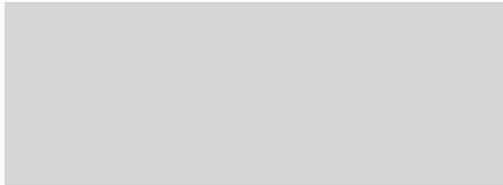




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 01 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:



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,

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 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 former spouse.

The director denied the petition for failure to establish that the petitioner resided with and entered into marriage with his former wife in good faith. On appeal, the petitioner submits a brief and evidence.

*Relevant 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 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 eligibility requirements are further explicated in the regulation 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.

\* \* \*

(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 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.

\* \* \*

(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.

\* \* \*

(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 is a citizen of Israel who entered the United States on February 27, 1998, as a B-2 nonimmigrant visitor. The petitioner married G-P<sup>1</sup>, a U.S. citizen, on [REDACTED] in [REDACTED]. The petitioner filed the instant Form I-360 self-petition on June 20, 2007. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into his marriage and residence with his wife. The petitioner responded to the RFE with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely filed an appeal.

We review these proceedings *de novo*. A full review of the record, including the brief and evidence submitted on appeal, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

#### *Joint Residence*

The director correctly determined that the petitioner failed to establish that he resided with G-P- during their marriage based on the relevant evidence submitted below and as supplemented on appeal. The petitioner stated on his Form I-360 self-petition that he resided with G-P- from July of 2001 to May of 2002. In his affidavit, the petitioner stated that he met G-P- while living at a hostel in [REDACTED] California from 1998 to 1999. He stated that they began dating and by the end of

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

1999, they fell in love. The petitioner then moved into an apartment while G-P- remained at the hostel. After a brief break up towards the end of 1999, the petitioner stated that the two reconciled and she moved in with him at another apartment he had moved into located on [REDACTED] California. The petitioner recounted that they continued to live at the [REDACTED] address after they married on [REDACTED]. The petitioner did not further describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with G-P- during their marriage. In addition, the petitioner did not indicate when he and G-P- stopped residing together; stating only that the two were divorced on [REDACTED].

The affidavits from friends, [REDACTED] and [REDACTED], likewise did not demonstrate the petitioner's joint residence with G-P-. In her affidavit, Ms. [REDACTED] stated that she met the petitioner and G-P- in 2003 through her neighbor, Mr. [REDACTED] and briefly described attending a dinner party at Mr. [REDACTED]'s apartment where the petitioner and G-P- were also invited. In his affidavit, Mr. [REDACTED] stated that he knew the petitioner and G-P- as a couple and had dinner with them at their [REDACTED] residence in 2001 before the two were married. Neither affiant described any specific residential visits, observations, or otherwise provided any probative details regarding the couple's living arrangements.

The petitioner also submitted: a residential lease agreement from May 15, 2000 to May 15, 2001; automobile insurance policy documents addressed to the petitioner listing G-P- as excluded from coverage; a jointly addressed postcard; a form letter from [REDACTED] to the petitioner and G-P- requesting a copy of G-P-'s driver's license; and correspondence addressed separately to the petitioner and G-P- at the claimed marital address. The residential lease is dated for a period prior to the petitioner's marriage to G-P-. The correspondence addressed to G-P- at the [REDACTED] address is evidence that she received mail there but insufficient to show that she resided with the petitioner after their marriage.

The director determined that the petitioner did not establish joint residence with G-P- during the marriage because there were inconsistencies in the record regarding the time period that he claimed to reside with her. On appeal, the petitioner's counsel asserts that the discrepancies in the record are due to mistakes made by counsel's office and that the petitioner actually resided with G-P- until December of 2004 and not May of 2002 as indicated on the self-petition. Counsel further asserts that the petitioner has presented compelling evidence that demonstrates that he resided with G-P- during their marriage. However, the petitioner did not describe his home with G-P- or their shared residential routines in any detail, nor did he specify the dates that he lived with G-P-. On appeal, the petitioner submits: a lease dated December 18, 2004, for an apartment on [REDACTED]; correspondence from the petitioner's accountant; an estimate for pest control service addressed to G-P-; and a job work order listing the petitioner and G-P-'s address. The letters from the petitioner's accountant are all addressed to the petitioner at the [REDACTED] address, including those dated March 10, 2005, and September 20, 2006, after which the petitioner claims he lived at the [REDACTED] address. The pest control estimate listing G-P- as a tenant and the work order, listing both the petitioner and G-P- as tenants, without probative testimony, are insufficient to establish joint residency. Accordingly, the record does not establish by a preponderance of the evidence that the

petitioner resided with his former wife during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Entry into the Marriage in Good Faith*

The director correctly determined that the petitioner did not establish that he married G-P- in good faith. The receipt for the anniversary ring contains no identifying information to demonstrate that the petitioner purchased the jewelry. The bank printout that the petitioner claimed is evidence of a joint checking account with G-P- does not contain any mention of G-P- as a joint account holder and does not demonstrate that both the petitioner and G-P- accessed the account for regular, marital expenses. The photographs show only that the petitioner and G-P- were pictured together at their wedding. The undated, handwritten note from [REDACTED] and the post card from someone named [REDACTED], absent probative testimony, do not demonstrate that the petitioner married G-P- in good faith.

Despite these deficiencies, traditional forms of joint documentation are not required to demonstrate a petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In the petitioner's affidavit, he stated that he first met G-P- while they were both living at a hostel in 1998 to 1999 and they started dating. The petitioner recounted that due to G-P-'s infidelity, their relationship ended but they later reconciled after G-P- was involved in a serious accident at the end of 1999 and the petitioner stayed with her during her recovery. The petitioner stated that G-P- moved in with him after she was released from the hospital and they spent all of 2001 together and happy. The petitioner did not further describe their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse.

The petitioner also submitted affidavits from friends [REDACTED] and [REDACTED]. In her affidavit, [REDACTED] stated that she knew the petitioner and G-P- as a couple and attended a dinner party with them on one occasion. In his affidavit, [REDACTED] stated that he spent time with the petitioner and A-W- as a couple before and after their marriage. Neither Ms. [REDACTED] nor Mr. [REDACTED] described their interactions with the couple in any probative detail. [REDACTED] stated that she knew G-P- and the petitioner were happy when they got married but had problems in their second year of marriage due to G-P-'s drinking. This is inconsistent with the petitioner's account that his marital problems started immediately after the wedding, casting doubt on whether Ms. [REDACTED] had actual personal knowledge of the relationship.

On appeal, the petitioner submits a copy of a receipt for a wedding band and previously submitted evidence. He asserts that the evidence submitted below and on appeal demonstrates that he married G-P- in good faith. However, the petitioner's statement and the statements of his friends did not provide probative details regarding his intentions in marrying G-P- sufficient to overcome the deficiencies of the record. Accordingly, a full review of the evidence in the record, including the petitioner's brief and evidence submitted on appeal, fails to establish his good-faith entry into marriage with G-P-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

On appeal, the petitioner has not demonstrated that he resided with and entered into marriage with his former wife 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. See Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the petition remains denied.

**ORDER:** The appeal is dismissed.