



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

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

MATTER OF S-L-

DATE: NOV. 3, 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 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.

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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, 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. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Serbia who entered the United States as a nonimmigrant visitor on May 13, 2001. The Petitioner married P-L-¹, a U.S. citizen, on [REDACTED] 2005, and they divorced on [REDACTED] 2014. The Petitioner filed the instant Form I-360 petition on September 2, 2014. The director subsequently issued a request for evidence (RFE) of the Petitioner's joint residence with P-L- and her entry into the marriage with him in good faith. The Petitioner timely responded with additional evidence which the director found insufficient and the director denied the petition on these grounds. The Petitioner filed a timely appeal. On appeal, the Petitioner submits a brief and additional evidence.

¹ Name withheld to protect individual's identity.

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We review these proceedings *de novo*. The Petitioner's claims and the additional evidence submitted on appeal do not overcome the grounds for denial. The appeal will be dismissed for the following reasons.

III. ANALYSIS

A. Joint Residence

The Petitioner has not provided sufficient probative evidence to establish that she resided with P-L- during their marriage. On her Form I-360, the Petitioner stated that she resided with P-L- from March 2005 to January 2010 and listed [REDACTED] Illinois, as her last residence with him. In her initial letter, the Petitioner indicated that she moved into P-L-'s apartment a month before they were married and lived at his apartment until he lost his job in December 2005, but she did not describe their home, their shared possessions, and their marital routines, apart from the abuse. The Petitioner stated that they then lived with P-L-'s mother and father in [REDACTED] Illinois, from December 2005 until October 2006, but she did not describe their living arrangements, beyond the abuse. The Petitioner stated that in October 2006, they moved to an apartment in [REDACTED] Illinois, and that she was given furniture by her friends and she spent her own money on the home that she claimed to share with P-L-. However, she did not further describe their joint residence at this location, apart from the abuse. She indicated that she had separated from P-L- after a year and that they had several reconciliations and separations, but did not specify the dates of the separations. In her response to the RFE, the Petitioner stated that she and P-L- had separated in 2007, and although her Form I-360 indicated that they resided together until January 2010, she "occasionally reunite[d]" and lived with P-L- from 2007 to July 2010. She claimed that they did not have a lease or pay utilities when they lived with P-L-'s parents on [REDACTED] in [REDACTED]. She further claimed that they did not have good credit to qualify for a formal lease for the apartment on [REDACTED] but had an informal agreement to pay rent on a monthly basis.

The Petitioner also provided notarized letters from her friends. In her letter, [REDACTED] stated that she spent Serbian holidays at the Petitioner's home on [REDACTED] but provided no further information about her visit(s) to the couple's residence. [REDACTED] recounted in his letter that he spent time with the Petitioner and P-L- but did not indicate that he visited their marital residence. [REDACTED] and [REDACTED] stated that they attended the couple's wedding, but also did not indicate that they ever visited the couple at their residence. In addition, the letters from her friends, [REDACTED] only discussed their knowledge of abuse in the Petitioner's marriage. The statements, therefore, do not provide detailed, probative information of the Petitioner's joint residence with P-L-.

The Petitioner also submitted documentary evidence to establish that she and P-L- received mail at the claimed [REDACTED] address, including: two bank account statements, dated September and October 2009; a bank account summary; and 2011 and 2012 IRS Forms 1040, U.S. Individual Income Tax Returns, and corresponding IRS tax return transcripts. However, the 2011 and 2012

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federal income tax returns cover a period after the Petitioner's separation from P-L-. She further provided an [REDACTED] automobile application, dated December 28, 2005, listing the claimed [REDACTED] address.

On appeal, the Petitioner submits a notarized statement in which she claims that she lived with P-L- during their marriage "with the exception of a few weeks at a time." She asserts that she and P-L- shared living expenses and that she provided the only joint bank account information that her bank had of checks which were sent to her marital address. She declares that she removed P-L-'s name from the joint bank account after he withdrew money without her knowledge. The Petitioner provides as evidence of her joint residence: photocopies of three checks, which show the [REDACTED] P-L-'s 2005 and 2007 Forms W-2, Wage and Tax Statements; the Petitioner's 2007 Form W-2; and unsigned IRS Forms 1040 for 2005, 2006, 2007, and 2010, which are addressed to the Petitioner and P-L- at their claimed [REDACTED] residences.

