



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

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

MATTER OF Y-R-C-

DATE: APR. 20, 2016

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). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established that he entered into the marriage with his U.S. citizen spouse in good faith and met the requirement for the *bona fide* marriage exemption under section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3), such that section 204(g) of the Act bars the approval of his petition.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the record of proceedings contains sufficient evidence to establish his eligibility for the benefit sought.

Upon *de novo* review, we will dismiss the appeal.

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. An alien who is divorced from an abusive U.S. citizen spouse may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(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:

(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.

....

(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.

In addition, the regulations require that to remain eligible for immigrant classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(iii) states, in pertinent part:

Marriage during proceedings—general prohibition against approval of visa petition. A visa petition filed on behalf of an alien by a United States citizen . . . shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . removal proceedings, or judicial proceedings relating thereto. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)[8] of this chapter, except that the burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exemption to section 204(g) of the Act as follows:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide

.....

A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. See section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of India, claims that he last entered the United States on October 9, 2010, without inspection, admission, or parole. The Petitioner was placed in removal proceedings on

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2010. The record of proceedings reflects that the Petitioner remained in the United States since his entry. He married C-F-¹ a U.S. citizen, on [REDACTED] while in removal proceedings. An immigration judge ordered the Petitioner removed from the United States and the Board of Immigration Appeals dismissed the Petitioner's appeal of that decision.

The Petitioner and C-F- were divorced on [REDACTED] 2014, prior to his filing of a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 15, 2014. The Director issued a request for evidence (RFE) of, among other things, the Petitioner's qualifying relationship with C-F-, battery or extreme cruelty of the Petitioner by C-F-, and the Petitioner's entry into his marriage with C-F- in good faith. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish that the Petitioner entered into his marriage with C-F- in good faith. The Director also noted that the Petitioner married C-F- while in removal proceedings and concluded that the Petitioner did not demonstrate by clear and convincing evidence that his marriage to C-F- was *bona fide*.² Therefore, the Director denied the Form I-360.

III. ANALYSIS

A. Entry into Marriage in Good Faith

The Petitioner has not established by a preponderance of the evidence that he entered into his marriage with C-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

In his personal statement submitted with the Form I-360, the Petitioner states that he met C-F- early in 2013 when she asked him for permission to sell produce in the parking lot of the gas station where he worked and that they became friends, saw each other every day, and started to date. He also mentions that her oldest son became very close to him and that he gave C-F- money when she asked for it. He states that he proposed to her, bought her an engagement ring for \$500.00, and they married on [REDACTED] after her youngest son was born. The Petitioner recounts that he and C-F- moved in together after they married, he paid for all of their living expenses, they went out to dinner, and sometimes her sons would stay with them and sometimes with their father. The Petitioner also states that he filed for divorce and moved from Tennessee in [REDACTED] 2013, returned to Tennessee in [REDACTED] 2014, and the divorce was granted on [REDACTED] 2014.

¹ Name withheld to protect the individual's identity.

² In the preamble portion of the Director's decision, she indicated that the Petitioner "established all of the eligibility requirements except number five (5) and seven (7) below." Paragraph 5 of the Director's decision refers to whether a petitioner was battered or subjected to extreme cruelty during the marriage and Paragraph 7 refers to whether a petitioner entered into a marriage in good faith. However, in the body of the Director's decision, she referred to Paragraph 2, which requires a petitioner to establish eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act, and discussed good faith marriage. The Director did not otherwise refer to or discuss Paragraph 5 in her decision but, in our *de novo* review of the record of proceedings, we determine that the Petitioner does not establish that C-F- subjected the Petitioner to battery or extreme cruelty. We will discuss the issue of battery or extreme cruelty later in this decision.

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The personal statement submitted by the Petitioner in response to the RFE repeats the same information contained in his initial personal statement relative to whether he entered into the marriage with C-F- in good faith. On appeal, the Petitioner submits a third personal statement which also repeats the same information from the previous two personal statements relative to whether he entered into the marriage with C-F- in good faith but adds that he and C-F- had a lot in common, they both liked scary movies, she wanted him to buy her Indian outfits, and he spent approximately \$1,000.00 on her engagement ring. The Petitioner's personal statements lack probative detail regarding his relationship with C-F- and his intentions in marrying her. His personal statements focus primarily on the abuse he allegedly suffered and do not contain specific information about the couple's courtship and decision to marry, their marriage ceremony, or their life together as spouses.

