



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

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

MATTER OF X-Y-S-

DATE: SEPT. 24, 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 petition based on a finding that the Petitioner did not establish that she resided jointly with her spouse and married him in good faith. 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 eligibility requirements 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)(1), which 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.

. . . .

(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.

. . . .

(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.

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II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner last entered the United States on October 27, 2013 under advance parole. She married H-S-¹ a U.S. citizen, on [REDACTED] 2011 in [REDACTED] Commonwealth of the Northern Mariana Islands (CNMI). H-S- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf on December 13, 2011, and the Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on the same date. The Form I-130 and Form I-485 were approved on May 15, 2012, but were reopened on May 17, 2012. H-S- withdrew the Form I-130 on March 4, 2014.

The Petitioner filed the Form I-360 on May 6, 2014. The Director issued a request for evidence (RFE) of, among other things, the Petitioner's joint residence with H-S- and her good-faith entry into marriage. The Petitioner responded to the RFE with a brief 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 H-S- during their marriage. On appeal, she asserts that she submitted sufficient evidence to establish her joint residence with H-S-, including her personal declarations, declarations of friends, rent receipts, documentation from two banks, and tax returns. She contends that the Director erred in dismissing the evidence she supplied.

The information the Petitioner provided about her address history is vague. She did not initially provide dates or locations of any joint residence with H-S- in her Form I-360. In response to the RFE, she supplied a replacement page of the Form I-360 in which she indicated that she and H-S- resided together from March 2011 until December 15, 2013, and that the location of their last joint residence was [REDACTED]. In two Forms G-325A, dated October 17, 2011, and June 4, 2013, and submitted in conjunction with applications for advance parole, the Petitioner stated that she had resided in [REDACTED] since December 2009, but she did not provide a specific address. In a third Form G-325A, dated April 7, 2014, the Petitioner again omitted specific addresses, but stated that she resided in [REDACTED] from December 2009 to October 2013 and in [REDACTED] from October through December 2013. The Petitioner's marriage certificate listed the current residence of both the Petitioner and H-S- as [REDACTED]. None of these documents provided full addresses with the street name, number, and city. As a result, it is not clear whether the locations listed on the Petitioner's Form I-360, Forms G-325A, or marriage certificate

¹ Name withheld to protect the individual's identity.

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are the same. This evidence is not specific enough to support a finding that the Petitioner resided jointly with H-S-.

Additionally, the tax returns and bank records the Petitioner submitted list a Post Office (P.O.) box rather than a physical street address, so those documents cannot establish that the Petitioner and H-S- resided together at the same physical location. Furthermore, the Petitioner's June 27, 2013, application for advance parole lists a different P.O. box address than the other documents, despite the Petitioner's claim that she resided with H-S- until December 2013.

The address history in the Petitioner's affidavits is also vague. In her December 23, 2013, affidavit, the Petitioner claimed that she and H-S- moved in together after getting married and lived "in [redacted] close to [redacted]" in an apartment owned by someone from the Philippines. She also alleged that she went to China in July 2013 for medical treatment, and that, when she returned to [redacted] in October 2013, she and H-S- stayed at the Petitioner's father-in-law's house. She did not specify whether the father-in-law they stayed with was the biological father or step-father of H-S-. The Petitioner indicated that she left H-S- on December 15, 2013 after an incident of abuse and went to her workplace and then to a shelter. The Petitioner did not provide the specific addresses of any of the residences she claimed to share with H-S-. She also provided no probative detail regarding the alleged shared residences, such as descriptions of the homes, belongings, or furnishings, or of any experiences or marital routines she and H-S- shared while living there, other than abuse.

In her September 2, 2014, affidavit, the Petitioner alleged that, while she was in China from May 15 to July 18, 2011, she and H-S- spoke by telephone and agreed that she would move in with him when she returned to [redacted]. She further stated that, when she returned to [redacted] H-S- took her to his biological father's house in [redacted]. The Petitioner recounted that H-S- proposed to her a few days after she returned from China, and that she and H-S- continued living with his father for approximately one week after getting married. She said they then moved to an apartment in [redacted] where they lived for about five months. She claimed that, on December 15, 2013,² they rented a one-bedroom apartment in [redacted] from "a local man by the name of [redacted]" and stayed there until mid-July 2013. The Petitioner alleged that, when she went on a second trip to China in 2013, H-S- moved in with his mother because he did not want to live alone in their [redacted] apartment. The Petitioner stated that she moved in with H-S- and his mother upon her return from China and lived with them until December 15, 2013. Again, the Petitioner did not provide addresses for any of the residences mentioned in her affidavit, nor did she provide detailed descriptions of the homes, the furnishings or belongings she shared with H-S-, or household routines at each location.

