



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-V-

DATE: DEC. 3, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER) OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. We dismissed a subsequent appeal and affirmed our decision on a motion to reopen and a motion to reconsider. The matter is now before us on a second motion to reopen. The motion will be denied.

I. APPLICABLE 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.

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 explained in 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.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child, and must have taken place during the self-petitioner’s marriage to the abuser.

....

(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 explained in 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.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

....

(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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of the Dominican Republic who claims to have entered the United States on or about July 4, 2004, without inspection, admission or parole. The Petitioner married M-P-,¹ a U.S. citizen, on [REDACTED] 2010, in Puerto Rico.² The Petitioner filed the instant Form I-360 on September 13, 2010. The Director found the evidence insufficient to establish that the Petitioner was subjected to battery or extreme cruelty by his U.S. citizen spouse, that he resided with her, and that he married her in good faith, and denied the petition. On appeal, we affirmed the Director's decision on all grounds and dismissed the appeal. The Petitioner filed a timely motion to reopen and to reconsider with supplemental evidence, and upon review on motion, we affirmed our previous decision. The Petitioner has timely filed a second motion to reopen.

We conduct *de novo* review of the proceedings. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner submits a personal statement, a photograph, and previously submitted evidence.

III. ANALYSIS

A. Joint Residence

We previously determined that the record did not establish that the Petitioner resided with M-P- during their marriage. The Petitioner's statements and those of his witnesses were general and did not contain probative details about the Petitioner's and M-P-'s shared residential routines or experiences in their claimed joint residences. Multiple unresolved inconsistencies also cast doubt on the Petitioner's claim to have resided with M-P- after they married. We indicated that the Petitioner's statement on the Form I-360 at Part.7 Section B that he and M-P- resided together from [REDACTED] 2010 until [REDACTED] 2010 and their last residential address was on [REDACTED] was inconsistent with other evidence of record. [REDACTED] the proprietor of the [REDACTED]

¹ Name withheld to protect the individual's identity.

² The record reflects that the petitioner and M-P- divorced on [REDACTED] 2013.

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address, stated that she rented the [REDACTED] property to the Petitioner by lease contract beginning in [REDACTED] 2010, and the couple resided there together until [REDACTED] 2010. [REDACTED] the proprietor of the Petitioner's apartment on [REDACTED] stated in her May 2012 declaration that she rented the property on [REDACTED] to the Petitioner, and that M-P- moved in after the marriage. Ms. [REDACTED] did not indicate exactly when the Petitioner and M-P- resided together at the [REDACTED]. Nor did she state that the Petitioner and M-P- moved to another address during the marriage, as claimed by the Petitioner and as stated by [REDACTED]. Moreover, the Form G-325A, Biographic Information, submitted in the instant proceeding reflects that the Petitioner first resided at the [REDACTED] property from [REDACTED] 2009 until [REDACTED] 2010 and then the [REDACTED] property starting in [REDACTED] 2010, which contradicts the aforementioned statements.³

With the current motion, the Petitioner submits a statement indicating that after the wedding ceremony in [REDACTED] 2010, he and M-P- went to stay at his place on [REDACTED] where they stayed for about a month, and that together they moved to [REDACTED] where they lived with his daughter. He indicates that on April 4, 2010 he and M-P- went to the [REDACTED] and leased a television and a washing machine.⁴ The Petitioner's statement on motion creates additional inconsistencies with the statement from Ms. [REDACTED] and the Petitioner's Form G-325A.

The Petitioner states that in April 2010, one day when he arrived home from work, M-P- had taken his daughter to her biological grandmother's home, and locked their apartment. He recounts that he could not get into the apartment for four days, and when he finally got in, M-P- had taken all of his clothing and shoes, his daughter's bedroom set and television set, and the leased property which he had to continue to pay for. The Petitioner states that in [REDACTED] 2010 he went to the court to file for an order to get his daughter's property back, and was arrested for false charges against him filed by M-P-. The record contains a motion filed by the Petitioner on [REDACTED] 2010 in the General Court of First Instance requesting that M-P- return the bedroom furniture and television set belonging to his daughter. Although this evidence is of some probative value, the record still contains multiple inconsistencies with respect to the Petitioner and M-P-'s joint residence that remain unresolved. The preponderance of the evidence does not demonstrate that the Petitioner resided with his wife after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Battery or Extreme Cruelty

In our previous decisions, we indicated that the record did not establish that M-P- subjected the Petitioner to battery or extreme cruelty. The Petitioner recounted in his personal statements that on [REDACTED] 2010, his wife bit his arm, that M-P- reported the incident to the police, and accused him of domestic violence, for which he was arrested and jailed. The Petitioner submitted photographs of an injury to his arm. The record contained a police report of a domestic violence incident of simple

³ In the Petitioner's third statement, dated January 9, 2015, the Petitioner recounted that he lived with M-P- from [REDACTED] 2009 until [REDACTED] 2010.

