



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

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

MATTER OF M-C-J-

DATE: NOV. 30, 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 United States 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.

The Director denied the petition after concluding that the Petitioner had not established a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immediate relative classification based on such a relationship. The Director also determined that the Petitioner had not demonstrated that he entered into the marriage with his spouse in good faith and resided with her. On appeal, the Petitioner submits a statement and additional evidence.

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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

- (A) Is the spouse of a citizen . . . of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 United States in the past.

* * *

(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 for a self-petition under section 204(a)(1)(A)(iii) of the Act 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

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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, a citizen of Nigeria, last entered the United States on January 15, 2010 as a nonimmigrant student. The Petitioner married S-E-¹, a U.S. citizen, on [REDACTED] 2011 in South Carolina. A Notice to Appear was issued against the Petitioner and filed with the immigration court on December 2, 2013, placing him into removal proceedings. On April 16, 2015, an immigration judge ordered the Petitioner removed from the United States. The Petitioner filed an appeal to the Board of Immigration Appeals, which remains pending.

The Petitioner filed the instant Form I-360 on January 3, 2014, based on his relationship with S-E-. The Director subsequently issued two requests for evidence (RFE) establishing, among other things, the Petitioner's qualifying relationship with a U.S. citizen, his good faith marital intentions in entering into marriage with S-E-, and his joint residence with her. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition and the Petitioner timely appealed.

III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has demonstrated a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on such a relationship. However, he has not overcome the remaining grounds for denial. The appeal will be dismissed for the following reasons.

A. Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The Director determined that the Petitioner had not established that he had a qualifying spousal relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification. Although the record below included a copy of the Petitioner's marriage license and certificate, it did not bear any official seals or stamps from the issuing office to indicate that the marriage had been registered and was legally valid. A subsequently submitted ceremonial marriage certificate similarly lacked any official indicators from the issuing agency of the document's authenticity.

On appeal, the Petitioner submits another copy of his marriage license and certificate, this time attested and bearing the seal of the Office of the Probate Judge where the marriage was officiated and the certificate was issued. Accordingly, the Petitioner has established that he is lawfully married to his U.S. citizen spouse, S-E-, and that he is eligible for immediate relative classification under section

¹ Name withheld to protect the individual's identity.

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201(b)(2)(A)(i) of the Act based on that qualifying relationship pursuant to sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act.

B. Joint Residence

The relevant evidence in the record does not, however, demonstrate that the Petitioner resided with his spouse, S-E-. The Petitioner asserted on his Form I-360 that he resided with S-E- from May 2011 through January 2013 and that they last resided together in January 2013 at their shared residence on [REDACTED] South Carolina. However, the Petitioner's multiple statements below and on appeal do not provide a coherent history and timeline of his joint residences with S-E- or describe in any probative detail the couple's shared residences. The statements are also inconsistent with the supporting documentation in the record. For instance, in the Petitioner's statement on motion to reconsider the Director's decision, he indicated that he moved out of the [REDACTED] residence sometime in March 2013 rather than in January 2013 as set forth on the Form I-360. The Petitioner asserted that the January 2013 date on the Form I-360 was an error.

In addition, in his second statement, the Petitioner recounted that following their May 2011 marriage, he and his spouse resided together at their [REDACTED] South Carolina from June 2011 until August 2011 and then they moved to the [REDACTED] residence. However, the rental agreement in the record for the [REDACTED] residence was only executed a full year later on August 14, 2012 for the period from August 15, 2012 through August 15, 2013. The rental agreement also lists the property incorrectly as [REDACTED]. On appeal, the Petitioner submitted a brief letter from [REDACTED], the landlord of [REDACTED] to corroborate his shared residence with S-E- at the [REDACTED] address. However, [REDACTED] misspelled the property address as [REDACTED] and indicated that the Petitioner resided there from September 7, 2012 to March 28, 2013. Likewise, the record contains a case status printout from [REDACTED] Second Judicial Circuit in South Carolina relating to a criminal matter against S-E-, which indicates that her address was updated on April 26, 2012 to reflect a [REDACTED] South Carolina residence where she had resided prior to her marriage, rather than the claimed joint residence with the Petitioner.