The supporting affidavits the Petitioner submitted are also insufficiently detailed to establish that the Petitioner resided with H-S-. H-S-'s step-sister, [redacted] states in an affidavit submitted on appeal that the Petitioner and H-S- lived near [redacted] workplace and that she often ate at their house. The Petitioner's friend, [redacted] stated in an

² It is not clear from the record whether the Petitioner intentionally referenced the year 2013 in this portion of her affidavit.

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affidavit submitted with the Form I-360 that the Petitioner and H-S- became her neighbors on December 20, 2011, when they moved in behind the [REDACTED] store in [REDACTED]. [REDACTED] claimed that she often visited the Petitioner and H-S- at their home and was aware that the Petitioner was responsible for all household expenses. [REDACTED] further alleged that she once found the Petitioner lying on the ground outside the apartment and learned that H-S- had kicked the Petitioner and told her to leave the house. Neither affidavit provided the address of the Petitioner's alleged residence with H-S- or described the home. These affidavits are not sufficiently detailed to support the Petitioner's claims of joint residence with H-S-.

Additionally, the Petitioner's affidavits are inconsistent with each other and with other evidence in the record. Although she stated in her 2013 affidavit that she and H-S- moved in together after getting married, she stated in her 2014 affidavit that they agreed to move in together prior to getting engaged, "so that [they] could get to know each other," and lived together at H-S-'s father's home for a few days before deciding to get married. Also, the Petitioner claimed in her 2013 affidavit that, after getting married, she and H-S- lived in an apartment in [REDACTED] but she stated in her 2014 affidavit that they continued living in [REDACTED] with H-S-'s father for a week after marriage, then moved to an apartment in [REDACTED]. Furthermore, the Petitioner indicated in her 2013 affidavit that, when she returned from China in October 2013, she lived with H-S- at her father-in-law's home, and remained there until leaving for a shelter in December 2013. By contrast, she stated in her 2014 affidavit that, when she went to China in July 2013, H-S- moved in with his mother. The Petitioner further stated in her 2014 affidavit that, when she returned from China in October 2013, she moved in with H-S- and his mother and remained there until she left for the shelter on December 15, 2013. Both affidavits are also inconsistent with the information the Petitioner provided in her replacement page of Form I-360, supplied in response to the RFE, in which she stated that she and H-S- began residing together in March 2011.

The Petitioner submitted numerous rent receipts which she alleges support her claim that she and H-S- resided together. However, the rent receipts do not indicate the address of the residences for which the rent was paid. Additionally, although the Petitioner claims the majority of the receipts were for the apartment she and H-S- rented from [REDACTED] the rent receipts cover the period from December 20, 2011 through July 9, 2013, while the Petitioner stated in her 2014 affidavit that she and H-S- began renting from [REDACTED] on December 15, 2013. The record does not clarify whether the Petitioner intended to list a different date, and the timeline of the Petitioner's alleged residences with H-S- is not clear.

The record does not contain sufficient detail to establish that the Petitioner resided with H-S- during their marriage. The Petitioner has not provided specific addresses for any of her alleged residences with H-S-, nor has she described, in probative detail, the homes, furnishings, belongings, or household routines. Similarly, the supporting evidence the Petitioner supplied lacks probative detail. Furthermore, the evidence the Petitioner submitted, particularly her own affidavits, contains unexplained inconsistencies regarding the dates and locations of her alleged residences with H-S-. Therefore, the Petitioner has not established that she resided jointly with H-S- during marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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IV. GOOD-FAITH MARRIAGE

The Petitioner has not established by a preponderance of the evidence that she married H-S- in good faith. In her brief on appeal, the Petitioner argues that the Director did not consider the difficulties she faces, as a battered spouse, in obtaining documentary evidence of her good-faith marriage. She also alleges that the Director erred in dismissing her evidence and that the Director's finding that the Petitioner was battered by H-S- requires a finding that she was in a good-faith marriage.

Although traditional forms of joint documentation are not required to demonstrate good-faith marriage under section 204(a)(1)(A)(iii) of the Act, the Petitioner must satisfy her burden of proof. In lieu of traditional documentation, the Petitioner may submit, among other evidence, "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 . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). Our *de novo* review of all relevant, credible evidence in the record does not demonstrate that the Petitioner married H-S- in good faith.

