



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

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

MATTER OF G-A-R-D-J-

DATE: OCT. 13, 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, revoked the approval of 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act 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].

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services (USCIS)].

The eligibility requirements for abused spouses 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.

....

(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)(A)(iii) 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

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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 the Dominican Republic, indicates that he last entered the United States on or about August 16, 2002, without admission, inspection, or parole by U.S. immigration officials. On [REDACTED] 2005, he married L-R-,¹ a citizen of the United States. The Petitioner filed the instant petition on May 10, 2011. The Director approved the petition on September 27, 2012, and after providing notice to the Petitioner, subsequently revoked the approval on February 23, 2015. The Director determined that the record was insufficient to establish the Petitioner's good-faith marriage to L-R- based, in part, on evidence that indicated the Petitioner had a continuing marital relationship with his prior spouse. The Petitioner filed a timely appeal.

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. GOOD-FAITH ENTRY INTO MARRIAGE

The Petitioner did not initially submit any statement regarding his good-faith intent in marrying L-R-. In his May 2011 response to a request for evidence, the Petitioner indicated he married L-R- "for all the right reasons" and their marriage was "very, very real." The Petitioner generally stated that he met L-R- in the winter of 2003 at an unspecified location, they started dating "right away," and they spent two "very happy years together" before they decided to get married upon learning that L-R- was pregnant. The Petitioner did not further describe his first meeting with L-R- or any specific occasion spent together during their two-year courtship, their engagement, married life, and residences during the marriage, other than as it relates to the abuse.

In his undated response to the notice of intent to revoke (NOIR), the Petitioner reiterated that he met L-R- in the winter of 2003 at an unspecified location, and their relationship and marriage "was certainly real." The Petitioner indicated that he did not marry L-R- for a benefit; rather, they had been dating for two years and they were expecting a baby. As in his May 2011 response, the Petitioner did not elaborate on his first meeting with L-R-, any specific occasions during the two-year period of their courtship, and their life together after marriage, apart from the abuse. Moreover, the Petitioner indicated that he and L-R- married, in part, because of L-R-'s pregnancy with their daughter, and submits a March 2015 letter from L-R-, in which she indicates their daughter "is the natural daughter born to [her] and [the Petitioner]." However, although the Certificate of Birth identifies L-R- as the birth mother, it does not identify a birth father. The Petitioner acknowledges

¹ Name withheld to protect the individual's identity.

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that his name is not listed on the Certificate of Birth but provides no explanation for the absence of this information.

In a March 2015 personal statement submitted in support of his appeal, the Petitioner reiterates that his marriage to L-R- “was real.” However, the Petitioner does not provide any further discussion of their relationship and his intentions for marrying.

The letters submitted on the Petitioner’s behalf also do not contain probative and detailed information to establish the Petitioner’s good-faith entry into his marriage. In a statement dated January 8, 2011, [REDACTED] indicated that he has known the Petitioner since 2003, and he met L-R- when she and the Petitioner lived in [REDACTED] at an unspecified address. Although he indicated that L-R- became pregnant, [REDACTED] did not elaborate on any interactions that he witnessed between the Petitioner and L-R- or provide a description of their marital relationship, other than as it relates to the abuse.

In his statement dated January 31, 2011, [REDACTED] indicated that he knew the Petitioner and L-R- before their marriage, and the Petitioner visited L-R- at her apartment in [REDACTED] [REDACTED] also indicated that the Petitioner moved in with L-R- after they were married, and he visited them a couple of times on weekends. However, [REDACTED] did not elaborate on their residence, any particular visit, discuss their courtship in any probative detail, or provide any further discussion of their relationship after the marriage, other than as it relates to the abuse.

In her statement dated January 29, 2011, [REDACTED] indicated that she has known L-R- since 2002, and met the Petitioner in 2004 when he became L-R-’s boyfriend. She generally stated that they were married in 2005, the Petitioner lived with L-R-, and they had a daughter. [REDACTED] did not provide any further discussion of their courtship, residence, and relationship after their marriage, other than as it relates to the abuse.

In her statement dated January 29, 2011, [REDACTED] indicated that she has known L-R- since 2004, and met the Petitioner after they were married and lived together at an unspecified address. [REDACTED] generally stated, “[L-R- and the Petitioner] had a true marriage,” and her friendship with them grew after L-R- became pregnant by the Petitioner. [REDACTED] did not elaborate on their residence or any interactions she witnessed between the Petitioner and L-R- to demonstrate their marital relationship.

Regarding the evidence that indicated the Petitioner had a continuing relationship with his former spouse, in her NOIR, the Director identified a Form DS-156, Nonimmigrant Visa Application, purportedly submitted by the Petitioner in January 2004 which indicated that the Petitioner was still married to his prior spouse, R-S-O-.² The Director indicated that R-S-O- also submitted an application containing similar information about her marriage to the Petitioner. In addition, the Director identified five additional applications submitted by R-S-O- in 2005, 2006, 2007, 2008, and

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2009, each indicating a current marriage to the Petitioner and listing addresses for travel to the United States, several of which corresponded with an address identified by the Petitioner on his 2004 income tax forms and an address affiliated with the Petitioner through public database information. The Director also identified applications submitted by the Petitioner's three sons. Specifically, the Petitioner's eldest son indicated during his nonimmigrant visa interviews at the Consulate Office on November 18, 2010, and June 16, 2011, that the Petitioner and R-S-O- were married, and the Petitioner's twin sons indicated during their nonimmigrant visa interview on July 25, 2011, that the Petitioner and R-S-O- were divorced only recently.

