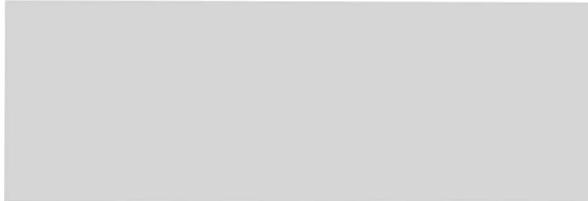




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 11 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:

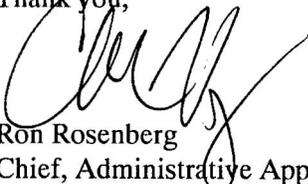


INSTRUCTIONS:

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

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 Vermont Service Center Acting Director, (“the director”) denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien parent of a child battered or subjected to extreme cruelty by the alien’s United States citizen spouse.

The director denied the petition on the basis of his determination that the petitioner failed to demonstrate a qualifying relationship with a citizen of the United States and his corresponding eligibility for immediate relative classification on the basis of such a relationship. The director also determined that the petitioner had not demonstrated that he had resided with his U.S. citizen spouse. On appeal, counsel submits a brief and additional 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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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.

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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. If the self-petition is based on a claim that the self-petitioner's child was battered or subjected to extreme cruelty committed by the citizen or lawful permanent resident spouse, the self-petitioner should also be accompanied by the child's birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.

(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.

* * *

In regards to verifying an abuser's immigration status, the regulation at 8 C.F.R. § 103.2(b)(17)(ii) states:

Assisting self-petitioners who are spousal-abuse victims. If a self-petitioner filing a petition under section 204(a)(1)(A)(iii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS [U.S. Citizenship and Immigration Services] will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who claims to have last entered the United States on May 22, 2000, without admission, inspection or parole. On [REDACTED] 2002, he married A-N¹, who he asserts is a citizen of the United States, in [REDACTED] Georgia. The petitioner filed the instant Form I-360 self-petition on February 25, 2014, as the alien father of a child who has been battered or subjected to extreme cruelty perpetrated by the alien's spouse. The director denied the petition and the petitioner timely appealed.

We review these matters on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, does not establish the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Eligibility for Immigrant Classification

We find no error in the director's determination that the petitioner did not establish a qualifying relationship with his spouse pursuant to section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act, and thus, also failed to show corresponding eligibility for immigrant classification under section 201(b)(2)A(i) of the Act. Here, the petitioner submitted a marriage certificate showing that he is married to an individual by the name of A-N-. The instant petition is based on abuse perpetrated by the petitioner's spouse against the couple's minor son. However, the petitioner's son's birth certificate lists the mother's name as A-T-, as does the juvenile court documents giving the petitioner custody of his son. The record does not contain any primary evidence showing that A-N- and A-T- are the same person, including identity documents, name change records or divorce judgments for the petitioner's spouse. Moreover, the record before the director lacked any evidence of either A-N-'s or A-T-'s US citizenship by birth as claimed by the petitioner. Neither the marriage certificate, nor the petitioner's son's birth certificate, in the record identifies his spouse's place of birth, and the record does not contain a copy of the marriage license or the application for their son's birth certificate which often require birth places of the parties.

On appeal, the petitioner submits a brief statement from the petitioner's spouse, along with affidavits of two employees from the petitioner's counsel who met with the spouse to obtain her statement. The statement from the petitioner's wife is undated, is not notarized, and did not include any identity documents. She indicated in her statement that her maiden name is A-T-, but stated that she married the petitioner under her former married name, A-N-, which she had not yet changed at the time of the marriage. The petitioner's wife further stated that she later changed her surname to the petitioner's but again returned to her maiden name for undisclosed reasons. The affidavits of the employees at the petitioner's counsel's office indicate that during their meeting with A-T-, the latter was combative, uncooperative, and appeared mentally unstable and that she refused to provide her birth certificate and divorce decree from her prior marriage for fear they would use it against her. The petitioner asserts that USCIS is required by regulation at 8 C.F.R. 103.2(b)(17)(ii) to provide special consideration in spousal abuse petitions and maintains that USCIS is acting contrary to the purpose of "VAWA protection" and

¹ Name is withheld to protect the individual's identity.

violated the petitioner's due process rights by requiring information that can only be obtained from the petitioner's abusive spouse.

