



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

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

MATTER OF S-M-H-

DATE: SEPT. 9, 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* section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the Petitioner resided with her spouse and was battered or subjected to extreme cruelty. On appeal, the Petitioner submits a brief 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 U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 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 regulation at 8 C.F.R. § 204.2(c)(1) provides, 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 United States 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 or the self-petitioner’s child, and must have taken place during the self-petitioner’s marriage to the abuser.

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

(b)(6)

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.

## II. FACTS AND PROCEDURAL HISTORY

The Petitioner last entered the United States on June 19, 2002 as a B-2 nonimmigrant visitor. She married B-H-<sup>1</sup> a U.S. citizen, on [REDACTED] 2006 in [REDACTED], Texas. The petitioner filed a Form I-360 on May 8, 2013. The Director issued a request for evidence (RFE) of, among other things, the Petitioner's joint residence with her spouse and the battery or extreme cruelty she suffered. The Petitioner responded to the RFE with a declaration and additional evidence, which the Director found insufficient to establish the petitioner's eligibility. The Director denied the petition and the Petitioner filed a timely appeal.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not overcome the Director's decision to deny the petition. Therefore, we will dismiss the appeal.

## III. JOINT RESIDENCE

The Petitioner has not established by a preponderance of the evidence that she resided with B-H- during their marriage. On appeal, the Petitioner asserts that the Director erred in basing her denial on a conclusion that the Petitioner's evidence was not credible. In particular, the Petitioner argues that the Director improperly concluded that B-H-'s signature on an apartment lease was forged because it did not match B-H-'s signature on other documents in the record. The Petitioner further alleges that she has submitted sufficient supporting documentation of her joint residence with B-H-, including evidence of the child they had together, letters from a neighbor, friends, family members, and pastors, photographs, and cellular phone and insurance bills.

In her Form I-360, the Petitioner indicated that she resided with B-H- from August 2006 through July 2007 and that they last resided together at [REDACTED] Texas. In her 2013 declaration, submitted with her Form I-360, the Petitioner did not discuss her living situation during her marriage to B-H-. She did not indicate where she and B-H- were living prior to marriage, when they moved in together, or where they lived, nor did she describe the home they allegedly shared or discuss any shared belongings or marital routines other than abuse. The Petitioner only briefly mentioned her apartment, stating that B-H- left in July 2007 and that she eventually moved in with her cousin because she could not pay the rent. Similarly, in her 2014 declaration, submitted in response to the RFE, the Petitioner provided no detail regarding her alleged joint residence with B-H-. She stated only that she and B-H- lived in [REDACTED] Texas, that B-H- locked her out of their apartment on two occasions, and that B-H- left in July 2007 and did not return. Again, the Petitioner provided no detail regarding the apartment she allegedly shared with B-H-, such as their furnishings, belongings, routines, or activities in the home other than the abuse. The Petitioner's 2015 declaration, which she submits on appeal, is similarly lacking in probative detail. She states that

---

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

(b)(6)

B-H- joined her in the apartment after marriage, that the utility bills were already in her name, and that the apartment manager initially refused to add B-H- to the lease due to his poor credit. Additionally, the Petitioner indicates that B-H- “was in and out of the house at random” until he eventually left and did not return. As with her previous declarations, the Petitioner provides no detailed descriptions of the apartment she claims to have shared with B-H-, their belongings or furnishings, or their life together there other than as it relates to abuse.

Although the record contains letters of support from individuals who claim to have been aware of the Petitioner’s joint residence with B-H-, those letters also lack detailed information about the claimed joint residence. In a letter submitted on appeal, [REDACTED] claims that he lived in the same apartment complex as the Petitioner and B-H- at [REDACTED]. However, Mr. [REDACTED] does not provide the dates that the Petitioner and B-H- resided there; instead, he states generally that he resided at the apartment complex from 2005 to 2008. Additionally, Mr. [REDACTED] asserts that he visited the Petitioner and B-H- at their apartment “a couple of times,” but does not describe the apartment or his visits, except for stating that he once knocked on the door after hearing a “commotion.” Similarly, [REDACTED] and [REDACTED] all stated, in letters submitted in the proceedings below, that they visited the Petitioner and B-H- at their apartment. Although the letters support the Petitioner’s claim of abuse, they do not provide detailed information relating to her claim of joint residence sufficient to overcome the lack of detail and inconsistencies elsewhere in the record.