In his response to the NOIR, the Petitioner stated that since R-S-O- divorced him in 2003, their only communication has been about their three sons. He further indicated that they "have not lived together or had a relationship" since he left the Dominican Republic in 2002. The Petitioner denied submitting the 2004 application and stated he "cannot control or change the fact that [R-S-O-] lied on her [visa] applications and stated that they were married ... and she'd be staying with [him]." He explained that R-S-O- was aware of his addresses in the United States because they maintained contact with one another because of their three sons. As it relates to his sons' statements, the Petitioner submitted with his response to the NOIR, statements dated December 8, 2014, in which his three sons indicated that they have lived with him since their arrival in the United States. However, these statements did not provide any explanation for their claims regarding the Petitioner's and R-S-O-'s continued relationship. The Petitioner's own statement submitted in response to the NOIR did not address his children's claims.

On appeal, the Petitioner submits an Extract of Certificate, indicating his divorce from R-S-O- on [REDACTED] 2003. He also provides a statement from R-S-O- dated March 20, 2015, in which she describes the circumstances concerning her fraudulent attempt to obtain a nonimmigrant visa to the United States in 2004 and disavows the Petitioner's involvement in her effort. However, the Petitioner provides no further discussion or explanation for R-S-O-'s remaining 2005, 2007, 2008, and 2009 applications indicating that she was married to the Petitioner and the application that she submitted in 2006 indicating that they were separated. The Petitioner also does not further address his children's claims.

Although the Petitioner explained that he did not have additional evidence such as joint bank accounts, insurance, a lease, and utilities, because he and L-R- have not lived together for many years "due to [her] abuse," traditional forms of joint documentation are not required to demonstrate a petitioner's entry into the marriage in good faith and "all credible relevant evidence will be considered." See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i), 204.2(c)(2)(vii). The Petitioner submitted joint tax documents for 2010 and 2012, photographs of himself along with L-R- and her children at various unidentified functions, as well as some documentation associating the Petitioner and L-R- at the [REDACTED] address. However, the Petitioner's statements and those submitted on his behalf do not provide the specific dates of their claimed residence together and a probative description of their residences, including any reference to the Petitioner's stepchildren, their courtship, wedding ceremony, and shared experiences, apart from the abuse. Therefore, even without consideration of the evidence of the Petitioner's relationship with R-S-O- during the time of his relationship with L-R-, the Director had good and sufficient cause to revoke the petition. Moreover, even if we accept the Petitioner's refutation

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of the application purportedly submitted by him, he has not addressed the remaining applications submitted by R-S-O- and his children. Accordingly, when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner entered into marriage with L-R- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. JOINT RESIDENCE

The record reflects that the Director issued the NOIR, requesting additional evidence demonstrating not only that the Petitioner married L-R- in good faith, but also that he resided with her. The record also reflects, however, that the Director did not address in the revocation whether the Petitioner established his joint residence with L-R-. Our *de novo* review of the record demonstrates that, beyond the decision of the Director, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner resided with L-R-.³

On the Form I-360, the Petitioner indicated that he resided with L-R- from February 2004 until January 2008 and that they last resided together at an address on [REDACTED] Pennsylvania. On the Petitioner's Form G-325A, Biographic Information, dated April 13, 2011, submitted in support of his Form I-360, the Petitioner listed only the [REDACTED] and [REDACTED] addresses during the above time period. Although the Petitioner submitted some documentation listing him and L-R- at the [REDACTED] address, his statements do not provide a description of either of the claimed shared residences. Further, although identifying "step-children" in photographs he submitted in support of the petition, the Petitioner does not discuss these children, their presence in the residence, or otherwise explain where they lived during the marriage. He also does not describe any shared residential routines, belongings, and experiences, apart from the abuse. The additional statements from the Petitioner's friends generally indicate that they visited the Petitioner and L-R-, but do not describe in detail any claimed visit or either of the claimed shared residences in New York and Pennsylvania.

Further, the regulatory provisions require a petitioner to demonstrate residence with his or her abusive spouse during the qualifying marriage. Therefore, although the Petitioner indicates that he and L-R- began residing together in February 2004, his qualifying marriage did not take place until [REDACTED] 2005. The Petitioner's marriage certificate lists the Petitioner and L-R- at separate addresses at the time of their marriage in [REDACTED] 2005; the Petitioner listed an address on [REDACTED] while L-R- listed the [REDACTED] address. The Petitioner listed this same [REDACTED] address on his 2004 tax return, which was prepared in January 2005. Consistent with the evidence documenting separate residences at the time of their marriage, the Evaluation Report submitted on the Petitioner's behalf indicated that "in the winter of 2004," the Petitioner was maintaining "his one room apartment that he had kept." The evaluation further indicated that they remained separated until around the summer of 2006 when the Petitioner became aware that L-R- had relocated to [REDACTED] Pennsylvania.

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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The evaluation then described the Petitioner's visits to [REDACTED] during the next year and a half but identified his continued residence in New York due to his "lucrative job" in New York and the high unemployment in [REDACTED] as well as his continued fear of L-R-.

Section 101(a)(33) of the Act prescribes that, as used in the Act: "The term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The preamble to the interim rule regarding abused spouse petitions cited section 101(a)(33) of the Act as the binding definition of residence and further clarified, "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home . . . while continuing to maintain a general place of abode or principal dwelling place elsewhere." 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996). In this instance, the Petitioner has not demonstrated a residence with L-R- after their marriage. Instead, the record shows that the Petitioner maintained his own dwelling, apart from L-R-, prior to and after their marriage. The record further reflects that after L-R- moved to Pennsylvania, the Petitioner continued to reside in New York while visiting L-R- at her residence in Pennsylvania.

Accordingly, when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence the Petitioner's joint residence with L-R- as required by section 204(a)(1)(A)(iii)(I)(dd) of the Act.

V. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish his 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 G-A-R-D-J-*, ID# 13746 (AAO Oct. 13, 2015)