



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

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

MATTER OF J-A-R-

DATE: NOV. 2, 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 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 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 or the self-petitioner's child, 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 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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, school records, hospital or medical records, 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.

(b)(6)

*Matter of J-A-R-*

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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. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Panama who entered the United States in [REDACTED] Georgia on January 21, 2005, as a B-2 nonimmigrant visitor. Petitioner wed Y-K-R-<sup>1</sup>, a U.S. Citizen, on [REDACTED] 2006, in Georgia. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on November 22, 2011. The Director subsequently issued a request for evidence (RFE) of, among other things, the Petitioner's good moral character, joint residence with Y-K-R-, entry into the marriage in good faith, and the requisite battery and/or extreme cruelty he was subjected to during the marriage. The Petitioner timely responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

The Director denied the petition because the Petitioner did not establish that he entered into the marriage in good faith, resided with his U.S. citizen spouse, and that she subjected him to battery or extreme cruelty. The Petitioner timely appealed the Director's denial of the petition. On appeal, the Petitioner submits a brief and additional evidence.

We review these proceedings *de novo*. Upon a full review of the record as supplemented on appeal, the Petitioner has not overcome all of the Director's grounds for denial. The appeal will be dismissed for the following reasons.

## III. ANALYSIS

### A. Joint Residence

The Director correctly determined that the Petitioner did not establish that he resided with Y-K-R-. In his Form I-360, the Petitioner did not provide the dates that he resided with Y-K-R-, instead left that section of the form blank. In his initial affidavit, the Petitioner recounted that he first resided with Y-K-R- in [REDACTED] 2006, at Y-K-R-'s mother's home on [REDACTED] Georgia. He stated that in 2007, they moved to a home on [REDACTED] Georgia. The Petitioner recounted that they moved back to Y-K-R-'s mother's home in January 2008, and in

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

(b)(6)

*Matter of J-A-R-*

September 2009 they moved to an apartment on [REDACTED] Georgia. In his second affidavit, the Petitioner clarified that he returned to [REDACTED] Georgia in October 2007, and resided with Y-K-R- at the [REDACTED] address from September 2009 until October 2010. The Petitioner's affidavits, however, do not describe his joint residence(s) with Y-K-R- in any probative detail. He does not provide information about their shared belongings and residential routines, apart from the alleged abuse. The Petitioner also submitted four photographs of himself and Y-K-R- that are not specified as being taken at any residence that the Petitioner claims he shared with Y-K-R-.

In response to the RFE, the Petitioner submitted letters from his friends and family members:

[REDACTED] recounted that they often socialized and visited the Petitioner and Y-K-R- at the couple's residence, but they did not describe any specific residential visits. [REDACTED] indicated that she resided with the Petitioner and Y-K-R- "for a while," but her statement also does not provide any probative details of her interactions with the couple at their residence, or describe the home in any detail.

On appeal, the Petitioner asserts that he has submitted sufficient evidence to show joint residence with Y-K-R-. He submits a copy of his daughter's birth certificate and asserts that it supports his assertion of joint residency. He contends that he does not have documentary evidence of his joint residence with Y-K-R- because of his immigration status. 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 of persons with personal knowledge of the relationship or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). However, the Petitioner's affidavit and the letters from his friends do not provide any substantive information relating to the Petitioner's claim of joint residence with Y-K-R-. The affidavits and letters were of a general nature and provided no probative details to substantiate Petitioner's claim of joint residency. Similarly, the photographs submitted solely depict the Petitioner and his wife, but they do not identify when and where they were taken and without probative testimony, are insufficient to establish the Petitioner's marital residence with Y-K-R-. Similarly, while the birth certificate depicts that Petitioner and Y-K-R- had a child together, without probative testimony, it is insufficient to establish joint residency. Accordingly, the Petitioner has not established by a preponderance of the evidence that he resided with his spouse after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### B. Good-Faith Entry into the Marriage

The Director determined that the Petitioner did not enter the marriage in good faith, stating that the evidence submitted was not sufficient to conclude that the Petitioner and his wife intended to form a life together. The Director further noted that the Petitioner claimed that he and his wife had a child together, but did not provide any documentary evidence, such as a birth certificate, to substantiate this claim. As discussed, the relevant evidence in the record contains the Petitioner's affidavits, affidavits and letters from friends and family, and several photographs of the Petitioner and his spouse. In his first affidavit, the Petitioner described how he met his spouse in 2005 at their place of employment in [REDACTED] Georgia. He stated that he asked Y-K-R- out on a date a few times before

(b)(6)

*Matter of J-A-R-*

she agreed to go out with him. Petitioner recalled that during the courtship they spent a lot of time together, going to the movies, the park, and once traveled together to [REDACTED]. He stated that in April 2006, Y-K-R- became pregnant with their child, and in [REDACTED] 2006, the Petitioner asked her to marry him. The Petitioner recalled that Y-K-R- accepted his proposal and they married on [REDACTED] 2006. In his second affidavit, the Petitioner explained that he wanted to marry Y-K-R- before the birth of their child and for this reason they got married quickly without a big wedding ceremony.