⁴ The record contains a copy of an April 4, 2010 lease with option to purchase between [REDACTED] and the Petitioner and M-P-, indicating the rental of new living room furniture, which is inconsistent with his statement that they rented a television and washing machine.

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battery on [REDACTED] 2010, naming the Petitioner as the aggressor. The record showed that M-P- subsequently initiated a domestic violence charge against the Petitioner, and that the case was dismissed. The Petitioner's statements failed, however, to provide probative information demonstrating that M-P- injured him and subjected him to extreme cruelty. The assessment from [REDACTED] a social worker, generally described incidents of abuse, but did not provide any probative details of specific incidents. The report from [REDACTED] a psychologist, mentioned panic episodes but did not provide any detail of M-P-'s behavior to establish the claimed abuse. Further, the Petitioner did not mention in his personal statements that he suffered panic attacks as noted by Dr. [REDACTED] or that he was subjected to the abuse as described by Ms. [REDACTED]. The Petitioner's witnesses did not provide sufficient probative detail to establish that M-P- battered or verbally abused him and had him arrested and jailed on false allegations.

On motion, the Petitioner submits a statement asserting that M-P-'s actions in locking him out of their joint residence, taking his daughter to her grandmother's house, taking his child's belongings, and having him unlawfully detained constituted extreme cruelty. While the domestic violence charges against the Petitioner were dismissed, the record does not contain sufficient evidence to establish that the Petitioner was falsely imprisoned on fraudulent charges fabricated by M-P-, and that he was not the primary perpetrator of violence in the relationship. Further, while the Petitioner submits a copy of a photograph of a scar on his arm from what he claims happened when M-P- bit him, the Petitioner did not discuss this incident in probative detail. Nor has the Petitioner shown that M-P-'s dropping his daughter at her maternal grandmother's home was either out of the ordinary or constituted extreme cruelty, given that the record establishes that the grandmother had custodial rights to visit with her granddaughter, and that the child visited her grandmother on a regular basis. With respect to M-P-'s taking away the Petitioner's belongings from the apartment, the record does not establish that this behavior constituted extreme cruelty, as that term is defined under the regulation at 8 C.F.R. 204.2(c)(1)(vi). When viewed in the totality, the preponderance of the relevant evidence on motion does not establish that M-P-subjected the Petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

C. Good-Faith Entry into the Marriage

In our previous decisions, we determined that the Petitioner did not establish his good-faith entry into the marriage. In our decision dismissing the appeal, we noted that aside from stating in his initial sworn statement that he and M-P- were in a close relationship for three years before they married, the Petitioner failed to describe the couple's courtship, wedding ceremony, shared residence and experiences, or his intentions for marrying M-P-. *See* 8 C.F.R. § 204.2(c)(2)(vii). On his first motion, the Petitioner reasserted that his wife abused him, but did not address his marital intentions and submitted no other, relevant additional evidence. None of the additional witness statements submitted on motion indicated that he or she attended the wedding ceremony, or provided probative details about the Petitioner's courtship, shared residence or marital experiences.

With the present motion, the Petitioner submits a statement indicating that he and M-P- met around seven months before they married on [REDACTED] 2010, which is inconsistent with his initial statement that they dated for three years prior to their marriage. The Petitioner submits one photograph from

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the wedding and states that M-P- destroyed the remaining photographs. The photograph does not reflect on the Petitioner's good faith in marrying M-P-. He states that the wedding was hosted by M-P-'s mother, and the wedding guests included M-P-'s siblings, cousins, friends of the family, and his daughter. The Petitioner explains that after the wedding, he, M-P-, and his daughter returned to his home, as "it was a Sunday and next day we had to go to work, she was not employed at that time and I was working at a restaurant." The 2010 calendar indicates that [REDACTED] 2010, the date of the wedding, was a Saturday. The Petitioner does not provide further probative details about their courtship, shared residence or experiences, and does not submit additional witness statements. Therefore, the Petitioner has not demonstrated that he entered into marriage with M-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

On motion, the Petitioner has not established that he resided with M-P-, entered into the marriage in good faith, and the requisite battery or extreme cruelty. He is consequently ineligible for immigrant visa classification under section 204(a)(1)(A)(iii) of the Act and the appeal remains dismissed.

In these proceedings, the Petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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.

ORDER: The motion to reopen is denied.

Cite as *Matter of J-V-*, ID# 14509 (AAO Dec. 3, 2015)