



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

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

MATTER OF W-E-M-

DATE: DEC. 18, 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.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the Petitioner had a qualifying relationship with his spouse, was eligible for immediate relative classification based on that relationship, and entered into the marriage in good faith. The Petitioner filed a timely appeal.

#### I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 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)(1), which provides, 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:

....

(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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . 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 . . . the self-petitioner . . . .

(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.

....

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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.

With regard 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 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 . . . status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Zambia, last entered the United States on June 11, 2001, as a B-2 nonimmigrant. He married A-R-<sup>1</sup> who he claims is a U.S. citizen, on [REDACTED] 2012, in [REDACTED] Missouri. The Petitioner filed the Form I-360 on May 27, 2014. The Director issued a request for evidence (RFE) of the Petitioner's qualifying relationship with A-R- and his good-faith marriage. The Petitioner responded to the RFE with additional evidence. The Director found the evidence insufficient to establish that A-R- is a U.S. citizen with whom the Petitioner had a qualifying relationship, and that the Petitioner married A-R- in good faith. The Director denied the Form I-360 and the Petitioner appealed.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not demonstrate that the Director's decision to deny the Form I-360 was in error. Therefore, we will dismiss the appeal.

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

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### III. QUALIFYING RELATIONSHIP AND CORRESPONDING ELIGIBILITY FOR IMMEDIATE RELATIVE CLASSIFICATION

Pursuant to section 204(a)(1)(A)(iii)(II)(aa) of the Act, the Petitioner must demonstrate that he is the spouse of a U.S. citizen, or that he was the spouse of a U.S. citizen within the past two years and that the legal termination of that marriage was connected to battery or extreme cruelty by the U.S. citizen spouse. The Petitioner has not submitted sufficient evidence to establish that A-R- is a U.S. citizen.

In response to the Director's RFE, the Petitioner provided a personal declaration, dated October 8, 2014, in which he claimed that A-R- is a U.S. citizen. In support of that claim, the Petitioner stated that A-R- "was born in [REDACTED] Missouri on [REDACTED]." He also stated that he contacted the "department of birth records" in [REDACTED] Missouri by telephone to inquire about the procedure for obtaining a copy of A-R-'s birth certificate, but that he was told that, as an ex-spouse, he was unable to obtain a copy. In the same personal declaration, the Petitioner also provided A-R-'s social security number.

On appeal, the Petitioner again states that he attempted to obtain a copy of A-R-'s birth certificate but was unable to do so because he is her ex-spouse. He provides A-R-'s city of birth and social security number again, and now claims that A-R-'s date of birth is "[REDACTED]."

The Petitioner's statements are not sufficient to establish that A-R- is a U.S. citizen. Although we acknowledge the Petitioner's assertion that he tried to obtain a copy of A-R-'s birth certificate and was unable to do so, we cannot determine that A-R- is a U.S. citizen absent credible evidence. Pursuant to 8 C.F.R. § 103.2(b)(17)(ii), we have attempted to verify A-R-'s U.S. citizenship, but there is no information available to confirm that A-R- is a U.S. citizen. Therefore, there is insufficient evidence to establish that the Petitioner has a qualifying relationship with A-R-, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act. As a result, he is not eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act based on his relationship to A-R-.

### IV. GOOD-FAITH MARRIAGE

The preponderance of the relevant evidence also does not establish that the Petitioner married A-R- in good faith. In his personal declaration signed on May 14, 2014, which he submitted with the Form I-360, the Petitioner claimed that he met A-R- in May 2011 at a barbeque restaurant in [REDACTED] Missouri, and they "just clicked." He indicated that he and A-R- exchanged telephone numbers and began calling each other, and began dating a few weeks later. He stated that they had a good relationship at first, with "normal marital problems here and there," but that A-R- later became abusive. According to the Petitioner, the relationship deteriorated after A-R- became pregnant with another man's child.

In his statement of October 8, 2014, the Petitioner asserted that he met A-R- in April 2011. He claimed that their exchange of telephone numbers led them to "see each other casually at first, catch a movie, a bite here and there," and their friendship grew into a romantic relationship. The Petitioner stated that he asked A-R- to move in with him because she spent a lot of time at his

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apartment and that she moved in with him in December 2011. He further reported that, because A-R- no longer wanted to live together without being married, he and A-R- were married at the courthouse in [REDACTED] Missouri in [REDACTED] 2012. He indicated that he and A-R- had a healthy relationship and shared many interests, including basketball, movies, cooking, and eating out. The Petitioner claimed that A-R- was loving and gentle until she became abusive in the summer of 2013.

The Petitioner did not provide probative detail in his statements about his relationship with A-R-. He did not describe, in specific detail, how he met her or what activities they shared during their courtship. Also, he did not describe their engagement, their wedding plans, or their wedding ceremony or reception. Similarly, the Petitioner's friends did not provide specific details about the Petitioner's relationship with A-R- to support a finding that the Petitioner entered into his marriage in good faith. [REDACTED] claimed that he was unable to attend the wedding but visited the couple when they were newlyweds, but did not provide other information about the Petitioner's relationship with A-R-, other than to report an incident of abuse that he witnessed in June 2013. [REDACTED] also stated that he was unable to attend the wedding but visited the couple later, but did not offer details about the Petitioner's intentions in marrying A-R-. [REDACTED] indicated that he was a witness to the wedding and that the marriage was in good faith, but he did not describe the wedding or the spousal relationship between the Petitioner and A-R-, aside from the abuse.

