



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

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

MATTER OF C-A-D-L-

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 lawful permanent resident of the United States. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). 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)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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 a spouse under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause . . . (ii) or (iii) of subparagraph (B) . . . , 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 explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(B)(ii) of the Act are explained further 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, a citizen of Brazil, was last admitted to the United States on December 23, 2004, as a B-2 nonimmigrant visitor, with permission to remain until June 22, 2005. The record reflects that the Petitioner has not left the United States since her last entry. On [REDACTED], 2012, she married M-M-C-B-,<sup>1</sup> a lawful permanent resident of the United States. The Petitioner filed the instant petition on July 25, 2014. The Director denied the petition on March 12, 2015, finding the record insufficient to establish that the Petitioner married M-M-C-B- in good faith and that she resided with him. The Petitioner filed a timely appeal.

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

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We review these proceedings on a *de novo* basis. A full review of the record, including the relevant evidence submitted on appeal, does not establish the Petitioner's eligibility, and we will dismiss the appeal for the following reasons.

### III. ANALYSIS

#### A. Notice of Derogatory Information

On appeal, the Petitioner asserts that the Director erred by not providing her "a meaningful opportunity to respond to the derogatory evidence" stemming from a home visit conducted by the agency on March 11, 2014. The Petitioner also asserts that she is not fluent in the English-language, and an interpreter in the Portuguese-language was not present during the investigation.

A review of the record reflects that on or about March 11, 2014, U.S. Citizenship and Immigration Services (USCIS) officers visited the Petitioner at her apartment on [REDACTED] in [REDACTED] Florida, during which the officers indicated that they were conducting an investigation for possible marriage fraud, queried her about M-M-C-B-'s whereabouts, and provided her the opportunity to demonstrate cohabitation with M-M-C-B-. The investigative report indicated that although the Petitioner initially indicated that she and M-M-C-B- had been residing at the apartment for the past two years, upon request by the investigators, she was unable to provide evidence of their cohabitation such as a lease agreement, claiming that she paid her rent on a month-to-month basis, or an explanation why she did not have correspondence addressed to him at that address. She also stated that, "[T]hey had separated two or three weeks ago," and M-M-C-B- was residing at their previous address in [REDACTED] Florida. On this same date, the officers also queried individuals at the [REDACTED] Florida address, an apartment complex at which one of the individuals identified upon presentation of photographs that M-M-C-B- had resided there with his ex-spouse and not the Petitioner.

Subsequent to the investigation, the Director issued a request for evidence (RFE), summarizing the Petitioner's statement submitted in support of the instant petition and indicated, in relevant part, that the Petitioner did not provide sufficient explanations for the inconsistencies in the record concerning her joint residence with M-M-C-B- and that her statement lacked details about how they met and the development of their relationship. The Director also referenced statements from the Petitioner's friends, concluding they described the Petitioner's marriage in general terms and did not discuss in probative detail "their observations of [the Petitioner's] interactions with or feelings for [M-M-C-B-] during [their] courtship or marriage." The Director's decision before us on appeal contained a similar discussion, concluding that there were inconsistencies concerning the Petitioner's and M-M-C-B-'s joint residence and insufficient details from friends concerning their courtship and marriage. The Director also indicated that the Petitioner's friends did not provide any indication that they "ever visited [the Petitioner and M-M-C-B-] at [their] claimed shared residence." The Director further referenced inconsistencies based on the USCIS officers' site visits. Specifically, the Director referenced the contradiction in claims between the Petitioner's stated date of separation during the site visit as being "two or three weeks ago," and the landlord letter submitted in support of the instant petition where she indicated they ceased residing together in October 2013, nearly five

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months prior to the site visit. The Director also noted the information obtained from the individuals at the [REDACTED] address indicating that one individual did not recognize M-M-C-B- as a resident while another recognized M-M-C-B- and his former spouse as residents but did not recognize the Petitioner.

On appeal, the Petitioner identifies the general obligation under 8 C.F.R. § 103.2(b)(16)(i) that USCIS must provide her an opportunity to rebut derogatory information for which she may be unaware prior to rendering an adverse decision. *See also Matter of Obaigbena*, 19 I&N Dec. 533, 536 (BIA 1988) (stating, “In as much as the intended purpose of a notice of intention to deny is to provide due process to the petitioner, such purpose is defeated when the petitioner is not given a reasonable opportunity to respond.”). First, the record does not support a finding that the Petitioner was unaware of the derogatory evidence obtained during the site visit in which she was present and personally queried by the USCIS officers. Her responses to the officers’ questions regarding her residence with and separation from M-M-C-B- and any inconsistencies between those responses and documentation submitted by the Petitioner in support of this petition, were all wholly within her knowledge. In contrast, however, the information cited in the decision that related to statements from individuals at the [REDACTED] address were not made known to the Petitioner until the issuance of the Director’s decision.

