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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: **JUL 29 2015**



IN RE: [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:

NO REPRESENTATIVE OF RECORD

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

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center (the director), denied the petition. 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 his U.S. citizen spouse.

The director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the petitioner had resided with his spouse and that he was a person of good moral character. On appeal, the petitioner submits a statement and additional evidence.

#### *Applicable Law*

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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:

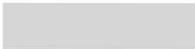
In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The regulation at 8 C.F.R. § 204.2(c)(1) provides, 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 United States in the past.

\* \* \*

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded



from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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.

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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.

\* \* \*

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

*Facts and Procedural History*

The petitioner, a native and citizen of Trinidad and Tobago, last entered the United States on December 4, 2012 as a B-2 visitor. He married S-S-<sup>1</sup> a U.S. citizen, on [REDACTED] in [REDACTED] New Jersey. The petitioner filed the instant Form I-360 on February 25, 2013. The director issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residence with his spouse and his good moral character. The petitioner responded to the RFE with a statement and letters of support from friends. The director found the evidence insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not demonstrate that the director's decision to deny the petition was in error. Therefore, we will dismiss the appeal.

*Joint Residence*

The petitioner has not established by a preponderance of the evidence that he resided with S-S- during their marriage.

In his affidavit filed with his Form I-360, the petitioner stated that he met S-S- in church and developed a relationship with her. He indicated that he later had to "go back home,"<sup>2</sup> and that he and S-S- maintained a long distance relationship but then decided it would not work. The petitioner claimed that the following year, he returned to visit and he and S-S- resumed their relationship. He said that S-S- asked him to move in with her, but that he "was not happy" to do so because they were not married. According to the petitioner, he and S-S- both wanted to get married. He said that he became close with S-S-'s son, [REDACTED] and was a father figure to him. The petitioner alleged that he and S-S- married at [REDACTED] in [REDACTED] on [REDACTED]. He further stated that during their marriage, he was unable to work lawfully in the United States, so S-S- worked long hours to provide for the family financially while the petitioner completed household duties and cared for [REDACTED]. The petitioner described his discomfort with depending on S-S- for support, and his arguments with her regarding her long absences from the home. He stated that S-S- told him she had filed an immigration petition on his behalf so that he could obtain work authorization, but that she hid details about the petition from him and did not follow through on submitting the paperwork.

According to the petitioner, S-S- began to insult and argue with him, accused him of defying and criticizing her, became angry with him if he went outside the house for too long, alleged that he was having affairs with other women, and humiliated him in public. He wrote that during one argument, S-S- shouted at him and hit him in the face while wearing several rings on her hand. He claimed that S-S-'s rings cut his lip and that his dentures flew out of his mouth and broke, and that S-S- then threatened to have him deported if he called the police. Additionally, he stated that S-S- once held a knife to his face and forced him to walk backwards out of the house. The petitioner also alleged that S-S- was arrested for fraud and that he remained in the house to care for [REDACTED] while she was in

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<sup>1</sup> Name withheld to protect the individual's identity.

<sup>2</sup> The petitioner does not indicate where he considered "home" at the time in question.

jail. He stated that once S-S- was released, she ordered the petitioner out of her house for telling [REDACTED] that she was a thief. He contended that he was never able to retrieve his belongings from S-S-'s house and that his clothing as well as his important documents, including his passport, birth certificate, driver's license, and marriage certificate, remain there.

The petitioner's affidavit is vague with regard to his establishment of a residence with S-S-. He does not provide the dates he met S-S-, began dating her, left to go "home," returned to visit, moved in with her, or decided to get married. He does not describe the home they allegedly shared.

The petitioner's affidavit was the only evidence of joint residence he submitted with his Form I-360. In response to the RFE on this issue, he submitted a letter from a friend, [REDACTED] who stated that she visited the petitioner and S-S- at their home at [REDACTED] for lunch and dinner. [REDACTED] further stated after S-S- was arrested, the petitioner continued to reside at that address to care for S-S-'s two children. [REDACTED] did not provide the dates she visited the petitioner and S-S-, nor did she describe the home. Her letter is not sufficiently detailed to establish that the petitioner resided with S-S-.

