



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

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

MATTER OF S-M-M-

DATE: NOV. 18, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE 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 and we dismissed the Petitioner's appeal. The matter is now before us on a motion to reconsider. The motion will be denied.

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 resided with her U.S. citizen spouse during their marriage and married him in good faith. Our prior decision is incorporated here by reference. On motion, the Petitioner submits a brief and additional evidence.

I. JOINT RESIDENCE

In her brief on motion, the Petitioner asserts that we erred in finding that she did not reside jointly with her U.S. citizen spouse, R-J-,¹ during their marriage. She contends that she submitted "ample" evidence to show that she "probably" resided with R-J-, and that, by basing our dismissal on "minor inconsistencies or omissions," we inappropriately imposed a burden of proof higher than the preponderance of the evidence standard.

The Petitioner alleges that we incorrectly found that R-J-'s signatures on leases the Petitioner submitted from September 2009, March 2010, and December 2010 did not match his signature on other documents. She states that R-J-'s signature on those leases was written in capital letters and "probably belonged to him." She also alleges that R-J- may have signed the leases while under the influence of drugs, which could have affected his signature. Additionally, she claims that we conceded that R-J- signed the April 2011 lease, which conflicts with our finding that the Petitioner and R-J- did not share a principal, actual dwelling place. As additional evidence on motion, the Petitioner submits an updated personal affidavit, which is very similar to her July 3, 2013, affidavit, in which she asserts, among other things, that R-J- signed the leases. She also submits a letter from the apartment management office stating that R-J- was added to the lease in September 2009 and

¹ Name withheld to protect the individual's identity.

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signed renewal leases with the Petitioner. She also alleges that R-J-'s signature on the April 2011 lease demonstrates that the Petitioner and R-J- resided together.

The Petitioner has filed a motion to reconsider, alleging that our decision was in error based on the relevant evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). We will not consider new facts or evidence in a motion to reconsider. Nevertheless, even considering the Petitioner's statements on motion, she incorrectly asserts that the signatures on the September 2009, March 2010, and December 2010 leases were written in capital letters; only the December 2010 lease bears R-J-'s name in capital letters. Also, the Petitioner claims in her updated affidavit that each time she and R-J- signed the leases, they "would do it together in front of the ladies at the lease office." In contrast, the Petitioner stated in her July 3, 2013, affidavit, that "I was not present when those documents were signed, most of the time he went by himself to the lease office to sign them. I cannot explain exactly what happened since I wasn't there." The Petitioner's statement in her updated affidavit creates a new and unexplained inconsistency. Additionally, even if R-J- signed the leases, this would not be sufficient, on its own, to establish that the Petitioner and R-J- actually resided jointly in the apartment in question. As discussed in more detail below, the Petitioner's accounts of her residences after marrying R-J- indicate that she and R-J- listed various addresses on documents to reflect their intentions, but not their actual, principal place of residence.

The Petitioner also asserts that, although she submitted several documents bearing a California address, this does not refute her claim that she resided jointly with R-J- in Texas. She states on motion that, after she and R-J- married in California, they were unsure of where they would live because the Petitioner had a job in Texas but R-J- did not want to leave his family in California. She indicates that she and R-J- moved to Texas one month after their wedding, but they were "not fully committed to living there" and were applying for jobs in California. She further states that R-J- got a job in California, so they made preparations to move, but his job offer then fell through. According to the Petitioner's brief on motion, "the California address only evidences a period of transition from California to Texas" However, the record contains documents from 2008, 2009, and 2010, bearing two different California addresses. This is not reflective of a "period of transition," but an ongoing connection to addresses in California which conflicts with the Petitioner's claimed joint residence with R-J- in Texas beginning shortly after their marriage in 2008. Moreover, the Petitioner's descriptions of her moves between California and Texas lack specific details, including the dates of each move. At best, the evidence indicates that the Petitioner and R-J- visited each other in Texas and California, had trouble deciding where they would live, and listed various addresses on various documents due to their intentions to reside at those addresses, despite the fact that had not finalized their plans and did not actually reside at the addresses they used. The intention to reside jointly, without sharing a "principal, actual dwelling place in fact," is not sufficient meet the requirement at section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Contrary to the Petitioner's assertion, our finding that she did not share an actual, principal dwelling place with R-J- was not based on minor inconsistencies or omissions. Instead, our finding was based on our *de novo* review of all relevant evidence in the record, which not only included inconsistencies and omissions but also lacked probative detail. The Petitioner and her supporting affiants provided