In support of his claim that he entered into his marriage with C-F- in good faith, the Petitioner submitted several letters with the Form I-360. C-F- wrote a letter dated [REDACTED] the day on which they married and one day prior to an individual hearing in removal proceedings involving the Petitioner. In her letter, C-F- generally states that the Petitioner is a good husband and father. She also claims that she and the Petitioner met over a year ago and they do not yet live together, which is inconsistent with the Petitioner's testimony that the couple met in early 2013, and with [REDACTED] testimony, described below, that C-F- and the Petitioner began living with him starting on [REDACTED]

The Petitioner also submitted a letter from [REDACTED] dated [REDACTED] who indicates that C-F- is her daughter and "foster-child." [REDACTED] states, in contradiction to the Petitioner's testimony, that C-F- and the Petitioner met over a year ago, and she also states that the couple met when C-F- was selling produce at the store where the Petitioner worked. [REDACTED] wrote one letter indicating that the Petitioner and C-F- lived with him from [REDACTED] to June 25, 2013, which is inconsistent with C-F-'s testimony, and, in a separate letter, he describes the alleged abuse. [REDACTED] wrote that he was present at the marriage of the Petitioner and C-F- and that they "both had good intentions [sic] and loved each other very much" but the remainder of his letter discusses the claims of abuse. Similarly, [REDACTED] each wrote letters discussing the alleged abuse but they do not provide any information relative to whether the Petitioner married C-F- in good faith.

In response to the RFE, the Petitioner submitted several statements and letters in support of his claim. [REDACTED] reports that he owned the store where the Petitioner was working when the Petitioner met C-F-, the Petitioner and C-F- became good friends and, within a few months, the Petitioner told him that he liked C-F- and wanted to marry her. He also confirms that the Petitioner and C-F- married in [REDACTED] and moved in together but the remainder of his statement discusses the alleged abuse. [REDACTED] states that the Petitioner lived at his apartment, the Petitioner and C-F- married in [REDACTED] and she moved in with the Petitioner. [REDACTED] wrote letters discussing the alleged abuse or the Petitioner's character but do not provide any information regarding whether he married C-F- in good faith. Accordingly, the letters and statements submitted by the Petitioner do not contain specific information about the Petitioner and C-F- as a couple, such as their courtship and decision to marry, their marriage ceremony, or their life together as spouses. In addition, the letters from C-F- and [REDACTED]

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Barber are inconsistent with the Petitioner's personal statements as well as the letters and statements of [REDACTED] regarding when he met C-F- and when they moved in together.

The Petitioner provided two mental health status reports from [REDACTED]. In her first report, submitted with the Form I-360, [REDACTED] states that the Petitioner told her that he knew C-F- for one year before they married and they were married for one year and a half. In the second mental health status report, which was submitted in response to the RFE, [REDACTED] notes the Petitioner reported to her essentially the same information as he did during the previous evaluation. In neither mental health status report does [REDACTED] state that the Petitioner ever told her any specific information about how or when he met C-F-, their courtship, their marriage ceremony, or their life together as spouses. In addition, the information provided in the mental health status reports is inconsistent with the Petitioner's personal statements regarding when he met C-F- and how long they were married.

In support of the Form I-360, the Petitioner submitted a copy of a [REDACTED] list including the name and photograph of C-F- and a list of crimes for which she was wanted, an on-line article regarding people who were booked into the [REDACTED] from [REDACTED] 2014, to [REDACTED] 2014, and an Incident Report prepared by the [REDACTED] Police Department. None of these documents provide any information relevant to the Petitioner's claim that he entered into his marriage with C-F- in good faith.

On appeal, the Petitioner submits two photographs of C-F- with him and other unnamed persons. The photographs depict the Petitioner and C-F- together on one occasion but, without probative testimony or captions, they are insufficient to establish that he entered into his marriage with C-F- in good faith. He also submits a receipt for a 22 karat ring, listing a purchase price of \$1,174.86, and dated [REDACTED] 2013, which is inconsistent with his personal statements regarding the purchase price of the engagement ring and when he proposed to C-F-.

In his brief submitted with the appeal, the Petitioner claims that he entered into his marriage to C-F- in good faith and refers generally to the evidence in the record of proceedings to support that claim but the brief does not provide a coherent, credible, and detailed account of how or when the Petitioner met C-F-, their courtship and decision to marry, their marriage ceremony, or their life together as spouses.

Accordingly, the Petitioner has not established by a preponderance of the evidence that he entered into his marriage with C-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Section 204(g) of the Act and Eligibility for Immediate Relative Classification

Because the Petitioner married C-F- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, the Form I-360 cannot be approved pursuant to section 204(g) of the Act unless he establishes the *bona fides* of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act.

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Demonstrating eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act requires a petitioner to establish his good-faith entry into the qualifying relationship by a preponderance of the evidence. See *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the *bona fide* marriage exemption under section 245(e)(3) of the Act, the Petitioner must establish his good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992).

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the *bona fide* marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Arthur*, 20 I&N Dec. at 478. See also *Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

As the Petitioner failed to establish his good-faith entry into his marriage with C-F- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the *bona fides* of his marriage under the applicable heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of the Form I-360. Accordingly, the Petitioner is also not eligible for immediate relative classification based on his marriage to C-F-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv) because he has not complied with, nor is he exempt from, section 204(g) of the Act.