On appeal, the Petitioner asserts that the Director's determination that his affidavits lack probative details and were not sufficient to determine that he intended to form a life together with Y-K-R- goes against the weight of the evidence. The Petitioner further asserts that he entered the marriage in good faith, as he and his spouse intended to build a life together, as supported by their marriage and subsequent birth of their child. As discussed, on appeal, the Petitioner provides a birth certificate, which indicates that the child was born on [REDACTED] and that Y-K-R- is the mother of the child and Petitioner is the father. The Petitioner's affidavits, in conjunction with his daughter's birth certificate, are probative evidence of the Petitioner's good-faith marital intentions. When viewed in the totality, the preponderance of the relevant evidence demonstrates that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### C. Battery or Extreme Cruelty

We find no error in the Director's determination that the Petitioner did not establish that Y-K-R- subjected him to battery or extreme cruelty. The relevant evidence in the record contains the Petitioner's affidavits, a copy of a photograph showing a mark on Petitioner's neck, and copies of electronic mail correspondence from [REDACTED] a letter from [REDACTED] and conviction records from the State of Georgia.

In his first affidavit, the Petitioner stated that during Y-K-R-'s pregnancy she called the Petitioner names, kicked him out of their home, and she acted "crazy" with jealousy. He stated that there was one incident in which his wife stabbed him in the hand with a knife. The Petitioner recalled that his wife often threatened to report him to the police because of his immigration status. In 2009, during an altercation with Y-K-R-, Petitioner stated that when he tried to lock himself in a bedroom to get away from Y-K-R-, she got in his way and he grabbed her to move her out of the way. He stated that Y-K-R- became angry, pushed and hit him in the face, and told him to leave the house. The Petitioner recounted that when he refused to leave the home, Y-K-R- called the police and they were both arrested. He stated that he was convicted of affray, and sentenced to two months in county jail. The Petitioner also recalled that his spouse came to his place of employment, yelled at him, and pushed him. He stated that he became angry and punched the windshield of his car. The Petitioner stated that Y-K-R- then called the police, he was arrested and spent two more months in jail. In his second affidavit, the Petitioner reiterated that on several occasions Y-K-R- physically assaulted him. The Petitioner also added that Y-K-R- did not allow him to interact with his friends and family members, and she currently limits his ability to see their daughter.

(b)(6)

*Matter of J-A-R-*

The Petitioner's claim that he was the victim of abuse by Y-K-R- is undermined by his conviction records. The record shows that on [REDACTED] 2010, the Petitioner was convicted of affray in violation of the Georgia Code. He was sentenced to 12 months imprisonment, with 10 months suspended, and he was ordered to avoid any contact with Y-K-R-. On [REDACTED] 2010, the Petitioner was convicted of disorderly conduct in violation of the Georgia Code, and sentenced to 76 days imprisonment. The Petitioner in his affidavits indicates that the disorderly conduct conviction was also related to an incident involving Y-K-R-.<sup>2</sup>

The statements from the Petitioner's friends also do not demonstrate abuse during the Petitioner's marriage to Y-K-R-. [REDACTED] stated that Y-K-R- did not allow the Petitioner to bring anyone to their apartment and threatened to call the immigration authorities. [REDACTED] recounted in a one-sentence statement that Y-K-R- "physically and verbally abused" the Petitioner. [REDACTED] stated that Y-K-R- controlled the Petitioner's whereabouts. [REDACTED] stated that Y-K-R- threatened to have the Petitioner deported. Their brief statements, however, are general in nature and lack details of any specific incident of battery or extreme cruelty that they witnessed in probative detail, or provide any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner.

On appeal, the Petitioner claims that the evidence demonstrates that he was subjected to battery and extreme cruelty by his spouse. He asserts that he was intimidated, threatened, and physically attacked by his spouse during the marriage. However, Petitioner's affidavits and the statements from his friends lack probative details about specific incidents of abuse. Furthermore, the Petitioner's two convictions for offenses he explains involved Y-K-R- undermine his claims of having been a victim of battery by Y-K-R-. Accordingly, the Petitioner has not established that Y-K-R- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### IV. CONCLUSION

On appeal, the Petitioner has established his good-faith entry into the marriage. However, he did not establish that he resided with Y-K-R- and that he was subjected to battery or extreme cruelty by her during their marriage. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

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.

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<sup>2</sup> Although the Director did not deny the petition under the good moral character eligibility ground of section 204(a)(1)(A)(iii)(I)(bb) of the Act, the Petitioner's convictions show that he may lack good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Since the appeal will be dismissed on other grounds, we will not address this further here.

*Matter of J-A-R-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-A-R-*, ID# 14123 (AAO Nov 2, 2015)