The Petitioner also submitted copies of several cellular telephone bills, six of which were addressed to the Petitioner and B-H- at [REDACTED] and covered the period from November 2006 through June 2007. Additionally, she submitted several car insurance bills, three of which were addressed to the Petitioner and B-H- at the [REDACTED] address and indicated coverage from December 15, 2006 through May 11, 2008. However, these documents are not sufficient to overcome the lack of detail and inconsistencies in the remaining evidence of record. Although the Petitioner also provided copies of photographs showing that she and B-H- spent time together, they contain no information to demonstrate their connection to the claimed residence.

The Petitioner claims on appeal that the fact that she and B-H- had a child together is strong evidence of a life together. She notes that her divorce decree from B-H- included a requirement that he pay child support. However, joint residence is not necessary for a couple to have a child together or for the father to acknowledge paternity. The birth of the Petitioner’s son establishes that she and B-H- had an intimate relationship but is not sufficient, on its own, to establish that they resided together while married.

The evidence of record also contains conflicting information regarding the Petitioner’s alleged residence with B-H-. As discussed, the Petitioner indicated in her Form I-360 that she and B-H- resided together at [REDACTED] until July 2007. As support for this assertion, she submitted with her response to the RFE a copy of an apartment lease for the [REDACTED] address, listing the Petitioner and B-H- as occupants and bearing both of their signatures, dated October 2, 2006. However, the Petitioner previously filed a Form I-485, Application to Register Permanent Residence or Adjust Status, in conjunction with a Form I-130, Petition for Alien Relative, B-H- filed on her behalf. As support for her Form I-485, the Petitioner included a lease for the [REDACTED] address,

(b)(6)

which she signed on October 3, 2006, bearing her maiden name and listing her as the only occupant. She also submitted with her Form I-485 a letter from the apartment manager, dated October 17, 2006, rejecting B-H-'s application for a lease due to his credit history. On appeal, the Petitioner asserts that the apartment manager initially refused to add B-H- to the lease, but ultimately agreed after requesting a "substantial deposit." She alleges that the second lease, submitted with her RFE response, was an "amended" version of the original lease.

Although the Director found that the second lease was altered because B-H-'s signature on the lease did not match his signature on other documents, we do not make such a finding. The signatures of B-H- on various documents in the record, in particular the lease and the Form I-130 and Form G-325A that B-H- previously filed, appear to be similar. However, the second lease does not indicate that it was an amendment, and although the Petitioner claims that the apartment manager accepted B-H-'s application upon receipt of a deposit, the second lease indicated that "the total security deposit for all residents is \$0.00." The Petitioner has not submitted records from the relevant dates to demonstrate that she or B-H- actually paid a security deposit. Furthermore, the second lease bears signatures dated prior to both the Petitioner's October 3, 2006 signature on the original lease and the October 17, 2006 rejection letter from the apartment manager. The Petitioner has not stated when B-H- was accepted as a tenant, when the second lease was actually signed, or where she and B-H- resided between their marriage on August 17, 2006 and the commencement of the October 2006 lease. Finally, the Petitioner has not explained why the original lease bore her maiden name, despite the fact that she had been married since August, while the second lease with an earlier signature date bore her married name.

Additionally, the Petitioner submitted with her Form I-360 a letter from Pastor [REDACTED] of the [REDACTED], Arizona. Pastor [REDACTED] stated that he met the Petitioner in 2007 for counseling regarding her marital problems. He further claimed that the Petitioner "always came to church alone" and had informed him that, because B-H- was controlling of her activities, "every time she comes to church, she does so because he works on Sunday . . . ." Pastor [REDACTED] letter does not clarify whether the Petitioner was attending his church and meeting with him in Arizona or in a different location. If the Petitioner was attending church in Arizona, and consulting the Pastor there for help with her marital problems, in 2007, this conflicts with her claim that she resided with B-H- in [REDACTED] Texas until July 2007 and remained in the apartment they had shared for at least several months after B-H- left.