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only vague, generalized statements regarding the residences the Petitioner and R-J- allegedly shared and their activities at those residences, and the Petitioner does not address those issues on motion. The record does not contain detailed, probative descriptions of the residences, such as furnishings, belongings, or marital routines, nor does it contain specific information about the occasions on which the Petitioner's friends allegedly visited the Petitioner and R-J- at those residences. Furthermore, we did not require that the Petitioner meet a burden of proof higher than the preponderance of the evidence standard. The preponderance of the evidence in this case demonstrates that the Petitioner and R-J- visited each other in Texas and California and had difficulty determining where they would reside on a long-term basis. The preponderance of the relevant evidence, when considered in the aggregate, does not show that the Petitioner and R-J- established a "principal, actual dwelling place" together during their marriage.

II. GOOD-FAITH MARRIAGE

In her brief on motion, the Petitioner argues that we did not consider the credible evidence she submitted regarding her finances or her explanations as to why she did not fully commingle her finances with R-J-. She states that she had a stable job while R-J- did not work, was a drug addict, was irresponsible with money, and owed child support, so the Petitioner was responsible for paying the bills and she attempted to limit his access to her bank account. The Petitioner's explanations appear to acknowledge that she did not commingle her finances with R-J-. Although commingling of finances is not required, the Petitioner originally asserted that her financial documentation demonstrated that she shared finances with R-J-. This documentation does not serve the stated purpose, and does not provide support for her claim that she married R-J- in good faith.

The Petitioner also asserts that her personal declaration and those of her family members and friends established that she married R-J- in good faith. She submits on motion two additional supporting letters from friends, who assert that they met R-J- before he and the Petitioner were married, spent time with the couple, and felt they were a good match. As stated above, we do not consider new evidence submitted with a motion to reconsider. Nevertheless, even with the addition of the Petitioner's updated affidavit and the new declarations from her friends, the preponderance of the evidence does not establish that the Petitioner married R-J- in good faith. The Petitioner and her friends and family members have not described, in probative detail, her dating relationship with R-J-, including specific shared experiences during their courtship, their reasons for deciding to get married, their wedding ceremony and celebration, or shared experiences as spouses other than the claimed abuse. With regard to her wedding, the Petitioner stated only that she and R-J- married at "a small church in California." She did not provide the name or location of the church, a description of the ceremony, or details regarding the celebration that followed, other than to state that she and R-J- had steak at a restaurant.

Furthermore, the Petitioner has not provided an explanation for the short timeline of her courtship and marriage with R-J-. She claims, in her updated affidavit and her July 2013 affidavit, that she and R-J- met on March 29, 2008, maintained a long-distance relationship in which they saw each other once in April and once in May, were engaged on June 20, 2008, and married on [REDACTED]

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2008. The evidence does not clarify why the Petitioner agreed to marry R-J- after seeing him only once per month for four months after their first meeting.

Additionally, in her updated affidavit and her July 2013 affidavit, the Petitioner stated that she arrived in California on the morning of her wedding, which took place on [REDACTED] 2008. However, the marriage license indicates that she and R-J- obtained the license in person, as evidenced by their signatures, in [REDACTED] California on [REDACTED] 2008. The Petitioner has not explained why she departed California after obtaining the license on [REDACTED] 2008, and returned for the wedding on [REDACTED] 2008. This discrepancy calls into question the accuracy of the Petitioner's accounts regarding the timeline and details surrounding her wedding to R-J-.

The Petitioner also asserts on motion that the evidence she submitted regarding mental health treatment for domestic violence demonstrates that her marriage was not a sham, because she would not have remained in an abusive marriage with R-J- solely to obtain immigration benefits. However, abuse can occur in types of relationships other than good-faith marriages, and a finding of battery or extreme cruelty does not require a finding that the marriage was also in good faith.

Our review of all relevant evidence in the record does not establish, by a preponderance of the evidence, that the Petitioner married R-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The Petitioner has not demonstrated that we erred based on the evidence in the record at the time of our decision.

III. CONCLUSION

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. Here, the Petitioner has not met that burden. Accordingly, the motion is denied.

ORDER: The motion to reconsider is denied.

Cite as *Matter of S-M-M-*, ID# 14821 (AAO Nov. 18, 2015)