



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

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

MATTER OF T-N-M-

DATE: OCT. 23, 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, denied 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.

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:

(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.

(vi) *Battery or extreme cruelty*. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any

act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

\* \* \*

(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.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

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(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

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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 Ghana, claims to have last entered the United States in July 1998, without admission, inspection or parole. The Petitioner married S-M-<sup>1</sup>, a U.S. citizen, on [REDACTED], 2002 in New Jersey. The Petitioner filed the instant Form I-360 on July 21, 2014.<sup>2</sup> The Director subsequently issued a request for evidence (RFE) to establish S-M-'s lawful permanent resident or U.S. citizen status. Thereafter, the Director also issued a notice of intent to deny (NOID) the Form I-360, because the record only included evidence that the Petitioner had submitted previously with two prior Form I-360 petitions, including altered and fraudulent documents, which had been found insufficient to establish the Petitioner's good faith entry into his marriage with S-M-, his shared residence, and that S-M- had subjected him to battery or extreme cruelty. 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. On appeal, the Petitioner submits a brief letter and additional evidence.

## 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 not overcome the Director's grounds for denial. The appeal will be dismissed for the following reasons.

### A. Joint Residence

The relevant evidence submitted below and on appeal does not demonstrate that the Petitioner resided with S-M-. The Petitioner asserted on the Form I-360 that he resided with S-M- from July 2001 to January 2009 at their shared residence on [REDACTED] in [REDACTED], New Jersey. The Petitioner resubmitted a December 19, 2013, statement he filed with his second Form I-360 and the record includes the Petitioner's statement, dated August 2, 2011, from his first Form I-360 proceedings. Aside from stating that he moved into S-M-'s apartment with her sometime before their marriage, the

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

<sup>2</sup> This is the Petitioner's third Form I-360. The Director denied the first Form I-360, finding that the Petitioner had not established joint residence or his good faith entry into his marriage to S-M-, and noting that the record contained altered joint documents (utility bills) which undermined the Petitioner's credibility. The Petitioner submitted his second Form I-360 and his most recent Form I-360 with the same supporting documentation, excepting the altered utility bills. The Director denied both petitions on the basis that the Petitioner had only submitted evidence previously found to be deficient, and thus, had not established his good faith entry into his marriage, joint residence, or the requisite abuse.

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Petitioner's statements do not provide a history and timeline of, or describe in any probative detail, the couple's shared residence. Additionally, his assertion on the Form I-360 that he resided with S-M- beginning in July 2001, is inconsistent with his Form G-325, Biographic Information, dated September 13, 2010, submitted with his first Form I-360, which indicated that he only began residing at the [REDACTED] address in August 2002. Similarly, his Forms G-325A, submitted with his second Form I-360 and the instant Form I-360 in 2013 and 2014 respectively, indicate that he has been residing at a residence on [REDACTED] since October 2007, contrary to his assertion in the instant Form I-360 that he resided with his spouse at the [REDACTED] residence until January 2009.

The Petitioner also submitted below documentary evidence of his shared residence with S-M-, including 2007 and 2008 IRS federal income tax transcripts, copies of the first pages of three joint bank statements from 2004 and 2005, and copies of the first page of joint mobile telephone bills from 2004, 2005, and 2008. However, none of these documents overcome the noted discrepancies in the record to demonstrate that the Petitioner and his spouse actually resided together. For example, at least one of the telephones bills is addressed to the Petitioner and S-M- at the [REDACTED] residence in January 2008, at a time when the Petitioner's 2013 and 2014 Forms G-325A indicated that he was living at the [REDACTED] residence. Additionally, as noted by the Director, the record also includes copies of the Petitioner's joint utility bills from October 2004 and November 2008, which were visibly altered as they were addressed to the Petitioner and S-M- at their claimed joint residence on [REDACTED] in the top portion of each billing statement, but showed different names at the same residential address in the bottom portion of the bill. It is unclear from the copies of the billing statements which of the names were altered. The Petitioner has disavowed any responsibility and knowledge of the alterations, and asserted that his roommate, [REDACTED] whose name appears on the bills, made the alterations for his own purposes. He provided a 2012 statement from [REDACTED], previously submitted in the Petitioner's prior Form I-360 proceedings, in which [REDACTED] declared that he altered the documents for his own purposes without the Petitioner's knowledge and without any intention of defrauding the U.S. government. [REDACTED] offered no explanation for why he committed the alterations, how he obtained the utility bills, and the Petitioner has not explained how the altered utility bills came into his possession.

