



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

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

MATTER OF F-A-B-

DATE: DEC. 4, 2015

APPEAL OF VERMONT SERVICE CENTER 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. The matter is now before us on appeal. The appeal will be dismissed.

**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 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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 for abused spouses 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.

(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 . . . and must have taken place during the self-petitioner’s marriage to the abuser.

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(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

*Evidence for a spousal self-petition –*

(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 . . . ,

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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.

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(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 native of Ghana with French citizenship. He last entered the United States on February 26, 2003, as a visa waiver visitor with authorization to stay for 90 days. The Petitioner married E-M-,<sup>1</sup> a U.S. citizen, in [REDACTED] California on [REDACTED] 2006. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 3, 2011. The Director subsequently issued a request for evidence (RFE) of the Petitioner's good moral character, and the Petitioner responded. The Director issued a second RFE, advising the Petitioner that several documents he had provided appeared to be altered and seeking evidence that, among other things, the Petitioner's spouse subjected him to battery or extreme cruelty. The Petitioner submitted additional evidence which the Director found insufficient and denied the petition on this ground. The Petitioner filed a timely appeal. We subsequently provided the Petitioner with notice that additional documents within the record did not appear to be valid and therefore undermined his claims to have resided with E-M-, to have been battered or subjected to

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

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extreme cruelty by E-M-, and to have entered into marriage with E-M- in good faith. The Petitioner timely responded.

We review these proceedings *de novo*. A full review of the record does not establish the Petitioner's eligibility. The Petitioner's statements and evidence on appeal do not overcome the Director's determinations and the appeal will be dismissed for the following reasons.

### III. ANALYSIS

#### A. Battery or Extreme Cruelty

The Petitioner has not overcome the Director's finding that the Petitioner did not establish that E-M- subjected him to battery or extreme cruelty. In his initial affidavits the Petitioner stated that E-M- took control of their money and as soon as he began to earn a salary, directed it into their joint bank account, and that "things were going bad financially." The Petitioner claims that in March 2009 he came home from work to find E-M- smoking marijuana, and that they began to argue. The Petitioner asserted that E-M- began to scream and push him and then slapped him. He said that after this, she "was still abusing [him] physically and emotionally anytime she is bored." The Petitioner recounted that subsequently, on October 11, 2009, E-M- took a phone call from a man and when the Petitioner asked her about the call, she told him it was none of his business and left the home. The Petitioner indicated that when E-M- came back at 3:00 AM, she "was smelling [sic] like she had slept with the man" and yelled abusive language at the Petitioner when he questioned her. The Petitioner stated that in November 2009, E-M- withdrew \$2,500.00 from their bank account and when he questioned her, she yelled, told him she had given money to "her new man" and pushed him into a wall, causing his forehead to hit the wall. The Petitioner suggested that this incident "affected [his] eyes and was giving MRI treatment with [his] lens glasses on when [he] was being treated at the Aurora South medical [sic]." According to the Petitioner, in "mid 2010," E-M- wrecked their apartment when he left to work overtime, and "within a couple of days" contacted him to let him know that she was "outside Colorado." The Petitioner indicated that he took pictures of the damage in the apartment and regretted not ever calling the police to report E-M-. On [REDACTED] 2011, they were divorced. The Petitioner further indicated that he later suspected E-M- stole his social security number to buy phones from [REDACTED] and service from [REDACTED] and provided a copy of a police report dated August 9, 2011, in which the Petitioner reported two incidents of Identity Theft based on "person(s) unknown" who opened accounts with [REDACTED] and [REDACTED]. Although these documents suggest that the Petitioner was the victim of identity theft, they do not establish that it was E-M-.

The Petitioner also submitted affidavits from friends and family who described witnessing various incidents of E-M-'s physical and verbal abuse of the Petitioner.

In support of his claims and the statements submitted by his friends and family, the Petitioner submitted a psychological evaluation purportedly prepared by [REDACTED] identified as a psychologist with the [REDACTED] of [REDACTED] Colorado. The letter also lists "[REDACTED]" [REDACTED] and [REDACTED] as additional psychologists and [REDACTED]

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██████████ at the organization. According to the evaluation, ██████████ examination is “proof that there has been a physical [sic], verbal and emotional attacks on [the Petitioner] by his wife” and that ██████████ “found out that the [Petitioner] has been thinking too much and that can cause brain damage.” The evaluation did not describe any specific incidents of abuse or extreme cruelty.