*Assuming arguendo* that the Petitioner should have been notified of the derogatory information pertaining to the information obtained from the [REDACTED] site visit, we generally accept new evidence on appeal. The Petitioner has presented arguments and evidence in response to the derogatory information and we have considered them on appeal. Accordingly, to the extent that the Director erred in not providing the Petitioner with specific notice of the derogatory evidence from the site visit, any such error is harmless.

#### B. Right to Confrontation

The Petitioner also argues that she “is a very nervous person” and her “English is very poor,” and accordingly, there were opportunities for miscommunication during the site visit since there was not an interpreter in the Portuguese language to assist her. Citing to decisions in the U.S. Courts of Appeals for the Fifth and Ninth Circuit, the Petitioner asserts that the Director’s reliance on “double hearsay” to discredit her sworn testimony concerning her residence with M-M-C-B- was “fundamentally unfair” as she was unable to cross-examine such testimony, and even if such evidence were to be considered, it must be afforded, “[V]ery low evidentiary weight and cannot overcome the overwhelming evidence to the contrary . . . .”

In general, Constitutional matters, including due process issues, are not within our appellate jurisdiction. Further, as this case arose outside of the jurisdictions of the Petitioner’s cited case law, they are not binding precedent. Within the Eleventh Circuit, where this case arises, the court has not recognized a “right to confrontation.” *Indrawati v. U.S. Att’y. Gen.*, 779 F.3d 1284, 1300 n.23 (11th

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Cir. 2015) (noting, “[W]ithin the immigration context—this circuit has not yet recognized anything resembling a right to confrontation rooted in the Due Process Clause.”).<sup>2</sup>

### C. Regulatory Eligibility and Evidentiary Requirements

The Petitioner asserts on appeal that the Director’s decision is “inherently flawed” because USCIS concluded that she sufficiently established that she had been subjected to extreme cruelty by M-M-C-B-, which “only occurs when two partners are emotionally and physically intimate,” but did not find the record sufficient to establish her good-faith intent in marrying him. Although similar evidence may be submitted to establish multiple eligibility requirements for a particular benefit, the Petitioner still bears the burden of proof in establishing, independently, each of the eligibility requirements as specified by the relevant statutory provisions and corresponding regulations. In this case, the Petitioner bears the burden of proof to establish by a preponderance of the evidence not only that she has been subjected to battery or extreme cruelty, but also that she entered into her marriage with M-M-C-B- in good faith.

The Petitioner further asserts that the Director erroneously applied the “any credible evidence standard” upon analyzing documents in the record, including letters of support and correspondence; bank account and billing statements; photographs; as well as tax returns; and accordingly, she has established by a preponderance of the evidence that she married M-M-C-B- in good-faith and that she resided with him.

#### 1. Good-Faith Entry into Marriage

In her personal statement dated July 1, 2014, the Petitioner indicated that she initially met M-M-C-B- on a street in 2010, when he asked her for directions. She then stated that they met again in 2011, when she accompanied her friend to M-M-C-B-’s cousin’s house to fix the friend’s car and M-M-C-B- coincidentally was the mechanic. The Petitioner recounted that she and M-M-C-B- recognized one another and exchanged telephone numbers, and between 2011 and 2012, they “got to know each other better and [she] started splitting [her] time between [redacted] where [M-M-C-B-] lived, and [her] apartment on [redacted].” During their approximate year-long courtship, the Petitioner generally stated that although they sometimes went to restaurants in [redacted] they mostly spent time together at home, where they would watch television and she would cook for M-M-C-B-. She further indicated that they attended parties at his cousin’s house, visited friends in [redacted] and planned to visit Brazil and Cuba. However, the Petitioner did not provide further probative details of their courtship or her intentions for marrying M-M-C-B-, and she did not describe any specific occasions spent together during this time.

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<sup>2</sup> We note here that our ultimate determination is not based, in any part, on the site visits or any of the information obtained during those visits. Rather, as will be discussed, our findings are based solely upon the information submitted by the Petitioner.

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The Petitioner stated she “was very excited” when M-M-C-B- asked her to marry him in July 2012, and they “began the preparations for [their] marriage,” which occurred on [REDACTED] 2012, at a courthouse. The Petitioner further stated they had “a beautiful ceremony” attended by her two friends and M-M-C-B-’s cousin, but her “longtime friends and [] family” were unable to attend because they were in Brazil. The Petitioner indicated that after the wedding ceremony, they had breakfast at a Cuban restaurant and “another small and simple celebration three days later” at a Brazilian restaurant with about 10 friends. The Petitioner stated their “financial conditions did not allow for much,” and she generally described their intimate relationship with one another and the terms of endearment that M-M-C-B- used when he referred to her. However, the Petitioner did not provide further probative details of their wedding ceremony and celebrations, and of their married life and residences during their relationship, other than as it relates to the abuse.

