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: **JUN 0 9 2015**

FILE #:
PETITION RECEIPT #:

IN RE: 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:

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) 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 Acting Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on motion. The motion will be denied.

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, finding that the petitioner did not establish that he had resided with his spouse, that his spouse had subjected him to battery or extreme cruelty during their marriage, and that he had entered into the marriage in good faith. The petitioner filed a timely appeal. In our decision on appeal, we found no error in the director's decision. Therefore, we dismissed the appeal. Our prior decision is incorporated here by reference.

On motion, the petitioner submits a brief and additional evidence. Although the petitioner meets the requirements of a motion to reopen, these new facts are not sufficient to establish error or overcome our previous determination.

Joint Residence

Section 204(a)(1)(A)(iii)(II)(dd) of the Act requires that the petitioner demonstrate that he resided with his abusive spouse during the qualifying marriage. On motion, the petitioner asserts that we erred in finding that he did not meet the residency requirement. Counsel for the petitioner claims that although the petitioner's previously submitted Forms G-325A indicate that he resided at Florida, from June 2010 to July 2011, this was a typographical error on her part. Counsel states that "the correct dates of residence . . . at his marital residence in Florida are April 2011 to February 2012." Counsel had not previously explained the errors or otherwise attributed them to herself; rather in response to the director's request for evidence counsel indicated only that the dates were incorrect. The petitioner did not submit any statement detailing the dates of residence or clarifying the dates that he signed as true and correct on each of the Forms G-325A. Counsel's response on motion adds further confusion as she references the petitioner's marital residence in when the petitioner previously claimed on the Form I-360 that his marital residence was in Florida. Moreover, despite the claims that the petitioner began residing with his spouse in April 2011, the petitioner's Application to Marry, dated 2011, only three days before he married his spouse, T-B-,[1] indicates that the petitioner was residing in while T-B- was residing in .

Counsel also contends that we erred in finding that the record lacked sufficient evidence of a marital residence, because the petitioner and his friends "cannot reasonably be expected to provide an exact blueprint of his marital home . . . ." Counsel states that the affidavits in the record, along with jointly addressed bills and bank statements received at the address of the petitioner's marital home should be sufficient to establish his residence there with T-B-. However, the record lacks detail about the home the petitioner and T-B- allegedly shared. Neither we nor the director required evidence tantamount to a

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

"blueprint" or "a videotape of him residing at said marital home," as counsel alleges appears necessary to overcome our denial. However, the petitioner must meet his burden of proof by providing relevant, credible evidence. As stated in our denial, the petitioner did not discuss or describe any shared marital residence in his affidavits, nor did his friends who claimed to have personal knowledge of the shared residence. The jointly addressed bills and bank statements, on their own, are insufficient to outweigh the lack of detail in the affidavits and the inconsistencies in the record with regard to the petitioner's residence.

Counsel also argues on motion that evidence that the petitioner maintained a home in Florida with another woman is false, and that our discussion of this evidence amounted to "speculation and erroneous allegations." Specifically, counsel asserts that evidence of a February 6, 2012 interview by immigration officers at the petitioner's apartment in , during which officers learned that the petitioner was living there with a girlfriend, is "absolutely false" and based on "an adjudicating officer's recollection of said interview conducted over a year ago." Although the director discussed the February 6, 2012 interview in his denial, we did not rely on it in our dismissal based on our *de novo* review. Instead, we noted inconsistencies in the petitioner's accounts regarding who lived in, and bore responsibility for, his apartment in In particular, the petitioner submitted a sublease agreement, dated March 14, 2012, in which he is listed as the sublandlord for the apartment and and are listed as subtenants. However, in his affidavit, dated September 13, 2013, the petitioner states:

> I was renting the apartment at . . . . I was permanently living in Florida . . . but due to my employment, I traveled once a week to and said address is where I stayed during my trips to At said address, lived with her husband, I was simply *subleasing a room from and her husband*, so I did not have to incur to [sic] constant high costs of hotels. Subleasing was much more cost effective.

(Emphasis added). In her brief on motion, counsel denies that the petitioner made the above statement, alleging:

> It is unbelievable that [the petitioner] would state that he is subleasing a room from Mrs. while providing proof that he is in fact the leasor [sic]. This fact is neither an inconsistency nor a discrepancy as these allegations are simply that, erroneous allegations and a misunderstanding by adjudicating officers.

However, the petitioner's statement regarding his sublease is in a signed and notarized affidavit which he submitted on appeal. Counsel previously attributed the discrepancy to the petitioner's "limited English skills" and stated that U.S. Citizenship and Immigration Services (USCIS) "interpreted [the affidavit] incorrectly." Again, however, the petitioner himself does not explain his meaning or provide any clarification. This remains an unexplained discrepancy regarding the circumstances of the petitioner's time spent at the apartment, including his relationship with the individuals who resided there with him.

The petitioner has not provided sufficient evidence to meet the requirement at section 204(a)(1)(A)(iii)(II)(dd) of the Act that he have resided with his abusive U.S. citizen spouse.

Battery or Extreme Cruelty

The petitioner did not establish by a preponderance of the relevant evidence that he was the victim of battery or extreme cruelty by his U.S. citizen spouse. In his brief on motion, the petitioner argues that he has never alleged he was physically abused by T-B-, but asserts that T-B- was verbally and emotionally abusive toward him as a result of her substance abuse. He argues that we erred in finding that the evidence he submitted of the abuse – including his affidavit, affidavits from friends, a psychological evaluation, and T-B-'s criminal records – was insufficient to establish battery or extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi).