On appeal, the Petitioner advised that he had “left out certain important” episodes of abuse in his prior statements. He, therefore, further recounted that E-M- also demanded that he sleep with one of her friends in order to make money and slapped him when he refused, and secretly placed heroin in his water container because he would not smoke marijuana and cigarettes with her. The Petitioner also indicated that E-M- had recently sent him a threatening e-mail in May of 2014, suggesting that she would send people to beat him up, and then a handwritten letter. He provided a copy of the e-mail, a card from a deputy of the ██████████, and a June 16, 2014, letter from the Victim Assistance Advocate of the ██████████ noting that the Petitioner is “listed as a victim of a crime” and therefore may be entitled to certain services, including help with medical bills, and mental health counseling. The Petitioner included evidence that a therapist prepared a “Victim Compensation Treatment Plan” and a letter dated October 13, 2014, from the therapist indicating that the Petitioner received 10 sessions of psychotherapy between July 18, 2014, and October 10, 2014, and that “[t]he focus of [his] treatment was on the alleged crimes and abuse committed against” the Petitioner by E-M-.

The Petitioner also provided a letter dated September 20, 2013, purportedly signed by ██████████ ██████████ Ophthalmologist-In-charge” of ██████████. According to the letter, the Petitioner was “examined for visual acuity and other related conditions when ask [sic] what was the cause, he said his wife hit him from the back [of the] head with an object very hard.” The letter indicated that ██████████ offered the Petitioner an MRI test on February 20, 2008, and found that the Petitioner has “reduced visual acuity due to lesion affecting the central visual axis . . . [t]hat can cause blindness in the long run.” The alleged ophthalmologist also attested that “indeed there was an abuse and battery cruelty [sic].”

On July 6, 2015, we issued notice to the Petitioner advising him that public records do not reflect that individuals with the names of the alleged psychologists listed on his evaluation are licensed psychologists or mental health counselors in the state of Colorado, and that the letter contains misspellings and grammatical errors similar to those found in the Petitioner’s personal statements. Based upon those factors, we requested the Petitioner to provide documentation of ██████████ credentials, evidence of her authorization to practice at the time she provided the report, information establishing that she was an employee of ██████████ and that the entity is recognized in the state of Colorado. Similarly, we notified the Petitioner that the letter from his ophthalmologist also appeared fabricated because it contained numerous spelling errors and grammatical mistakes and public records did not demonstrate the existence of any doctor in Colorado with that name. We requested that the Petitioner provide an updated letter from ██████████ documenting his credentials as an ophthalmologist and authorization to practice medicine in the state of Colorado at the time he issued the letter, and evidence establishing he was an employee of ██████████ at the time he wrote the letter.

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In response to the notice, the Petitioner did not provide the requested evidence relating to the [REDACTED]. He asserts that he had been deceived by the false “obnoxious letter” from the purported ophthalmologist, and asserts that he also was deceived by the MRI department at [REDACTED]. According to the Petitioner, he confronted the [REDACTED] with our notice and that they said they “don’t know anything about this” but prepared a new medical report for the Petitioner. The new report indicates that the Petitioner had an MRI, and notes that the findings appear to be “normal.” The report does not suggest that the MRI revealed damage to the Petitioner as a result of abuse inflicted by E-M-. Regarding the evaluation from [REDACTED] the Petitioner states that counselors at [REDACTED] were “spiritual counsellors,” rather than licensed practitioners. He also asserts that they have moved and he does not know where to find them. If the Petitioner knew that these individuals were not licensed counselors but rather “spiritual counsellors,” he does not explain why their letterhead reflects that each one was a psychologist.

The Petitioner also provided a July 25, 2014, Victim Compensation Treatment Plan from the [REDACTED] Colorado. According to the therapist who prepared the report, the Petitioner advised her that he had been stalked by E-M- since their divorce in 2011, and that as a result of her May 2014 e-mail and subsequent handwritten letter, he had lost his job from stress and was now homeless. Specifically, the counselor indicated that the Petitioner “had a job and a home prior to the crime [of May 2014] and now he does not have either.” We note that the Petitioner included a Form I-912, Request for Fee Waiver, with his 2013 Form I-290B, Notice of Appeal or Motion. On the Form I-912, the Petitioner asserted that he had been unemployed and homeless since April 4, 2011. The Petitioner signed the Form I-912 on September 15, 2013. If he had been homeless and unemployed since April 4, 2011, it is unclear why the Petitioner advised the therapist that he was homeless and unemployed as a result of E-M-’s alleged stalking incident of May 2014.

