



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

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

MATTER OF B-A-M-

DATE: DEC. 22, 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

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 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 immigrant classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act are explained at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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.

....

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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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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.

....

(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 was paroled into the United States on September 9, 2005. The record reflects that he had previously entered the United States and married Y-M-¹, a U.S. citizen, on [REDACTED] 1994, in [REDACTED] New York. Their marriage was terminated in a divorce on [REDACTED] 2013. The Petitioner filed a previous Form I-360,² which the Director denied because the Petitioner did not establish that he resided with his spouse, married her in good faith, and that she battered him or subjected him to extreme cruelty. We summarily dismissed the Petitioner's subsequent appeal.

The Petitioner filed the instant Form I-360 on November 21, 2014. The Director issued a notice of intent to deny (NOID) requesting, in part, evidence that the Petitioner married Y-M- in good faith and resided with her during their marriage. The Petitioner responded with additional evidence, which the Director found insufficient to establish eligibility. The Director denied the petition as the record did not

¹ Name withheld to protect the individual's identity.

² The Director denied the petition on October 17, 2013.

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establish that the Petitioner entered into marriage with his spouse in good faith and that he jointly resided with her. The Petitioner timely appealed.

On appeal, the Petitioner submits a statement. We review the appeal on a *de novo* basis. Upon review of the entire record, we find that the Petitioner has not overcome the Director's grounds for denying the petition. The appeal will be dismissed for the following reasons.

III. ANALYSIS

A. Joint Residence

The record does not establish that the Petitioner resided with Y-M- during their marriage. The Petitioner stated on the Form I-360 that he resided with Y-M- from April 1994 to December 2011, and that they last resided together on [REDACTED] in [REDACTED]. The relevant evidence in the record includes the petitioner's declaration, copies of the Petitioner's 2002 and 2008 state and federal income tax returns, and statements from [REDACTED] and [REDACTED].

In his statement in response to the Director's NOID, the Petitioner did not describe his shared residence with Y-M- in any probative detail. He did not, for example, describe their apartment, shared belongings, and residential routines, or provide any other substantive information sufficient to demonstrate that he resided with Y-M-. Mr. [REDACTED] and Mr. [REDACTED] do not indicate in their statements that they visited the Petitioner and Y-M- at their shared home, or claim to have personal knowledge of the couple's joint residence. The 2002 and 2008 income tax returns show the Petitioner's filing status as "married filing separately."

On appeal, the Petitioner explains that after they married, he and Y-M- moved to the address on [REDACTED] and he resided there with her from April 1994 through December 2011. This evidence is inconsistent with the Petitioner's statement in response to the Director's NOID, where he stated that his marriage abruptly ended in 2005 when he returned from the Dominican Republic to learn that his wife had taken out an order of protection against him, and that since that time, he and Y-M- had been separated. In addition, the Petitioner's 2002 income tax returns show his address as an apartment on [REDACTED] in [REDACTED]. The record contains no explanation for these inconsistencies. The Petitioner further states on appeal that he and Y-M- shared a life together, but does not provide any details of the lives they shared during their claimed joint residence. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner resided with his former spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal also fails to demonstrate the petitioner's entry into his marriage in good faith. The record contains the petitioner's personal statement, statements from friends, and copies of the Petitioner's 2002 and 2008 state and federal income tax returns. As noted above, the tax returns are filed as "married filing separately," and do not give any indication of the Petitioner's good faith marital intentions. In the Petitioner's declaration before the Director, he stated

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that he loved his wife, but did not indicate how he met her, or describe in any probative detail their courtship, wedding ceremony, shared residence and experiences, other than the abuse.

Similarly, the statements from the Petitioner's friends, [REDACTED] and [REDACTED] lack probative detail regarding the Petitioner's intentions in marrying Y-M-. Mr. [REDACTED] attested to knowing the Petitioner and Y-M- as a married couple because they went to the same church, and stated that the Petitioner and Y-M- were together for two years prior to their marriage. Mr. [REDACTED] statement that the couple knew each other for two years before marrying is inconsistent with the Petitioner's statement on appeal that he knew Y-M- for about a year before they married. Mr. [REDACTED] does not provide observations of the relationship between the Petitioner and Y-M-, or any details to establish his personal knowledge of the Petitioner's good-faith marriage to Y-M-. Mr. [REDACTED] stated that he socialized with the Petitioner and Y-M- about 20 times in 1993, 1994 and 1995, but he does not describe any particular visit or social occasion with the couple in probative detail. Both Mr. [REDACTED] and Mr. [REDACTED] stated that they attended the couple's wedding, and the couple looked happy, but neither provided any substantive information about the Petitioner's intentions in marrying Y-M-.

On appeal, the Petitioner submits a statement indicating that he met Y-M- at a friend's house in February 1993, they fell in love, and married. He states that in the first year of marriage, he and Y-M- were together all the time, shopped, ate out on Saturdays, and they were active in their church. The Petitioner provides a cursory description of his relationship with Y-M-, and the remaining, relevant evidence lacks probative information sufficient to meet his burden of proof. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not demonstrated that he resided with his former spouse or entered into marriage with her in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden to establish eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of B-A-M-*, ID# 14760 (AAO Dec. 22, 2015)