In her response to the RFE, the Petitioner reiterated that she met M-M-C-B- in 2010, and they exchanged telephone numbers in 2011 upon recognizing each other when she accompanied a friend to have the friend’s car repaired. The Petitioner generally stated, “[They] spent many nights talking about [their] families and how each wanted to meet the other’s family and . . . visit each other’s countries of birth . . .” The Petitioner indicated that while they were dating, she visited M-M-C-B- at a hospital in September 2011; introduced M-M-C-B- to her friends around September 2012 where they went “on different occasions for lunch and dinner”; spent time at another friend’s house, where M-M-C-B- “would have long conversations about Cuba” with the friend’s husband; and they sometimes got together at M-M-C-B-’s cousin’s house for barbecues. The Petitioner generally recounted the gifts and restaurants where they spent Valentine’s Day in 2012 and 2013, and their birthdays. Regarding their wedding celebration, the Petitioner indicated that they ordered a cake and a photographer for the celebration at the Brazilian restaurant, which occurred on October 28, 2012. However, as in her July 2014 personal statement, the Petitioner did not elaborate on any specific shared occasions during their courtship and did not provide further probative details of the wedding ceremony and celebrations, and their married life and residences, other than as it relates to the abuse.

In support of her appeal, the Petitioner submits a personal statement dated May 12, 2015. In her statement, when referring to the site visit that occurred at her home, the Petitioner indicates that she “tried to show them things [she] had in the apartment that belonged to [M-M-C-B-],” including clothes, photographs and mail, to demonstrate that her marriage was “real.” She does not, however, provide any further detail regarding how she met M-M-C-B-, specific descriptions of shared occasions during their courtship, their wedding ceremony and celebrations, and their married life and residences together.

The letters submitted on the Petitioner’s behalf also do not contain any further probative and detailed information to establish the Petitioner’s good-faith entry into her marriage. In these statements, the Petitioner’s friends generally described the Petitioner’s desires to meet a companion and indicated that they had either met M-M-C-B- on a few occasions or had heard of him through the Petitioner. The letters indicated that the Petitioner’s friends were aware of her marriage, that some had attended the marriage ceremony or celebration, and described the Petitioner and M-M-C-B- generally as seeming “like the perfect couple,” and “doing many things that a regular couple does.” Some friends also indicated having visited the Petitioner at her marital residences but the letters did not contain

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further specific and probative details of the Petitioner's and M-M-C-B-'s relationship, married life, and residences, other than as it relates to the abuse.

In addition to these statements, the Petitioner submitted joint bank account statements; amended tax documents, some documentation identifying residences for the Petitioner and M-M-C-B- at both the [REDACTED] Florida and [REDACTED] addresses; an invoice for rings; photographs of greeting cards; and photographs of her and M-M-C-B- at various events, including their wedding ceremony and celebration. In her decision, the Director placed limited evidentiary value on the greeting cards and afforded the Petitioner's photographs no evidentiary weight. The regulation at 8 C.F.R. § 103.2(b)(3) states:

*Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Since certified translations have not been provided, as required by 8 C.F.R. § 103.2(b)(3), for any of the correspondence in a foreign language, we give the information contained within this correspondence no weight. Further, although we disagree with the Director's statement that photographs "cannot establish [] intentions for entering into marriage" as such documentation generally provides some evidentiary value concerning an individual's intentions, the Petitioner's statements and those submitted on her behalf do not provide a probative account of their relationship, their reasons for entering into marriage, their year-long courtship, shared residences, and shared experiences, apart from the abuse.

In addition to the deficiencies in the evidence noted above, the Petitioner's statements and those of her friends contain inconsistent information concerning the Petitioner's and M-M-C-B-'s relationship and marital residence. In her July 2014 personal statement, the Petitioner indicated that after their initial brief encounter in 2010, she saw M-M-C-B- again nearly a year later, at his cousin's house in [REDACTED] where M-M-C-B-, a mechanic, fixed her friend's car. However, in her December 2014 personal statement, the Petitioner indicated that they exchanged telephone numbers "after meeting him at his place of work." In her statements, the Petitioner had made a distinction between M-M-C-B-'s working for [REDACTED] and working on weekends fixing cars at his cousin's home. Although this minor discrepancy may be explained, in the psychological evaluation dated April 12, 2014, when discussing how the Petitioner met M-M-C-B-, the Petitioner's licensed clinical psychologist stated that the Petitioner "met [M-M-C-B-] randomly as he worked in an auto shop where her friend was getting her car fixed. They came into contact some days when she and her friend were near his workplace. He began to pursue her and from there[,] they started dating for a year before they married."<sup>3</sup> The evaluation does not mention the

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<sup>3</sup> The psychologist indicated that the interview was conducted in Portuguese and that the Petitioner "answered all questions asked of her and was cooperative, respectful, and polite." She did not indicate any language barriers or

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initial 2010 encounter highlighted by the Petitioner in both of her statements, as making their second meeting at M-M-C-B-'s cousin's house in 2011 "a thing of destiny." Rather, the evaluation indicates only a single, random meeting and identifies that meeting as occurring where M-M-C-B- was "work[ing] in an auto shop," not at a house.

