



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

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

MATTER OF K-A-M-C-

DATE: SEPT. 14, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE 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 Acting Director, Vermont Service Center, denied the petition, and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motion will be denied.

The Director denied the petition, as the record did not establish that the Petitioner resided with her former spouse, married him in good faith, and was a person of good moral character. On appeal, although we determined that the Petitioner was a person of good moral character, we affirmed the Director's denial, finding that the Petitioner did not reside with her former spouse or marry him in good faith.

I. RELEVANT LAW AND REGULATIONS

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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 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 explained 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.

....

(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 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, the following:

(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.

(b)(6)

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Jamaica who last entered the United States as an F-1 nonimmigrant student on April 26, 2011. The Petitioner married W-R-¹, a U.S. citizen, on [REDACTED], 2011, and they divorced on [REDACTED] 2013. The Petitioner filed the instant Form I-360 on December 17, 2012. The Director denied the petition as the record did not establish that the Petitioner resided with her former spouse, married him in good faith, and was a person of good moral character. In a decision dated January 7, 2015, which is incorporated here by reference, we dismissed the appeal, finding that the record did not establish that the Petitioner resided with her former spouse or entered into the marriage with him in good faith. We determined that the record established that the Petitioner was a person of good moral character and withdrew the director's finding to the contrary. The Petitioner timely filed the instant motion to reopen and reconsider.

We review these proceedings *de novo*. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The Petitioner has not asserted new facts to be proved in the reopened proceeding, as required by the regulation at 8 C.F.R. § 103.5(a)(2). The Petitioner does not cite binding precedent decisions or other legal authority establishing that we incorrectly applied the pertinent law or agency policy, nor does she show that our prior decision was erroneous based on the evidence of record at the time, as required by the regulation at 8 C.F.R. § 103.5(a)(3). Consequently, the motion to reopen and reconsider will be denied for the reasons discussed below. *See* 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

III. JOINT RESIDENCE

On her Form I-360, the Petitioner stated that she resided with W-R- from September 2010 to August 2012 and the location of their last joint residence was an apartment on [REDACTED] in [REDACTED] Missouri [REDACTED]. In our January 7, 2015 decision, we reviewed the Petitioner's Form I-360, her initial letter, statements of her friends and family members, the [REDACTED] lease agreement, letters from the apartment building manager, miscellaneous pieces of mail, a patient registration form, and the couple's joint cable and utility bills, bank statements and vehicle insurance policy. We determined that the preponderance of the evidence did not establish that W-R- resided with the Petitioner because of inconsistencies in the documentary evidence and the lack of probative, detailed statements. On motion, the Petitioner requests that we reopen our decision that she did not share a joint residence with W-R- during their marriage. She submits a second statement from W-R- as new evidence.

¹ Name withheld to protect individual's identity.

(b)(6)

In his statement, W-R- describes the physical layout and décor of the apartment on [REDACTED], and the location where he kept his shoes, clothes, and socks. W-R- states that he and the Petitioner first resided together after they married in [REDACTED] 2011. W-R-'s statement is inconsistent with the Petitioner's statement on the Form I-360 that she resided with W-R- from September 2010 – August 2012. It is further contradicted by the [REDACTED] lease agreement, dated September 9, 2010, signed by both the Petitioner and W-R-, and with the letters from the apartment building manager indicating that W-R- occupied the [REDACTED] apartment beginning in September 2010.² As discussed in our January 7, 2015 decision, W-R-'s statement that he moved into the [REDACTED] apartment is also inconsistent with other evidence in the record from a USCIS site visit and investigation in April 2012 showing that W-R- and his father renewed a lease agreement on [REDACTED] Missouri [REDACTED] four months after W-R- married the Petitioner. W-R- explains in his statement that he renewed the lease with his father because his father needed a co-signatory, which is inconsistent with W-R-'s previous statement that the Petitioner submitted in support of the appeal, in which W-R- stated that he renewed the lease with his father so he could have a place to stay if the marriage did not work. Because the statements the Petitioner submitted from W-R- are internally inconsistent and inconsistent with other evidence, they will be given no weight in these proceedings.

On motion, the Petitioner states that we failed to consider her documentary evidence, including the lease agreement and letters from the apartment building manager. In our January 7, 2015 decision, we considered these documents and stated that although the Petitioner submitted the [REDACTED] lease agreement and letters from the apartment building manager indicating that W-R- occupied the premises from September 9, 2010, the USCIS investigation found court records from W-R-'s traffic violations that listed his residence in 2011 at the [REDACTED] address. The evidence of joint residence was further undermined during the site visit by USCIS officers to the [REDACTED] address in April 2012, where the officers found few personal effects of W-R-. As discussed in our previous decision, the statements from the Petitioner, her family members and friends lack probative details, and the Petitioner's remaining documentation is insufficient to overcome the inconsistencies and other deficiencies in the record.

Accordingly, when the credible and relevant evidence is viewed as a whole, the preponderance of the evidence does not establish that the Petitioner resided with W-R-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

IV. ENTRY INTO THE MARRIAGE IN GOOD FAITH

On motion, the Petitioner asserts that we did not give sufficient weight to her documentary evidence including, the lease agreement, the letters from the apartment building manager, a credit union letter and statements, utility and cable bills, patient registration form, vehicle insurance policy, and miscellaneous pieces of mail, as evidence of her good-faith marriage. As discussed above, the information contained in the lease agreement and letters from the apartment building manager are inconsistent with other evidence of record. Although two credit union letters indicate that the

² The Petitioner's Form I-360 is also inconsistent with her initial letter in which she recounted that she rented an apartment that later became her residence with W-R- after they married.

Petitioner and W-R- had a joint account, three months of credit union statements did not reflect significant joint activity. The vehicle insurance policy is dated after the petitioner's separation from W-R- and shows W-R- as an excluded driver. The marital status section on W-R-'s patient registration form, dated January 9, 2012, was left blank.

In our January 7, 2015 decision, we found that while the Petitioner submitted some joint documentation, she has not provided a detailed account of her relationship with W-R- to overcome the deficiencies of the record. We stated that the petitioner did not describe in detail the first time she met W-R-, their courtship and engagement, wedding ceremony, joint residence, or any of their shared experiences, apart from the abuse. We further found that the Petitioner's friends and family members did not provide detailed, substantive information about the Petitioner's intentions at the time of marriage. On motion, the Petitioner requests that we reconsider our decision that she did not marry her former spouse in good faith. She does not, however, submit a new personal statement, statements from her family members and friends, or any other additional evidence to demonstrate her good-faith marital intentions.³

When the credible and relevant evidence is viewed in the totality, the preponderance of the evidence fails to demonstrate that the Petitioner entered into marriage with W-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

V. CONCLUSION

On motion, the Petitioner has not overcome our previous determination that she did not reside with W-R- during their marriage or enter into the marriage with him in good faith. The Petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

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 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 motion is denied.

Cite as *Matter of K-A-M-C-*, ID# 13392 (AAO Sept. 14, 2015)

³ On motion, the Petitioner further states that her filing taxes in 2011 as "single" should not be held against her, because she was informed by her financial advisor that since she was not married for the entire year in 2011, she could choose to file as single. While we did not raise the Petitioner's 2011 tax filing status as an issue in our prior decision, the guidance in Internal Revenue Service Publication 501, *Exemptions, Standard Deduction, and Filing Information* (2011) states that marital status for filing purposes is determined on the last day of the tax year. Under that guidance, if the Petitioner was married to and residing with her spouse on December 31, 2011, she was required to file her 2011 taxes as married.