Overall, the evidence of record lacks probative detail regarding the Petitioner's first meeting with A-R-, their courtship, engagement, wedding, and life together as spouses. Accordingly, the preponderance of the evidence does not establish that the Petitioner married A-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

## V. JOINT RESIDENCE

Beyond the decision of the Director, the preponderance of the evidence does not establish that the Petitioner resided jointly with A-R- during their marriage. We may deny a petition that fails to comply with the technical requirements of the law even if the Director 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); *Dor v. I.N.S.*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

On the Form I-360, the Petitioner indicated that he resided with A-R- from April 2012 until May 2014, and that their last shared address was on [REDACTED]. In his statement of April 20, 2014, he indicated that A-R- moved in with him in December 2011. Similarly, in his statement of October 8, 2014, the Petitioner declared that A-R- moved in with him in December 2011 and eventually told him that she was not happy cohabiting without being married. He stated that he and A-R- were married in [REDACTED] 2012 and that, in the summer of 2013, A-R- began bringing other men to the apartment. According to the Petitioner, A-R- kicked him out of their shared apartment in August 2013.

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On appeal, the Petitioner alleges that the timeline he provided on the Form I-360 regarding his joint residence with A-R- was in error. He asserts that [REDACTED] 2012 was the date he and A-R- were married, not the date they moved in together. However, the Petitioner also stated on the Form I-360 that he last lived with A-R- in May 2014, but he stated in his October 8, 2014, declaration that A-R- kicked him out of the apartment in August 2013. Furthermore, although the Petitioner stated that A-R- kicked him out of the apartment, the record of proceedings indicates that he continued to live at that address until October 2015, when he submitted an AR-11 change of address notification to U.S. Citizenship and Immigration Services (USCIS). The Petitioner has not provided a clear timeline of his addresses during his marriage to A-R-. Additionally, the Petitioner's personal declarations lack probative detail with regard to his joint residence with A-R- because, in neither personal declaration, did the Petitioner provide a description of the alleged shared residence or marital routines within the home.

Furthermore, the supporting statements the Petitioner submitted are vague with regard to the Petitioner's joint residence with A-R-. Two of the Petitioner's friends, Mr. [REDACTED] and Mr. [REDACTED] each submitted two statements in which they claimed to have visited the Petitioner and A-R- at their home, but did not describe the home or the state where it was located. Another friend, Mr. [REDACTED] asserted that he stayed with the Petitioner and A-R- for three days at their home in [REDACTED] Kansas, but he did not describe that home or provide the address.

As additional supporting evidence, the Petitioner provided a copy of a lease for an address on [REDACTED]. The lease is dated February 6, 2013, indicates that occupancy will commence on April 1, 2013, lists the Petitioner as the resident on the first page, and contains the Petitioner's signature and initials throughout the document. A-R- is listed as an occupant on the second page of the lease, but she did not sign the lease. Additionally, on the second page, the name of one of the occupants was apparently crossed-out prior to generation of the copy and, following the generation of the copy, correction fluid was applied to the copy and the Petitioner's last name was entered in blue ink. The reason for the alteration of the lease is not clear. Due to the lack of A-R-'s signature on the lease and the entry of the Petitioner's name in blue ink on the second page, the lease carries little evidentiary weight. Additionally, the lease is for an address on [REDACTED] and did not terminate until March 31, 2014, but the Petitioner stated on his Form I-360 that he last resided with A-R- on [REDACTED]. As a result, the record does not contain a clear timeline of the address or addresses at which the Petitioner resided with A-R- during their marriage.

The Petitioner also supplied utility bills for the [REDACTED] address. These include gas bills, listing the names of the Petitioner and A-R-, for several months between November 2012 through September 2013. The Petitioner also submitted cable bills, addressed only to A-R- at the [REDACTED] address. Several of the gas and cable bills predate the period of occupancy indicated on the lease provided by the Petitioner for the [REDACTED] address. These bills do not overcome the lack of detail and inconsistencies elsewhere in the record or establish that the Petitioner and A-R- resided together at the [REDACTED] address.

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The record lacks probative detail regarding the Petitioner's claimed joint residence with A-R- during their marriage. Additionally, the record contains inconsistencies relating to the dates the Petitioner resided with A-R-. Therefore, the preponderance of the evidence does not establish that the Petitioner resided jointly with A-R- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

## VI. CONCLUSION

The preponderance of the evidence does not demonstrate that the Petitioner has a qualifying relationship with a U.S. citizen spouse and is eligible for immigrant classification based on that relationship, married his spouse in good faith, and resided jointly with his spouse. The Petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proving 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of W-E-M-*, ID# 12914 (AAO Dec. 18, 2015)