On appeal, the Petitioner submits an updated statement from [REDACTED] who asserts that he altered a utility bill for proof of an address to open his bank account. [REDACTED] indicates that he believed he had removed all evidence of his actions, but inadvertently left one of the bills among the Petitioner's documentation. [REDACTED] explanation for the alterations are not reasonable, given that the Petitioner submitted two altered utility bills, and [REDACTED] has not provided a reasonable explanation of how the altered documents were found back in the Petitioner's possession. In addition, the November 2008 utility bill is for a period when the Petitioner indicated, on his 2013 and 2014 Forms G-325A, that he was residing at a residence other than [REDACTED]

The record also includes statements from the Petitioner's former neighbors and friends, [REDACTED], [REDACTED], and [REDACTED]. These individuals indicated that they visited the Petitioner and S-M- at the couple's residence. However, they did not provide probative details of any particular visit with the couple. In addition, the letters of [REDACTED] [REDACTED] and [REDACTED]

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submitted in prior Form I-360 proceedings, focus primarily on the claimed abuse by S-M- against the Petitioner, and do not provide any probative details of the couple's shared residence.

Upon *de novo* review of the record, the Petitioner has not established his joint residence with S-M-. The inconsistencies in the Petitioner's documentary evidence and the lack of detailed, probative statements undermine the Petitioner's claim of joint residence with S-M-. Accordingly, the preponderance of the evidence does not establish that the Petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Entry into the Marriage in Good Faith

The Petitioner has also not established his good faith entry into his marriage. In the Petitioner's statement, dated August 2, 2011, he indicated that he met S-M- in July 2000. He described their initial meeting and subsequent date, and stated that they started going out, often to the movies. The Petitioner recalled one particular movie date, after which they became more intimate with each other, and he stated that they began to see each other exclusively. He indicated that they talked about having children and visiting the Petitioner's parents in Ghana, and that they sent pictures of themselves to his parents. He stated that he eventually moved in with S-M- and they resided in her apartment. The Petitioner indicated that they got engaged in 2002 and were married later that year in . The Petitioner's second statement from December 19, 2013, is nearly identical in language to his 2011 statement, as it relates to his good-faith intentions. Neither statement describes in any probative detail the couple's wedding ceremony, their joint residence, or any of their shared experiences, apart from the alleged abuse.

The letters of the Petitioner's neighbors and friends also do not contain probative information regarding the Petitioner's intentions in marrying S-M-. , and focus primarily on the alleged abuse, and do not provide any substantive information regarding their interactions or shared experiences with the Petitioner and S-M- to substantiate the Petitioner's good-faith marital intentions. indicated that he believed the couple's "union was genuine" and stated that the Petitioner loved S-M-, but neither individual provided any specific details of their knowledge of the relationship, or of the Petitioner's intentions in entering the marriage. Although briefly recounted socializing with the couple, she did not discuss these interactions in any specific detail.

The remaining documents, including the income tax transcripts, the first page of three bank statements, and three telephone bills, are of some probative value in establishing the couple's shared finances. However, the other documentary evidence in the record, including the Petitioner's marriage certificate and photographs of the Petitioner and S-M- at the courthouse for their wedding ceremony, are of little probative value in establishing the Petitioner's good-faith entry into the marriage. The marriage certificate and photographs establish a legal marriage, but without probative testimony, do not evidence the nature of the relationship between the Petitioner and his spouse. The photographs of the couple at their wedding ceremony offer little insight into the marriage, and the record does not include photographs from other periods in the couple's nearly decade long relationship, despite the fact that the