The Petitioner submits on appeal a car service bill from a [REDACTED] in Michigan issued in his name on December 20, 2011, during a time he claimed to have visited S-E- in Michigan. The Petitioner listed a former [REDACTED] residence in [REDACTED] South Carolina as his address on the bill, contradicting his statement that he had moved with his spouse to the [REDACTED] residence earlier in August 2011. According to his 2012 Form G-325A, Biographic Form, submitted with his adjustment of status application in prior proceedings, the Petitioner had last resided at [REDACTED] in July 2011. Similarly, his marriage license indicated that he and his wife both resided at a [REDACTED] address in [REDACTED] SC. However, in his first written statement, he recounted that at the time of their May 2011 marriage, he was temporarily residing at [REDACTED] SC, and that he and S-E- moved into their [REDACTED] residence shortly afterwards. The Petitioner's Form G-325A lists neither the [REDACTED] nor the [REDACTED] residences as part of his residential history. The record offers no explanation for the significant discrepancies noted here. Additionally,

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the Petitioner acknowledged in his first statement that S-E- moved to Michigan without his knowledge around September 2011 to escape arrest on a bench warrant issued against her and that she did not return to their purported shared residence in South Carolina for well over year until January 2013.

The record also includes supporting statements, which also do not establish the Petitioner's joint residence with S-E-. The statements submitted below from [REDACTED] and [REDACTED] are all on form letters in which certain information presented in multiple choice and fill-in-the-blank options were not fully completed. Moreover, [REDACTED] asserted that the Petitioner resided at the [REDACTED] address from June 2011 to May 2012. As noted, this is inconsistent with the Petitioner's statements that he resided at the [REDACTED] address from June to August 2011. It is also inconsistent with the December 2011 [REDACTED] bill in which the Petitioner gave his former [REDACTED] residence as his address. [REDACTED] letter indicated only that the Petitioner lived in [REDACTED] South Carolina from June 2011 to May 2012 and from August 2012 to the date of the letter, without setting forth the actual residence. Although [REDACTED] indicated that he was the Petitioner and S-E-'s neighbor across the street, he also did not state the residential address. None of the three letters provide any substantive information or probative details about the couple's shared residences.

On appeal, the Petitioner submitted a second statement from both [REDACTED] and [REDACTED] [REDACTED] stated that he lived a number of years as the Petitioner and S-E-'s neighbor on [REDACTED] and that he had several negative encounters with S-E-, where she harassed his family and once called the police about his dogs. However, [REDACTED] does not describe the claimed joint residence in any probative detail, or provide substantive information, including the approximate dates of the encounters with S-E-, that would demonstrate that S-E- actually resided with the Petitioner there. [REDACTED] second statement appears to indicate that S-E- was her former foster daughter and does not discuss the Petitioner's joint residence with S-E-.

The record also includes documentary evidence of the Petitioner's shared residence with S-E-, which, considered cumulatively, do not overcome the noted discrepancies in the record to demonstrate that the Petitioner and his spouse actually resided together as asserted. Although the marriage license and certificate from May 2011 indicated that the couple resided at the same address, it is an address that the Petitioner never claimed in his statements or on his 2012 Form G-325A. The five joint bank statements from December 2012 through May 2013 reflect zero or negative balances and little account activity most of those months. Additionally, most of the statements are from a period after the Petitioner claimed to have left the marital home in either January or March 2013. The 2012 income tax records in the file indicate that they were prepared in July 2013, after the couple separated. Although the Petitioner submitted a 2012 tax transcript from the Internal Revenue Service (IRS) indicating that the couple filed as married filing jointly, it indicated that the IRS actually received the tax return earlier in April 2013, which was still after the couple separated. The record is unclear as to why the tax records indicate they were prepared after April 2013.

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The rental agreement for [REDACTED] indicates the lease term of August 15, 2012 to August 15, 2013, but both the agreement and the landlord's letter on appeal misspell the property address. The landlord's letter also indicates the beginning date of residence as September 7, 2012, contrary to the Petitioner's statement, as well as the supporting statements of [REDACTED] and [REDACTED] who recounted that the Petitioner lived there from August 2012 to April 2013. Additionally, the Petitioner stated, on motion to the Director, that S-E- signed the lease in October when she came to South Carolina, but the lease, on its face, purports to have been executed by both the Petitioner and S-E- on August 14, 2012. Moreover, in his first statement, the Petitioner had indicated that he was the one who went to Michigan to visit S-E- in October 2012. The landlord's letter on appeal also indicated that the Petitioner resided at the address with his wife, but the attached payment record he provided only reflects the Petitioner's name and he does not reference the fact that S-E- continued to live there, as the Petitioner claimed, after the Petitioner claimed to have left the premises in March 2013.