In her denial, the director noted that the petitioner's marriage license, dated [REDACTED], indicated that S-S- resided at [REDACTED], while the petitioner resided at [REDACTED]. This conflicts with the petitioner's claim in his Form G-325A, Biographic Information, that he lived at [REDACTED] from September 2011 to [REDACTED]. On appeal, the petitioner asserts that his marriage license reflects a different address because the clerk requested two forms of identification, and his identification bore an old address from 2010. However, his Form G-325A reflects that he lived in Jamaica until September 2011. The record does not show how he obtained a New Jersey driver's license while living abroad. Nor does it establish why, if the petitioner's Form G-325A correctly reflects that his first address upon arrival to New Jersey from Jamaica was [REDACTED] he would have obtained a driver's license listing his address as [REDACTED]. Furthermore, the petitioner has not explained why, if he resided at [REDACTED] beginning in September 2011, he had not updated the address on either of his two forms of identification by the time he applied for a marriage license in [REDACTED]. His statement is not sufficient to resolve these inconsistencies.

Also on appeal, the petitioner submits a letter from a friend, [REDACTED] who states that he visited the petitioner and S-S- at the home they shared on "[REDACTED] reports that he first met the petitioner when he went to S-S-'s home for Thanksgiving dinner in 2011, but that he knew the petitioner was living there before that date because S-S- frequently mentioned the petitioner during telephone conversations. [REDACTED] states that he visited the home often in order to perform repairs, and that S-S- usually was not home but the petitioner and [REDACTED] always were. [REDACTED] also indicates that he picked up the petitioner for men's choir practice at that home, and that he spent two nights there after parties held at the home. [REDACTED] only provides a date for a particular visit in 2011, prior to the couple's marriage in [REDACTED] and does not provide sufficient detail about other visits. It is not clear from [REDACTED] affidavit whether he visited the couple's home

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<sup>3</sup> The petitioner indicates that he and S-S- resided at [REDACTED]

only prior to or also after their marriage. [REDACTED] affidavit is not sufficient to overcome the lack of detail and inconsistencies in the other evidence of record.

Therefore, the petitioner has failed to show by a preponderance of credible, relevant evidence that his principal, actual dwelling place was with S-S- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Moral Character*

The petitioner has demonstrated that he is a person of good moral character. He previously submitted a criminal history background check letter from the State of New Jersey, indicating that he has no criminal record in that state. He also submitted a personal affidavit in which he certified that he is a person of good moral character with no criminal record. Additionally, he submitted letters of support from friends attesting to his good moral character. [REDACTED] stated in her letter that the petitioner is a “hard working, honest, church going Christian who is a sincere and kind person and the epitome of what a good person should be.” [REDACTED] Principal of [REDACTED] School, indicated in two letters that he knows the petitioner well and that he is a responsible, respectful, disciplined person whose “integrity and character [are] impeccable.” [REDACTED] wrote that the petitioner is a hard working person who “fits in well in his community . . . .” Pastor [REDACTED] stated that the petitioner “is an extraordinary person” with a good attitude and work ethic, that he helps others through his church, and that he is respected in his community. Additionally, the petitioner submitted on appeal a Police Certificate from the Jamaica Constabulary Force indicating that he has no criminal record in Jamaica, where he claims to have resided from January 2008 to September 2011.

The evidence is sufficient to show that the petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The director’s contrary conclusion on that subject is withdrawn. However, his petition will remain denied because he has not demonstrated that he resided with his spouse during their marriage.

#### *Conclusion*

The record does not demonstrate by a preponderance of the evidence that the petitioner resided with S-S- during their marriage. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proving eligibility for the benefit sought. 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.