychological evaluation prepared by [REDACTED]. In the NOID, we informed the petitioner that the evaluation was confirmed to be fraudulent by the licensed psychologist whose California license number and office address appears on the report. In response to the NOID, the petitioner stated that his former representative obtained the report, and that the petitioner spoke with someone purportedly named [REDACTED] over the phone. With his initial Form I-360 submission, the petitioner provided an affidavit in which he described A-A-'s abuse that he claimed took place in the home the couple shared. In light of the submission of fraudulent documentation in this matter with respect to the petitioner's joint residence with A-A-, and the petitioner's failure to establish that he ever resided with A-A-, his claims of abuse that took place in his joint residence with A-A- cannot be considered credible.

In response to the director's RFE, the petitioner submitted an additional personal affidavit in which he again described abuse that occurred in the couple's purported joint residence. The petitioner also submitted a psychiatric evaluation prepared by [REDACTED]. A review of the evaluation reveals discrepancies that call into question the accuracy of the information provided by the petitioner to Dr. [REDACTED]. For example, the evaluation states that the petitioner's prior marriage failed when he moved to Canada in 1996, and he ultimately divorced his wife in 2010. However, the petitioner's administrative record indicates that he filed a Form I-485, Application for Adjustment of Status, in 2007, listing his wife as filing with him. The Form I-485 also noted that the couple has a daughter born in the United States in 2001. Dr. [REDACTED] evaluation also states that the petitioner was employed in New Jersey as a computer programmer from September 2006 until June 2010. However, on a Form G-325, Biographic Information, dated May 10, 2010, the petitioner claimed that he moved to California in January 2010. In sum, the petitioner submitted the psychiatric evaluation in support of his self-petition, which contained false information that he personally provided.

Willful Misrepresentation of a Material Fact

The petitioner has represented that he and his wife resided at an address on [REDACTED] that the petitioner now concedes is the address of a commercial mailbox store. The petitioner has submitted various documents to prove his good-faith marriage and his and A-A-'s residence at the [REDACTED] address, including a fraudulent lease and utility bills. In response to the NOID, the petitioner did not provide any evidence to establish that the couple actually resided together at a different address. The petitioner's false claims regarding his joint residence with A-A-, the submission of the fabricated

lease and utility bills for the [REDACTED] address, and submission of the Form G-325, signed by the petitioner, constitute misrepresentations of a material fact. The petitioner's claims that he was abused by A-A- in the home that they shared are thus not credible, as it is not apparent from the record that the couple ever resided together. The petitioner has also acknowledged that he did not have an in-person meeting with [REDACTED], and that his prior representative obtained the psychological evaluation that contained fraudulent information regarding the credentials of the evaluator. Further, the petitioner provided an evaluation from Dr. [REDACTED] containing false information regarding the petitioner's background.

Here, the petitioner's submission of a fraudulent lease and cable television bills for a nonexistent residential property, and his representations regarding events that transpired at the nonexistent residential property, clearly constitute willful and material misrepresentations in a visa petition proceeding. The petitioner provided an e-mail confirming that he gave the fraudulent lease to his prior representative to submit to U.S. Citizenship and Immigration Services (USCIS). As the lease was for a residential address that does not exist, there are no plausible circumstances under which the petitioner could have been confused about the authenticity of the document. In response to the director's RFE, the petitioner affirmed the legitimacy of the cable television bills, claiming to have contacted the company for further documentation without success. In addition, the petitioner signed each of his statements regarding the alleged abuse that purportedly took place at the nonexistent residential property. These submissions in support of the petitioner's Form I-360 self-petition constitute misrepresentation to a government official.

The misrepresentations were willfully and knowingly made by the petitioner, by providing the documents to USCIS, and by signing them or confirming their authenticity. The petitioner also signed the Form I-360 self-petition, certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. *See* section 287(b) of the Act, 8 U.S.C. § 1357(b); *see also* 8 C.F.R. § 103.2(a)(2).

In addition, the evidence is material to the petitioner's eligibility under section 204(a)(1)(A)(iii) of the Act. In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Matter of Ng*, 17 I&N Dec. at 537. Here, the fraudulent lease is material to the eligibility criteria of joint residence, good faith marriage, and battery or extreme cruelty (to the extent that the petitioner claimed that the abuse took place in the couple's joint residence). The cable bills are relevant to the petitioner's joint residence and good-faith entry into the marriage. The petitioner's affidavits regarding the abuse that he suffered in the South Street home that he purportedly shared with A-A- are primary evidence of battery and/or extreme cruelty. *See* 8 C.F.R. § 204.2(c)(2) (describing evidentiary guidelines for Violence Against Women Act (VAWA) self-petitions).

As the petitioner has failed to provide competent evidence to overcome, fully and persuasively, our finding that he submitted falsified documentation, we find that the petitioner has willfully

misrepresented a material fact. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.²

ORDER: The appeal is dismissed based on its withdrawal by the petitioner with a finding of willful misrepresentation of a material fact.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted false documents in an effort to mislead USCIS on elements material to his eligibility for a benefit sought under the immigration laws of the United States.

² Although we have entered an administrative finding of willful material misrepresentation, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the petitioner may be found inadmissible at a later date if he subsequently applies for admission into the United States or applies for adjustment of status to permanent residency. *See* sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).