The Petitioner asserts on appeal that the director found fault with her evidence and did not apply the "any credible evidence" standard. She declares that the bank account statement which she provided shows that she resided with P-L- because it was addressed to both of them. She further declares that the director disregarded the document from [REDACTED] and contends that it is credible evidence that she resided with P-L-. She asserts that when the credible evidence is taken into account, she has demonstrated by a preponderance of the evidence that she resided with P-L-. For self-petitioning abused spouses and children, the statute prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act; *see also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act; C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

In this case, the Petitioner has submitted some documentation indicating that she and P-L- received mail at the [REDACTED] addresses. However, the Petitioner herself has not described in detail any marital residence that she claimed to have resided at with P-L-, nor has she described their shared possessions and marital routines. Similarly, the statements from her friends do not contain detailed, probative information demonstrating that she and P-L- resided together during their marriage. The preponderance of the relevant evidence, therefore, does not demonstrate that the Petitioner resided with P-L- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Entry into the Marriage in Good Faith

In her initial letter, the Petitioner recalled that she met P-L- on November 6, 2004, while she was visiting her friend at a restaurant. She recounted that she talked with P-L- but did not give him her

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phone number. She indicated that for the next few weeks she saw him at the restaurant. She stated that she fell in love with P-L- and moved into his apartment in March 2005, and that they decided to get married. Other than stating that on one occasion they visited P-L-'s mother and father, she did not further describe her courtship, engagement, and relationship prior to the marriage. The Petitioner indicated that in [REDACTED] 2005, she married P-L- and that his family members did not attend their wedding ceremony. She briefly recalled that they had a wedding reception with her friends at a Serbian restaurant but did not discuss these events in probative detail. She declared that the first five months of her marriage were "perfect" and that she worked during the day and studied English, but she did not describe her shared residence and experiences with P-L- beyond the alleged abuse. In her response to the RFE, the Petitioner discussed her lack of joint documentation, and her dates of residence with P-L-.

The statements from the Petitioner's friends also fail to demonstrate her good-faith marital intentions. As discussed, in their statements, [REDACTED] primarily discuss abuse in the Petitioner's marriage. [REDACTED] recounted in her affidavit that she has known the Petitioner since 2002, that she attended the Petitioner's wedding ceremony and reception, and that she spent time at the couple's [REDACTED] home. She does not, however, discuss her visit(s) to the couple's home, or interactions with the couple in any probative detail. In their letters, [REDACTED] briefly stated that they attended the Petitioner's marriage to P-L-, but did not provide any other information. [REDACTED] stated in his notarized letter that he has known the Petitioner since 2002, socialized with the couple, and attended their marriage ceremony. He does not, however, discuss any particular visit or social occasion with the couple. The statements from the Petitioner's friends do not contain detailed, probative information about the Petitioner's courtship, feelings for P-L-, or decision to marry such as to establish the Petitioner's good-faith marital intent.

The Petitioner provided photographs of herself and P-L- at their wedding ceremony and on other unspecified locations, and a "guest check" from [REDACTED] restaurant. As discussed, she also provided joint bank account statements which show two months of account activity in 2009, and a bank account summary which shows a joint checking account and issuance of check cards. She also provided joint 2011 and 2012 IRS Forms 1040 and corresponding IRS tax return transcripts, but these documents cover a period after her separation from P-L-. She further submitted a joint application for automobile insurance from [REDACTED]. However, she did not provide evidence that an automobile insurance policy was ever in effect for the couple.

On appeal, the Petitioner recounts in a third statement that she married P-L- because she fell in love and wanted to spend her life with him, but her dream of a future with him was shattered a few months into their marriage. She states that she separated from P-L- in 2007, but occasionally went back to him until their separation in July 2010. As stated, the Petitioner provides on appeal, photocopies of three checks and check deposit slips, and copies of unsigned joint 2005, 2006 and 2007 IRS Forms 1040. However, there is no evidence that the tax returns were ever filed with the Internal Revenue Service. She further provides an updated psychological evaluation from [REDACTED] a licensed professional counselor, which discusses abuse in the Petitioner's marriage and

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states that the Petitioner has been diagnosed with Major Depressive Disorder and Adjustment Disorder with Anxiety.

On appeal, the Petitioner contends that her statement discussed how she met P-L-, how their relationship developed, and the “positive shared experiences before and during married life.” She asserts that the affidavits from her friends contain sufficient detail regarding her marital relationship. She further avers that her statement, coupled with the joint bank account statements, automobile insurance application, joint tax returns, guest check from [REDACTED] restaurant, psychological evaluation, and her friends’ statements are sufficient to demonstrate by a preponderance of the evidence her good-faith intent in marrying P-L-. Although the Petitioner has provided some joint documents, the Petitioner only generally described the first time she met P-L-, and she has not described her courtship in any probative detail. Nor has she described her engagement, decision to marry, and marital residences and experiences in detail such that it would support her good-faith marriage claim. Similarly, the affidavits and letters from her friends do not provide any substantive information to establish that she married P-L- in good faith. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner entered into marriage with P-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

On appeal, the record does not establish that the Petitioner resided with P-L- and entered into the marriage with him in good faith. The Petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

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 appeal is dismissed.

Cite as *Matter of S-L-*, ID# 14238 (AAO Nov. 3, 2015)