Furthermore, the Petitioner submitted with her Form I-485 copies of two pay stubs for B-H-, dated August 18, 2006 and September 15, 2006, on which his address was listed as [REDACTED] Texas. Additionally, the birth certificate of the Petitioner's son, who was born January 20, 2008, lists B-H-'s address as [REDACTED] Texas. The Petitioner has not explained why B-H- resided at [REDACTED] until at least September 2006, a month after he married the Petitioner, and then returned to the same apartment at that address by 2008.

---

<sup>2</sup> The street name is spelled slightly differently on the pay stub versus the birth certificate, but this appears to be a typographical error in one of the documents, as the letters within the street name are the same, and all other elements of the address are identical.

(b)(6)

Additionally, the Petitioner claimed in her 2013 declaration that B-H- left their shared apartment in July 2007 and did not return. She stated that she had to stop working soon thereafter due to pregnancy complications, could not pay the rent, and went to live with her cousin until the Petitioner's son was born. The Petitioner's cousin, Ms. [REDACTED], indicated that the Petitioner began living with her in November 2007. However, the birth certificate of the Petitioner's son, who was born [REDACTED] lists the Petitioner's address as [REDACTED]. This documentation does not support the Petitioner's testimony regarding the timeline and circumstances of her residence at the [REDACTED] address.

The record contains unresolved inconsistencies in the evidence the Petitioner submitted. Furthermore, notwithstanding these inconsistencies, the Petitioner has not provided sufficient detail regarding her claimed residence with B-H-. She did not submit specific and probative information about the dates and location of their residence together or descriptions of their apartment, marital routines, and belongings, nor did she submit sufficient supporting documentation. Therefore, the Petitioner did not demonstrate by a preponderance of credible, relevant evidence that her principal, actual dwelling place was with B-H- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### IV. BATTERY OR EXTREME CRUELTY

The evidence demonstrates by a preponderance of the evidence that the Petitioner was battered or subjected to extreme cruelty by B-H-. The Director's contrary conclusion will be withdrawn.

In her declaration on appeal, the Petitioner states that B-H- was abusive and controlling, particularly after she became pregnant. She describes a particular incident in which B-H- became angry with the Petitioner for refusing to let him use her credit card, sweeping his hand across the table and breaking the Petitioner's favorite mug. She also states that B-H- once screamed at her when she did not want to drive him to [REDACTED] then "banged the dash board of the car real hard and push[ed] his face in [her] face while [she] was driving" because she did not want to allow him to use her credit card. Additionally, the Petitioner claims that B-H- forced her to engage in unwanted sexual activity and then laughed at her, telling her she was "doing [her] wifely duty." The Petitioner notes that she eventually attended counseling sessions and realized she had been in an abusive relationship.

The Petitioner also stated in her 2014 declaration that B-H- demanded use of her credit card, did not contribute to the household expenses, incurred debts in her accounts, and told her that he was entitled to use her money because she was from Africa, and was "working in the United States because of him." She also indicated that B-H- isolated her from family and friends by refusing to give her rides to events or to attend with her, being hostile to her family and friends, and telling her that she "had to choose between [her] family and him." The Petitioner further claimed that B-H- called her derogatory names, threw the meals she cooked on the floor or in the trash, pounded his fist against the table or wall, and would not eat with the Petitioner, telling her that "[her] presence made him sick or cause[d] him to [lose] his appetite." She added that B-H- forced her to engage in unwanted sexual activity while pregnant. Finally, the Petitioner stated that B-H- was not concerned with the welfare of their baby, but later threatened to take the baby from her. She made similar claims in her 2014 affidavit.