The record also contains two police reports in the file, indicating S-E-'s address as the [REDACTED] address, but the earlier January 23, 2013 report lists another individual as also residing at that same address as the Petitioner and S-E-. However, the Petitioner in his statements does not describe having a roommate, and none of the documentary evidence indicates that the Petitioner and S-E- resided with another individual. The remaining documentary evidence, including a car title in both the Petitioner and S-E-'s names; life insurance policies for each other; a single joint utility bill from the claimed joint residence period (February 2013); a list of transactions for a bank account held by the Petitioner for the period from July 2012 to January 2013; and a joint tax refund issued in 2013 for an unspecified tax year, considered cumulatively, do not sufficiently overcome the discrepancies identified in the record and do not establish that the Petitioner resided with his spouse, S-E-.

As discussed, the record contains numerous inconsistencies in the Petitioner's statements and other evidence regarding his claimed shared residence, for which he has not provided a reasonable explanation. The supporting statements in the record, as well as the documentary evidence, are insufficient to overcome the noted inconsistencies and establish his shared residence. Accordingly, when viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner resided with his spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

C. Entry into the Marriage in Good Faith

The Petitioner has also not demonstrated that he entered into his marriage with S-E- in good faith. In his initial statement, the Petitioner briefly indicated that he met his former spouse in the spring of 2010, they were dating by October 2010, and married in May 2011. Although the Petitioner stated that S-E- had a child during the couple's marriage in March 2012, that fact alone does not establish the Petitioner's good faith intentions, as the record does not contain the child's birth certificate to establish that the Petitioner is the father of the child.³ The Petitioner recounted in his initial

² The second report from January 25, 2013 actually lists a different address for S-E- on the same street.

³ The record contains a June 25, 2014 letter from the Department of Community Health in Michigan acknowledging the

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statement that he learned that the baby was not his. A letter from a licensed clinical psychologist, [REDACTED] states that during a psychological evaluation, the Petitioner maintained that contrary to what S-E- told him previously, she has since told him that he is the father of the child. The Petitioner's statements, however, are inconsistent in regard to how he first learned that he may not be the biological father. The record indicates that, initially, the Petitioner stated he learned that the baby was not his in February 2013 when the baby's paternal grandmother called him and told him. However, in his statement on motion to the Director, the Petitioner asserted that S-E- told him the child was not his following a confrontation about finances. The record does not offer any explanation for the Petitioner's inconsistent statements.

Moreover, neither the Petitioner's initial statement, nor any of his subsequent ones, provide any probative details of the couple's initial meeting, courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse. The supporting statements in the record from [REDACTED] and [REDACTED] submitted below and on appeal, are similarly lacking in probative information regarding any shared interactions or occasions they had with the couple to demonstrate the Petitioner's good-faith marital intentions in marrying S-E-.

The Petitioner submitted photographs of himself and S-E- on the day of their wedding and on other unspecified occasions, but without probative testimony, they do not evidence the nature of the relationship between the Petitioner and his spouse to establish the Petitioner's good-faith marital intentions. The remaining documents, previously discussed in detail, including the 2012 income tax returns that appear to have been filed jointly after the couple separated; a 2013 joint tax refund; a lease agreement; bank statements with little activity; a utility bill; life insurance policies; a car title; and bank transaction history for an account in the Petitioner's name are of some probative value. However, as noted, the record contains significant inconsistencies in the Petitioner's statements, which he has not fully overcome on appeal, and which serve to diminish the probative value of his documentary evidence. Accordingly, the preponderance of the relevant evidence, considered cumulatively, does not demonstrate that the Petitioner entered into the marriage with her former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

On appeal, the Petitioner demonstrated a qualifying relationship with a U.S. citizen and his corresponding eligibility for immediate relative classification based on such a relationship. However, he has not overcome the remaining grounds for denial in the Director's decision, as he has not established that he entered into his marriage to S-E- in good faith and that he resided with her. 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 of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N

Petitioner's attempt to add his name as the father of S-E-'s second child.

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Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. The appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of M-C-J-*, ID# 14547 (AAO Nov. 30, 2015)