While the petitioner is correct in noting USCIS' obligation under 8 C.F.R. 103.2(b)(17)(ii) to verify the immigration status of an abuser through a check of its records where possible, USCIS immigration records are unlikely to include records of U.S. citizens by birth, such as the petitioner's wife. Nonetheless, a search of USCIS records failed to disclose any records establishing that the petitioner's wife acquired U.S. citizenship or lawful permanent residence. While we empathize with the petitioner's difficulties in obtaining the evidence of his spouse's citizenship, her identity, and her prior divorce, we lack the authority to disregard the statutory requirements for eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, based upon our review, the record before us lacks sufficient, reliable evidence to satisfy the petitioner's burden to demonstrate that he is lawfully married to a U.S. citizen. Consequently, the petitioner has not established a qualifying relationship as the spouse of a U.S. citizen, and has not demonstrated a corresponding eligibility for immigrant classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA), (cc) of the Act.

Joint Residence

The petitioner has also failed to establish that he resided with A-T- during their marriage as required. The petitioner stated on the Form I-360 self-petition that he resided with A-T- from June 2001 until May 2005 and that their last joint residence was on [REDACTED]. The relevant evidence in the record includes a statement from the petitioner's spouse, family photos, the petitioner's driver's license issued in 2002, brief reference letters, and miscellaneous cable and electric bills, vehicle registration records, and bills of sale for vehicles. None of the documents show the petitioner and his spouse to have ever jointly resided at any given time at any of the given addresses. Moreover, a number of the documents submitted to show joint residence were for periods several years after the petitioner claimed he separated from his wife.

Despite these deficiencies, traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). Here, the petitioner did not provide a statement detailing his history of shared residence with his spouse. In response to a Request for Evidence (RFE), detailing the discrepancies in the documents regarding the timeline of the petitioner's joint residence with his wife, the petitioner submitted brief letters from four individuals. One letter from his landlord, Jesus [REDACTED], indicated that the petitioner and his wife lived in apartments he rented out to them located on [REDACTED] from January 2008 until November 2011. This, again, is inconsistent with the petitioner's assertion that he last lived with his wife in May 2005. Similarly in his statement, [REDACTED] indicated that he has known the petitioner for the past three years (approximately since June 2011) when they started working together and that he met the petitioner's wife when she brought him food. However, Mr. [REDACTED] did not refer to the petitioner's wife by name and also referred to a period when the petitioner was already separated from and not residing with his spouse. The remaining brief statements submitted were similarly brief and offered no probative details about the petitioner, his wife, their relationship or their joint residence, as requested in the RFE. The

petitioner offered no statement of explanation for the discrepancies noted in the evidence regarding his assertion that he and his wife last resided together in 2005.

On appeal, the petitioner fails to resolve the noted deficiencies in the record and introduces yet another discrepancy with the submission of his wife's statement. Although we give limited weight to the assertions of a spouse alleged to have perpetrated abuse, it is the petitioner here who submitted the referenced statement from his wife. While the petitioner's wife provides a timeline of the couple's shared residence, it is, however, also inconsistent with the petitioner's assertion that they did not reside together after May 2005. According to the petitioner's wife, the couple did not separate until 2010 and resided together for several years after May 2005. As noted, the petitioner has offered no written statement of explanation for this or any of other noted discrepancies in the record. Upon *de novo* review, the evidence of record fails to establish by a preponderance of the evidence that the petitioner resided with his wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The petitioner has failed to establish that he has a qualifying relationship as the spouse of a U.S. citizen by a preponderance of the evidence, and consequently, he is ineligible for immigrant classification as required under section 204(a)(1)(A)(iii) of the Act. The petitioner has further failed to demonstrate that he resided with his wife during their marriage as required under section 204(a)(1)(A)(iii)(II)(dd) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration 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, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.