In her 2013 affidavit, the Petitioner claimed that a friend introduced her to H-S- at a party in 2011. She stated that H-S- spoke to her slowly because she did not speak English well, and she felt that he was a kind person. She alleged that she and H-S- exchanged telephone numbers and, after meeting as friends, began dating in April 2011. According to the Petitioner, she traveled to China two months after she and H-S- started dating, and H-S- called her in China nearly every day. She alleged that H-S- proposed to her by telephone, but she told him she was not ready. She further stated that, when she returned from China in July 2011, she and H-S- saw each other every day and he then proposed marriage again. The Petitioner indicated that she and H-S- were married in [REDACTED] 2011 at the Mayor's office, with four friends and H-S-'s aunt in attendance, and three friends then accompanied them to dinner at a restaurant. The Petitioner stated that she and H-S- stayed at a hotel on their wedding night. She alleged that she and H-S- attended many parties and events together as spouses, and that her mother-in-law paid for an anniversary dinner for them at a resort.

In her 2014 affidavit, the Petitioner made similar statements regarding her first meeting with H-S- and the beginning of their dating relationship. She claimed that, for their first date, H-S- took her sightseeing and then to [REDACTED] for lunch. She stated that she and H-S- went on several more dates before she traveled to China on May 15, 2011, and that H-S- often called her in China to tell her he loved her and to ask how she was doing. The Petitioner recounted that, although she told him she was not ready when he proposed over the telephone, they agreed to move in together when she returned to [REDACTED]. She recalled that H-S- proposed a second time "[a] few days after" she returned from China, at which point she agreed. Her description of her wedding was substantially the same as in her 2013 affidavit. According to the Petitioner, she and H-S- moved to [REDACTED] about a week after the wedding, and H-S- then took the Petitioner to meet his mother, step-father, and siblings. She stated that she later met two of H-S-'s four children. She further stated that H-S-'s mother had a large family, and frequently hosted parties with all in attendance. The Petitioner also claimed that her mother-in-law

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hosted a first anniversary party for the Petitioner and H-S- at a resort, and that “[i]t was a night filled with fun and laughter.”

Although the Petitioner’s affidavits provided some detail regarding her first meeting with H-S- and their initial discussions regarding marriage, her descriptions were otherwise vague. The Petitioner did not discuss any specific shared experiences during their courtship other than lunch at [REDACTED] and telephone conversations. She did not describe the wedding ceremony, other than to state who attended, nor did she discuss why H-S-’s parents and other family members, who resided in the same region, did not attend the wedding. She did not explain why she did not meet H-S-’s family until after the wedding. Additionally, the Petitioner did not explain the short timeline of her courtship and engagement with H-S-; her affidavits indicate that H-S- first asked her to marry him during a telephone conversation only a few months after they met, and she refused because they barely knew each other, but she then accepted his second proposal shortly thereafter, despite the fact that she had been in China for the two months prior to that proposal. Additionally, although the Petitioner stated that she wanted to move in with H-S- in order to get to know him before discussing marriage again, she also indicated that she agreed when he proposed only a few days after they moved in together. Furthermore, the couple were married only ten days after the Petitioner returned from China, and less than ten days after getting engaged. The Petitioner offered no explanation for the short duration between their meeting, engagement, and marriage, or for the lack of involvement of H-S-’s family in the wedding despite their involvement in the couple’s lives after the wedding.

As supporting evidence, the Petitioner submits on appeal a letter from her mother-in-law, who states that she first met the Petitioner in August 2011, when H-S- brought the Petitioner for a visit. According to the Petitioner’s mother-in-law, the Petitioner “often called or visited” following their first meeting, and they saw each other at least once per month. The Petitioner’s mother-in-law claims that she hosted a Mother’s Day celebration at a resort in May 2012, which the Petitioner and H-S- attended with other family members. She also states that the Petitioner and H-S- attended her daughter’s wedding banquet, a birthday party for her granddaughter, and a Christmas celebration at her home. The Petitioner’s mother-in-law certifies that the marriage between the Petitioner and H-S- was *bona fide*, and that, although “their relationship is now broken apart, it is not [the Petitioner’s] fault.” The Petitioner’s mother-in-law does not state whether she was aware of H-S-’s relationship with the Petitioner before August 2011, what H-S- told her about his decision to marry the Petitioner, or why she did not attend the wedding or meet the Petitioner prior to the wedding. Additionally, although the Petitioner’s mother-in-law describes the Mother’s Day celebration she hosted at a resort, the Petitioner did not mention that event in her own affidavits; by contrast, the Petitioner stated that her mother-in-law hosted a first anniversary party at the same resort, but the Petitioner’s mother-in-law does not mention that event.