(b)(6)

Statements from the Petitioner's family and friends support her claims of battery or extreme cruelty. Mr. [REDACTED] states in his letter on appeal that he knocked on the Petitioner's door during a commotion, and that when B-H- opened the door, Mr. [REDACTED] noticed that the Petitioner's eyes were red. Ms. [REDACTED] described witnessing violent behavior by B-H- against the Petitioner, including "cursing and yelling . . . almost all the time," calling the Petitioner derogatory names, yelling at her about money, and banging on the door while the Petitioner was in the shower. Ms. [REDACTED] stated that B-H- was possessive and isolated the Petitioner from her family. Ms. [REDACTED] further noted that she once arrived at the Petitioner's apartment to find that B-H- had thrown plates and glasses against the wall because he was angry that the Petitioner had planned to go shopping with Ms. [REDACTED] without first consulting him. Additionally, Ms. [REDACTED] stated that the Petitioner became withdrawn after marrying B-H-. According to Ms. [REDACTED] the Petitioner told her that B-H- called her names, said he was disappointed that he married her, broke bottles against the wall, mishandled the household finances, shoved the Petitioner into furniture, refused to pick her up from work, locked her out of her apartment, and raped her. Pastor [REDACTED] also indicated in a letter that the Petitioner told him in 2012 that B-H- had abused her during marriage and later threatened to take her son away.

The evidence of record also indicates that the Petitioner sought mental health treatment in relation to the abuse she suffered during her marriage to B-H-. In a December 16, 2013 letter, a counselor at [REDACTED] stated that the Petitioner had attended one intake session, one individual session, and five group counseling sessions between March 25 and May 22, 2013. Additionally, in a Mental Health Evaluation submitted on appeal, [REDACTED] Licensed Professional Counselor, states that the Petitioner reported verbal, emotional, physical, and sexual abuse by B-H-, as well as threats after they were separated. Mr. [REDACTED] reports that the violence the Petitioner experienced in her relationship with B-H- caused her to suffer from major depressive disorder and generalized anxiety disorder, and that she would benefit from therapy, counseling for survivors of sexual abuse, and continued participation in her counseling group for battered women.

The Petitioner has provided detailed, probative descriptions of the abuse she suffered during her marriage to B-H-. Her friends and family corroborated her claims in detailed statements. Additionally, the Petitioner has been diagnosed with depression and anxiety as a result of the abuse she experienced, and the evidence shows that she has sought mental health counseling as a survivor of domestic abuse and battery. Therefore, the Petitioner has established by a preponderance of the evidence that she was battered or subjected to extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The Director's finding to the contrary is withdrawn. However, because the Petitioner has not established that she resided jointly with B-H- during their marriage, she cannot demonstrate eligibility for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

We also note that, in her brief on appeal, the Petitioner argues that she is a person of good moral character, entered into marriage in good faith, and is not subject to the bar against approval of immigration petitions under section 204(c) of the Act. However, the Director did not base her denial on these issues. Instead, the Director found only that the Petitioner had not established that she had

resided with B-H- and had been battered or subjected to extreme cruelty. Therefore, we need not address the Petitioner's arguments regarding these issues.

Although the Form I-130 B-H- filed on the Petitioner's behalf was denied based on a finding that the petition was barred under section 204(c) of the Act, the Director did not make such a finding in her denial of the Petitioner's Form I-360. Indeed, section 204(c) of the Act is not applicable to this case. Section 204(c) of the Act bars approval of subsequent immigrant petitions where the alien has previously been accorded, or sought to be accorded, immediate relative status based on a fraudulent marriage. The section applies only to petitions filed subsequent to the fraudulent marriage or attempt or conspiracy to marry. The plain language of the statute refers to an immigrant status that was "previously" accorded, or sought to be accorded. Section 204(c)(1) of the Act, 8 U.S.C. § 1154(c)(1). Further, the statute is written entirely in the past tense, indicating that section 204(c) of the Act applies to fraud in a prior marriage. *See also Matter of Isber*, 20 I&N 676, 677-78 (BIA 1993) (holding that section 204(c) of the Act refers to fraud in a "prior" marriage, consistent with Congressional intent). As the Petitioner's Form I-360 is based on the *same* marriage to B-H- for which the prior Form I-130 petition was filed, section 204(c) of the Act does not apply.

## V. CONCLUSION

The record does not demonstrate by a preponderance of the evidence that the Petitioner resided with B-H- during their marriage. The Petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. 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 (AAO 2010). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-M-H-*, ID# 13641 (AAO Sept. 9, 2015)