In addition, regarding the Petitioner's account of when M-M-C-B- met her friends, in her December 2014 statement, the Petitioner specified that, "Around September 2012, [she] finally introduced [M-M-C-B-] to her friends. [They] went to [her] friend, [A-A-S-'] house where [M-M-C-B-] met [A-A-S-, her husband, and two other friends]." However, in A-A-S-' letter of support dated June 17, 2014, she stated that she met the Petitioner in August 2011 during a surprise birthday party coordinated by her husband, and "A week later [the Petitioner] came to my house with her boyfriend, [M-M-C-B-]. She introduced him to everybody . . . They announced that they were thinking and planning to get married in the next year, since they had already been together for some time."

Also in her December 2014 personal statement, the Petitioner indicated that she and M-M-C-B- retained the services of a photographer and ordered a cake for their wedding celebration that occurred at a Brazilian restaurant on [REDACTED] 2012. In support of these claims the Petitioner submitted an order and invoice form from [REDACTED] with a handwritten note from the Petitioner, indicating the form is evidence of "photos for wedding/family pics." The form indicates the "Session Date" as [REDACTED] 2013," one year after the alleged wedding celebration. Also, the record includes a "Custom Cake Order Form" from [REDACTED] with a handwritten note from the Petitioner indicating the form is evidence of "receipt for wedding cake." Although the form does not include the date when the cake was ordered, it indicates the "Day and Date Needed" as [REDACTED] one day after the alleged celebration.

Regarding the dates of their residence together, on the instant petition, the Petitioner indicated that she resided with M-M-C-B- from October 2012 until October 2013, and that they last resided together at the [REDACTED] address. On the Petitioner's State of Florida Marriage Record, in the "Application to Marry" portion of the form signed by the Petitioner and M-M-C-B- on October 11, 2012, the Petitioner listed her residence as [REDACTED], while M-M-C-B- listed his residence in [REDACTED]. In contrast, on her Form G-325A, Biographic Information, signed by the Petitioner on February 12, 2013, the Petitioner indicated that she resided at the [REDACTED] address until February 2012 when she moved to M-M-C-B-'s address in [REDACTED]. This February timeframe is repeated in the Petitioner's December 2014 statement in which she indicated that when they started dating in 2011, they "went back and forth between [REDACTED] where he lived, and [REDACTED], where [she] lived," and that she moved into his apartment on [REDACTED] around February 2012.

Even without these inconsistencies regarding their dates of residence and how, where, and when they met each other, and when M-M-C-B- was first introduced to the Petitioner's friends, as previously

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difficulties during her evaluation.

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discussed, the record is insufficient to establish the Petitioner's good-faith entry into her marriage. Although the Petitioner's documentation does indicate that they had some joint documentation and documents addressed to each of them at the claimed residences, the Petitioner's statements and those submitted on her behalf do not contain sufficient probative and detailed discussions about their relationship and feelings for each other both prior to and after their marriage, except as it relates to the abuse. When viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner entered into marriage with M-M-C-B- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

## 2. Joint Residence

The relevant evidence does not establish by a preponderance of the evidence that the Petitioner resided with M-M-C-B-. Although the Petitioner submitted some documentation listing herself and M-M-C-B- at the claimed marital residences at the [REDACTED] addresses, her statements did not provide a probative account of their shared residences, routines, shared belongings, and experiences, apart from the abuse. Some of the additional statements from her friends and landlord generally asserted that the Petitioner and M-M-C-B- lived together; however, they did not describe in detail the claimed shared residences or any experiences there, apart from the abuse. In fact, although the Petitioner claimed in her December 2014 statement that she, M-M-C-B-, and her friend, E-S-, "shared the [REDACTED] apartment together until [E-S-] went back to Brazil," E-S-' letter does not describe any joint living arrangement with the Petitioner and M-M-C-B-. Instead, E-S- stated that he moved back to Brazil in 2013 and the Petitioner "decided to move with [M-M-C-B-] to her old apartment . . . ." Moreover, as detailed in our earlier discussion of the Petitioner's evidence, her documents and the statements contained in the record contain discrepant claims regarding the dates of her residence with M-M-C-B-. When viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence the Petitioner's joint residence with M-M-C-B- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

## IV. CONCLUSION

In these proceedings, 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). On appeal, the Petitioner has not met this burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of C-A-D-L-*, ID# 14458 (AAO Nov. 30, 2015)