

(b)(6)



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

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

MATTER OF B-K-B-

DATE: NOV. 30, 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 (the Director), denied the petition. We dismissed a subsequent appeal, concluding that the Petitioner did not establish that he entered into the marriage in good faith, and that he resided with his spouse, T-G-¹. The matter is now before us on a motion to reopen. The motion will be denied.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). On motion, the Petitioner submits a brief and additional evidence.² The Petitioner asserts that the additional evidence establishes that he resided jointly with T-G- during their marriage and that he entered into the marriage in good faith. The additional evidence includes affidavits from the Petitioner; [REDACTED] the Petitioner's former father-in-law; [REDACTED] a friend; and [REDACTED] the Petitioner's uncle. We review these proceedings *de novo* and our prior decision is incorporated herein by reference.

A. Joint Residence

In his brief on motion, the Petitioner asserts that the additional evidence he provides on motion establishes that he resided jointly with T-G- during their marriage. The Petitioner also contends in his personal affidavit submitted on motion that, because he was required by law enforcement to return the keys to the home in Texas that he shared with T-G-, he could not retrieve "official or business mails, junk mails, and mails from family members to show that he resided at the Texas

¹ Name withheld to protect individual's identity.

² The Petitioner's brief is captioned as pertaining to a "motion to reopen and/or reconsider" but the Form I-290B, Notice of Appeal or Motion, indicates that the Petitioner only filed a motion to reopen. Accordingly, the brief will be regarded as pertaining solely to a motion to reopen. In any event, a motion to reconsider would be denied because it is not supported by any pertinent precedent decisions to establish that our earlier decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence of record at the time of the initial decision, as required under the regulations pertaining to motions to reconsider. 8 C.F.R. § 103.5(a)(3).

(b)(6)

Matter of B-K-B-

address with his wife.” The affidavit of the Petitioner submitted on motion does not materially add to or change the information contained in the three personal affidavits he previously submitted with the Form I-360, in response to a request for evidence (RFE) from the Director and on appeal, but merely explains why he could not retrieve documents indicating that he resided with T-G- in Texas. This explanation is insufficient to establish joint residence of the Petitioner and T-G-.

The affidavit of [REDACTED], the Petitioner’s former father-in-law, provides additional details regarding how he first met the Petitioner, the Petitioner’s engagement to T-G-, telephone calls between [REDACTED] and the Petitioner when the Petitioner was in Texas, why the Petitioner moved back to New York from Texas, and a 2010 Thanksgiving meal in New York with the Petitioner and T-G-. The only information contained in [REDACTED] affidavit relevant to joint residence relates to telephone calls between [REDACTED] and the Petitioner and there is no indication that several telephone calls made while the Petitioner happened to be in Texas establish joint residence, rather than that the telephone calls were made while the Petitioner was visiting T-G- in Texas. As a result, the information contained in the affidavit is insufficient to establish joint residence.

On motion, the Petitioner submitted another affidavit from [REDACTED], a friend of the Petitioner, that provides additional details regarding double-dates he and his wife went on with the Petitioner and T-G- in New York, and an engagement party in New York. [REDACTED] also refers to a conversation he had with the Petitioner in June 2011, when the Petitioner was in Texas and [REDACTED] could hear an encounter between the Petitioner and the police, in which the Petitioner apparently stated to the police that he was “the husband who lives there.” However, [REDACTED] provided an earlier affidavit in response to the RFE, in which he indicated that he “was present and overheard [T-G-] calling the police in Texas where she resides.” The affidavits, therefore, vary in terms of whether [REDACTED] was present when the police encountered the Petitioner or if he merely overheard part of the encounter via telephone. However, the police report which documents the encounter with the Petitioner indicates that the Petitioner “came to [T-G-’s] house . . . [and that] he had a key to the apartment but had been living in New York for several months.” Therefore, the affidavit of [REDACTED] submitted on motion is insufficient to establish that the Petitioner actually resided with T-G- in Texas.

The Petitioner submitted on motion, for the first time, an affidavit from [REDACTED] the Petitioner’s uncle, in which [REDACTED] indicates that he visited the Petitioner and T-G- when he happened to be passing through Texas as a long-haul truck driver. [REDACTED] recounted the first visit he made with the Petitioner and T-G- on January 24, 2009, when the Petitioner and T-G- came to pick him and his wife up at a nearby truck stop and they spent five hours with the Petitioner and T-G- at a house in Texas. [REDACTED] indicated that he visited the Petitioner twice more in Texas and that he would spend the day with the Petitioner and then have dinner with the Petitioner and T-G- when T-G- returned from work. Although [REDACTED] affidavit indicates that the Petitioner and T-G- spent time together in Texas, it does not provide any probative information as to whether the Petitioner’s principal, actual dwelling place was with T-G- in Texas or whether the Petitioner just happened to be visiting T-G- when [REDACTED] also visited.

(b)(6)

Matter of B-K-B-

The preponderance of the relevant evidence, including the evidence submitted on motion, demonstrates that the Petitioner lived in New York but visited T-G- in Texas during their marriage and that the Petitioner and T-G- did not establish a principal, actual dwelling place together, as required by section 101(a)(33) of the Act. Accordingly, the Petitioner has not established by a preponderance of the evidence that he resided with his U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Entry into the Marriage in Good Faith

On motion, the Petitioner argues that the affidavits submitted with the motion to reopen establish that he entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. As noted above, the affidavit from [REDACTED] provides additional details regarding when he met the Petitioner for the first time, an engagement party he attended for the Petitioner and T-G-, and a shared Thanksgiving meal in New York with the Petitioner and T-G-. Similarly, the affidavit from [REDACTED] provides additional information regarding times at which he observed the Petitioner and T-G- interacting, such as on double dates prior to the marriage, but he does not provide any information regarding interactions between the Petitioner and T-G- after the wedding, other than interactions related to the claimed abuse. [REDACTED] affidavit indicates that he saw “the love, the togetherness, the way the [Petitioner and T-G-] talk to each other” but he does not support these broad assertions with any specific descriptions or detailed evidence of any outward manifestations of a good faith marriage. Therefore, the documents submitted on motion do not serve their stated purpose, and are not sufficient to establish that the Petitioner married T-G- in good faith.

Our review of all relevant evidence in the record does not establish, by a preponderance of the evidence, that the Petitioner resided jointly with T-G-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act, and that he married T-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought 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. Here, the Petitioner has not met that burden. Accordingly, the motion is denied.

ORDER: The motion to reopen is denied.

Cite as *Matter of B-K-B-*, ID# 15099 (AAO Nov. 30, 2015)