In her letter submitted on appeal, H-S-’s step-sister, [REDACTED] also states that she first met the Petitioner in August 2011 when H-S- brought the Petitioner to meet his family. [REDACTED] claims that the Petitioner visited her and her mother often, attended the birthday party of [REDACTED] son, and helped [REDACTED] care for her son. [REDACTED] also asserts that the Petitioner attended other family events, including a wedding banquet and Christmas celebration. She repeats the statement of the Petitioner’s mother-in-law that the marriage was *bona*

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vide. Like the Petitioner's mother-in-law, [REDACTED] does not discuss whether H-S- told her about his relationship with the Petitioner before their marriage, nor does she explain why she did not attend the wedding or meet the Petitioner before August 2011. [REDACTED] descriptions of family events the Petitioner allegedly attended are also vague.

In her affidavit submitted with the Form I-360, [REDACTED] stated that she had known the Petitioner for many years, was her roommate, and talked to the Petitioner about everything. However, [REDACTED] did not discuss the Petitioner's first meeting with H-S- or their dating relationship or announcement of their decision to get married. Although the Petitioner claimed in her own affidavits that [REDACTED] attended her wedding ceremony, [REDACTED] did not mention the wedding. Because [REDACTED] affidavit lacks information about the nature of the Petitioner's relationship with H-S- except as it relates to abuse, the affidavit does not support the Petitioner's claim of a good-faith marriage.

The Petitioner also previously submitted letters from the [REDACTED] and [REDACTED] confirming that the Petitioner and H-S- had joint accounts at each bank. The letter from the [REDACTED] indicated that the account was opened on April 11, 2011, but, according to the Petitioner's affidavits, she and H-S- began dating in approximately April 2011, and they were not engaged or living together until July 2011. The Petitioner has not explained why she and H-S- opened a joint bank account so early in their relationship. The letter from the [REDACTED] indicated minimal activity in the account, listing an average balance of \$3.34. The Petitioner claims on appeal that she and H-S- had little income because H-S- did not work, and that the Petitioner avoided making deposits into the account for fear that H-S- would spend her money. However, the record lacks other detailed evidence to support this claim. Furthermore, the Petitioner's explanation regarding her [REDACTED] account conflicts with the letter from the [REDACTED] which showed that the Petitioner began to share her finances with H-S- the same month they began dating, and that they had over \$3,000 in that account.

With the Form I-360, the Petitioner supplied copies of tax returns for 2011 and 2012, listing the Petitioner and H-S- as "Married filing joint." On appeal, she resubmits copies of the tax returns and includes a document from the CNMI Division of Revenue and Taxation, indicating that she filed a 2012 tax return listing H-S- as her spouse. This tax documentation confirms that the Petitioner and H-S- filed taxes jointly for 2011 and 2012, but it is not sufficient to overcome the lack of detail and inconsistencies in the other evidence of record.

The Petitioner also previously submitted photographs showing her and H-S- together and with members of his family. The photographs demonstrate that the Petitioner and H-S- were together on several occasions. However, without additional, detailed supporting evidence, the photographs do not establish the Petitioner's intentions in marriage.

Although the Petitioner submitted additional letters of support from coworkers, supervisors, and a domestic violence shelter, as well as documentation of the order of protection she obtained against H-S-, those documents discussed abuse against the Petitioner by H-S-, not the Petitioner's intentions in marrying H-S-. Contrary to the Petitioner's argument on appeal, the Director's finding that she was battered or subjected to extreme cruelty by H-S- does not require a finding that she was also in a good-

faith marriage with him. Section 204(a)(1)(A)(iii)(I) of the Act and the corresponding regulation at 8 C.F.R. § 204.2(c)(1) list good-faith marriage and battery or extreme cruelty as separate eligibility requirements. Additionally, abuse can occur in types of relationships other than good-faith marriages. Furthermore, although the Petitioner claims in her brief that “the evidence strongly supports petitioner’s claim that she is a spouse of an abusive United States citizen,” a showing that she is legally married to H-S- does not necessarily establish that the marriage was in good faith. In this case, the Petitioner has not provided sufficient detailed, consistent evidence to establish that she entered into marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

V. CONCLUSION

The record does not demonstrate by a preponderance of the evidence that the Petitioner resided with H-S- during their marriage and married H-S- in good faith. 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 is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of X-Y-S-*, ID#13895 (AAO Sept. 24, 2015)