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Petitioner indicated in his statement that he and S-M- sent photographs of themselves to his parents overseas even before their marriage. Accordingly, upon *de novo* review of the record in its entirety, the Petitioner has not established that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### C. Battery or Extreme Cruelty

The Petitioner has also not established that S-M- subjected him to battery or extreme cruelty during their marriage. In his 2010 statement, [REDACTED] described encountering the Petitioner sleeping in the car at a park because S-M- had been verbally and emotionally abusing him at home. He did not detail his knowledge of the claimed abuse except to relay what the Petitioner told him and he provided no substantive information about the underlying circumstances that led the Petitioner to leave his marital home. He recounted that he had never actually witnessed S-M-'s animosity to the Petitioner, aside from one incident where S-M- interrupted his conversation with the Petitioner to call the latter "a lazy bum." [REDACTED] statement is inconsistent with a second statement from him, written one year later in 2011, in which he briefly touches on his knowledge of other incidents of abuse by S-M- against the Petitioner, including physical abuse. Specifically, [REDACTED] indicated that he knew that S-M- had cut holes in the Petitioner's shirts, and on another occasion, he witnessed S-M- throw bleach at the back of the Petitioner's head, destroying his clothes and bag. [REDACTED] did not provide any probative details of either incident of claimed abuse. More importantly, he offered no explanation for why he did not reference these incidents in his earlier statement, and instead previously asserted that he had never witnessed S-M-'s animosity towards the Petitioner, aside from one occasion where she was "rude." [REDACTED] statement is therefore of little probative value in these proceedings.

The remaining statements from the Petitioner's neighbors and friends are also insufficient in demonstrating that S-M- subjected the Petitioner to battery or extreme cruelty. [REDACTED] 2010 statement described a single incident in June 2005 where S-M- called the Petitioner names and broke bottles at a social gathering at the couple's home. However, the Petitioner's statements in the record do not reference this incident. [REDACTED] also recounted that the Petitioner called him on one occasion, crying, and said he felt suicidal because of S-M-'s verbal abuse. However, he did not provide any substantive information about the incident or its underlying circumstances. [REDACTED] second statement from 2011 reiterates his prior claims, and does not set forth any probative details about any specific incident of alleged abuse by S-M-. Similarly, [REDACTED] statement briefly references various occasions of S-M-'s mistreatment of the Petitioner, but she also did not provide any specific, probative details of the alleged abuse. Finally, the statements of [REDACTED] [REDACTED] and [REDACTED] indicate their awareness of the couple's marital distress, but do not set forth any substantive information regarding incidents of claimed abuse by S-M-.

The Petitioner recounted in his statements how the marriage deteriorated suddenly and unaccountably, where S-M- would call him derogatory names, throw things at him, and withhold information about his immigration correspondence. He stated that he had headaches when S-M- hit him on the back of his head with an object, but he did not otherwise describe in any probative detail any specific occasion where this occurred. The Petitioner also noted one instance where S-M- cut holes in his clothes when

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he told her he was going to stay with his friend. The Petitioner recounted that on other occasions, S-M- threatened to divulge personal information the Petitioner told her to his family members. The Petitioner also recalled that when they last parted, S-M- threw bleach on him. The Petitioner described the circumstances of discovering that his wife was bisexual and was cheating on him. He stated in his second statement that he was ashamed and so fearful of what others would say if they knew and that he was unable to discuss this incident. This is inconsistent with [REDACTED] second statement in which he specifically indicated that the Petitioner called him after learning about S-M-'s extramarital affairs. Further, while the Petitioner asserts that he has not resided with S-M- since January 2009, the Petitioner's statements from 2011 and 2013 appear to be describing incidents of abuse as current or ongoing. The Petitioner's statements lack detailed, consistent accounts of the alleged abuse to demonstrate that S-M- battered the Petitioner, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, upon *de novo* review of the record in its entirety, the Petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### IV. CONCLUSION

On appeal, the Petitioner has not overcome the Director's grounds for denial as he has not established that he entered into marriage to S-M- in good faith, resided with her, and that she subjected him to battery or extreme cruelty during the marriage. 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 Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of T-N-M-*, ID# 14066 (AAO Oct. 23, 2015)