In our decision on appeal, we found that the petitioner's claim that T-B- controlled him through isolation and economic coercion was not supported by the record. We discussed that the petitioner traveled between on a weekly basis and maintained residences in both cities, and that the evidence showed that he frequently socialized with friends. On motion, the petitioner claims that he did not maintain residences in both but instead visited only for short periods of time for work. He also contends that he never claimed "to spend significant time socializing with a number of friends," and that even if he did spend time socializing with friends, this would not negate his claim of abuse. However, as discussed above, the record contains unexplained inconsistencies regarding the petitioner's time spent living in At minimum, the petitioner's own statements establish that he traveled to on a weekly basis, rented an apartment there, resided with individuals other than T-B- in that apartment, and went there without T-B- in order to conduct his work. These activities indicate independence from T-B- rather than coercion and isolation. Furthermore, affidavits from the petitioner's friends state that the petitioner spent time with them at parties, barbecues, and outings at a lake. The petitioner also notes in his own affidavit, dated October 11, 2012, that he and his friends consulted a private investigator to conduct a background check on T-B-. This evidence does not demonstrate that the petitioner was isolated from his friends, but instead that he spent time with them without T-B- and had sufficient time away from her to investigate her criminal history without her knowledge.

We also noted in our decision on appeal that, although the petitioner claimed that T-B- frequently did not return to their marital home because of her "numerous arrests based on drug usage," the evidence in the record only contains arrest reports for T-B- from 2008 and 2009, over two years before she and the petitioner married. On motion, the petitioner states that he "is not privy to whether or not [T-B-] has been arrested since these convictions." The admission that the petitioner is not aware of T-B-'s arrests after 2009 is counter to his claim on appeal that T-B- often did not return home during their marriage due to her "numerous" drug-related arrests.

As further support of his assertion that T-B- abused him as a result of her drug use, the petitioner submits on motion a photocopy of the summons relating to the divorce petition he filed on March 31, 2014. The summons indicates that it was not served on T-B- and that the "[c]urrent homeowner reports that subject moved a very long time ago." According to the petitioner, this demonstrates T-B-'s "erratic behavior and continued pattern of 'sofa-hopping' as is common among those with drug and alcohol

problems." However, the summons does not address substance abuse by T-B- or the reasons for her relocation from her last known address; it only demonstrates that the summons could not be served at that address.

Furthermore, even if the record did show that T-B- abused drugs during her marriage to the petitioner, the preponderance of the evidence does not support his claim that her drug abuse led her to subject the petitioner to extreme cruelty. The evidence of record indicates that T-B- yelled at the petitioner, called him names, threw items against the wall, went out late at night and did not return, stole money from him, and did not answer her telephone when the petitioner called. The petitioner's friends gave generalized statements about T-B-'s behavior, but did not provide sufficient detail about specific incidents they witnessed, nor did they assert that the petitioner was the victim of abuse amounting to violent acts, psychological or sexual abuse, or an overall pattern of violence, or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not demonstrated that he was the victim of battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Marriage

The preponderance of the relevant evidence does not establish that the petitioner entered into his marriage with T-B- in good faith. In his brief on motion, the petitioner claims that the evidence of his good-faith marriage includes proof that he resided with T-B-, joint bank statements and telephone bills, affidavits from his friends and family, and his own affidavits. He asserts that our finding to the contrary, which was based only on "alleged inconsistencies that have been proved false," was an abuse of discretion.

However, the inconsistencies we noted in our previous decision have not been resolved, and the record lacks detail regarding the circumstances of the petitioner's courtship, wedding ceremony, residence, and marital relationship with T-B-. As we discussed on appeal, the petitioner stated in his affidavit of October 11, 2012 that he and T-B- met a year and a half earlier. This indicates that he met T-B- in approximately 2011, three months before marrying her in 2011. He states that he and T-B- got married after "a short engagement due to [their] intense relationship and the great chemistry [they] had . . . ." By contrast, counsel for the petitioner stated on appeal that the courtship between the petitioner and T-B- "last[ed] a year and [a] half before they decided that the next step in their relationship would be to get married." The petitioner has not addressed this inconsistency on motion. Additionally, the petitioner did not provide any details in his affidavit regarding his first meeting with T-B-, their dating relationship, their wedding ceremony, their alleged marital residence, any shared activities or experience other than the alleged abuse, or his intentions in the marriage. Similarly, the affidavits from the petitioner's friends contain generalized language which is nearly identical in all three affidavits. The petitioner has not provided additional evidence or detail to address these issues on motion. Furthermore, as discussed above, the evidence does not demonstrate that the petitioner shared a residence with T-B- during their marriage.

Although the petitioner did submit on appeal photocopies of telephone bills and bank statements indicating shared accounts with T-B-, even when considered in conjunction with the other evidence in the record, those documents do not establish that the petitioner entered into the marriage in good faith.

Some copies of the telephone bills list the names of both the petitioner and T-B-, but others bear only T-B-'s name. The bills also relate to a single mobile telephone number and it is unclear how the petitioner and T-B- would have shared it. Some of the bank statements reflect almost no transactions; for example, the statement for July 20 to August 16, 2011 lists only one deposit and one withdrawal all month, and the statement for August 17 to September 19, 2011 lists no activity. The petitioner has not submitted additional detailed statements or documentation of his good-faith marriage on motion. Accordingly, the preponderance of the relevant evidence in the record does not show that the petitioner entered into his marriage with T-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The record does not demonstrate by a preponderance of the evidence that the petitioner resided with his spouse during their marriage, was subjected to battery or extreme cruelty, and entered into the marriage in good faith. Therefore, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proving his 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 motion will be denied.

ORDER: The motion is denied. The appeal remains dismissed and the petition remains denied.