Although the Petitioner initially submitted personal statements and statements from family and friends attesting to the claimed abuse, the supporting documentary evidence submitted by the Petitioner appears to have been manufactured. We advised the Petitioner in our notice that without additional information to establish the authenticity of his documents and the claims contained within them, his credibility was diminished and his claims and supporting evidence were of limited evidentiary value. He has not provided the specific evidence that we requested in our notice, nor has the information he provided explained or overcome the problems we advised of in the notice. Accordingly, based on the above contradictory and inconsistent information, the Petitioner has not established by a preponderance of the evidence that E-M- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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## B. Joint Residence

Beyond the Director's findings, based on our *de novo* review,<sup>2</sup> the Petitioner has not demonstrated that he resided with E-M- after their marriage. On the Form I-360, the Petitioner claimed that he lived with E-M- from June 2006 to April 2011, and that they last resided together at an apartment on [REDACTED] Colorado. In his initial affidavits, the Petitioner indicated that he met E-M- in California but did not describe where either one of them were residing at that time, throughout their courtship, or after marriage.<sup>3</sup> The statements submitted on the Petitioner's behalf also did not contain any probative discussion of their residence together, except as it related to the claimed abuse. On appeal, the Petitioner claims that after they were married, they moved to California but again provides no probative and specific discussion regarding their claimed marital residence, shared belongings, and residential routines.

In support of his petition, the Petitioner submitted three leases with the contract date of February 4, 2009. Each of these leases, despite having the same contract date, have different lease terms; one covers the term of March 1, 2009 to February 28, 2011, a second one covers the term of March 1, 2009 to February 28, 2010, and the remaining one covers the term from March 1 to February 28, but does not list a year. As it relates to the leases, in our notice we indicated to the Petitioner that although the letter from [REDACTED] Community Manager of the apartment complex, suggested that [REDACTED] had acknowledged the authenticity of a lease, [REDACTED] did not specify which lease she confirmed as being the lease "provided by the management company." In response to our notice, the Petitioner claims that he returned to the management office where he was told that they had already given the Petitioner "the whole lease" and could not prepare another one and the lease previously given to USCIS is on their "records from 2006 to 2011." Again, however, the Petitioner did not indicate which of the three leases is purportedly contained in the management company records. He also does not explain the existence of three leases with the same contract date but with conflicting lease terms.

In our notice, we also advised the Petitioner that public records show that E-M- resided in California during the period he claimed she lived with him in Colorado. In response to the notice, the Petitioner acknowledged that E-M- lived in California and pointed to her Colorado driver's license as proof of her residence but did not further explain why she would maintain a California residence during the time the Petitioner claimed they resided together in Colorado.

Although the Petitioner has submitted some documentation that lists E-M- at the claimed residence in Colorado, the Petitioner's own statements and those submitted on his behalf do not provide a

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<sup>2</sup> An application or petition that does not comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

<sup>3</sup> According to the Petitioner, E-M- trashed their apartment and moved "outside Colorado" in "mid 2010" when the Petitioner was called to work overtime. This contradicts his claim on the Form I-360 to have been living with E-M- until April of 2011.

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probative discussion of their joint residence. Therefore, based upon this finding alone, the Petitioner has not established that he resided with E-M-. In addition, however, the Petitioner has also not overcome the derogatory information regarding the altered leases and the contradictory information showing that E-M- resided in California during the period that the Petitioner claimed she resided with him in Colorado. Accordingly, the Petitioner has not established, by a preponderance of the evidence, that he resided with E-M-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### C. Good-Faith Entry into Marriage

Also beyond the Director's determination and based on our *de novo* review, the relevant evidence submitted below and on appeal is not sufficient to demonstrate the Petitioner's good-faith entry into his marriage. In his initial affidavit, the Petitioner asserted that he met E-M- on May 4, 2006, at a social center in [REDACTED] where children played. He stated that they began speaking to each other and exchanged phone numbers. According to the Petitioner, they had their first date at [REDACTED] on July 8, 2006, when he also proposed to her, and they married on [REDACTED] 2006. The Petitioner indicated that he and E-M- married in California but lived in Colorado after their marriage. The Petitioner generally described birthdays shared in 2006 but provided no further details regarding their courtship, feelings for each other, reasons for getting married, or life after marriage, except as it related to the claimed abuse.

The Petitioner provided documents to support his claim of a good-faith entry into marriage, such as joint bills and accounts from 2011, evidence that E-M-'s life insurance lapsed in January 2011, and leases. The Petitioner also submitted affidavits from family and friends who indicated their awareness of the Petitioner's marriage to E-M-, generally discussed shared occasions together, and described the Petitioner as "happily married" and the marriage as "cordial." However, other than as it related to the claimed abuse, the statements did not provide any probative discussion of interactions witnessed between the Petitioner and E-M- or detailed statements to establish support for their claims that the Petitioner entered into his marriage in good-faith.

In addition to having submitted insufficient evidence of his good-faith entry into marriage, as discussed above, the Petitioner has submitted altered documents to support his claim that he and E-M- resided together in Colorado and has not overcome derogatory evidence which demonstrates that E-M- continued to reside in California during their marriage. Accordingly, the Petitioner has not established by a preponderance of the evidence that he entered into marriage with E-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish his 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-A-B-*, ID# 10699 (AAO Dec. 4, 2015)