C. Battery or Extreme Cruelty

As mentioned above, in our *de novo* review of the record of proceedings, we determine that the Petitioner does not establish that C-F- subjected the Petitioner to battery or extreme cruelty during their marriage and he consequently cannot establish a qualifying relationship with C-F- and corresponding eligibility for immediate relative classification.³

The Petitioner submitted a personal statement with the Form I-360, in which he indicates that, approximately two months after he married C-F-, he saw C-F-'s photograph in a local newspaper on a [REDACTED] list indicating that she was wanted for crimes, including theft, methamphetamine for resale, burglary, vandalism, and possession of weapons. The Petitioner states that he asked C-F- the same day regarding her appearance on the [REDACTED] list and that C-F- yelled at him, got angry, left their home, and did not return for the next two to three days. The Petitioner recounts that C-F- apologized to the Petitioner when she returned and asked for money to get her car fixed, which the Petitioner gave to her, and then C-F- left again.

³ We may deny a petition that fails to comply with the technical requirements of the law even if the Director 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).

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The Petitioner reports that C-F- came to the store where he worked a few days later and she was “drunk and high on drugs.” The Petitioner recounts that C-F- yelled at him in front of customers and asked him for money and said “really bad things” to him, such as threatening that she will tell the police that he hit her and only married her to gain legal immigration status and that she “will not file for [the Petitioner]” unless he gives her money. The Petitioner states that he gave C-F- the money that she demanded and she repeats the same behavior on several other occasions and once threatened to have him killed. The Petitioner recounts that he was afraid for his life and fed up with C-F-’s behavior so he filed for divorce in [REDACTED] 2013 and moved.

The Petitioner notes that, on [REDACTED] 2014, C-F- came to his apartment in the evening and banged on and kicked his door very hard and that she was screaming and shouting at him. He explains that C-F- threatened to hurt him. He reports that he told her that he would call the police and C-F- became angry and broke a bedroom window as she left. He states that he was afraid she would hurt him if he called the police so he waited a few days before he reported the incident to the police.

In response to the RFE, the Petitioner submitted a second personal statement in which he reiterates the account in his initial statement regarding the alleged abuse by C-F- and added that “[s]he did not abuse me physically although in anger she would start kicking and using her hands, but she tortures me mentally and emotionally.” The Petitioner also submits a personal statement on appeal but it does not provide additional information regarding abuse by C-F-.

The Petitioner’s personal statements do not contain probative details regarding specific violent acts or an overall pattern of violence constituting battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner states generally that C-F- was verbally abusive, but he does not describe in probative detail any specific abusive incidents. The specific acts the Petitioner mentioned were C-F-’s demands for money and threats to call the police and to not assist him with gaining immigration status. These actions are not comparable to the acts described in 8 C.F.R. § 204.2(c)(1)(vi), such as sexual abuse, forced prostitution, forceful detention, or other acts or threats of violence that may be considered battery or extreme cruelty. The incident on [REDACTED] 2014, occurred after the couple was divorced and under the statute, battery or extreme cruelty must occur during the marriage. Section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The Petitioner also submitted with the Form I-360 a letter from his former employer, [REDACTED] in which he indicates that the Petitioner confided in him that C-F- was drinking “more and more,” she was asking for money for her addiction, and they would “argue constantly.” In response to the RFE, the Petitioner submitted another statement from [REDACTED] in which he reports that he was working with the Petitioner in July 2013 when C-F- came in and started yelling at the Petitioner, called him names, and threatened to tell the police that he hit her and only married her to gain immigration status unless he gave her money. [REDACTED] recounts in his statement that “[s]imilar incidents happen[ed] almost every day” and he states that, on one occasion when only he and the Petitioner and C-F- were in the store, C-F- threatened to “get [the Petitioner] killed” if he did not give her money and, in August 2013, the Petitioner told him he was scared for his safety and that he quit his job, filed for divorce, and moved out of state. Although [REDACTED] discusses two specific

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incidents he observed involving C-F-, his previously-submitted letter does not mention either of these incidents and, due to this inconsistency, his letter and statement will not be given significant weight to establish that the Petitioner was the victim of battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(vi).

The Petitioner also submitted with the Form I-360 a letter from [REDACTED] in which he indicates that C-F- would come to the Petitioner's work place and "cause many troubles" for the Petitioner. He also states that, "[o]n one occasion she even hit him while she was under the influence of drugs" but he does not explain how he was aware of this information. In response to the RFE, the Petitioner submitted a statement in which [REDACTED] indicates that the Petitioner and C-F- formerly lived at his apartment but he does not discuss or explain the basis for his knowledge of the incidents described in his previously-submitted letter. The Petitioner also submitted letters from [REDACTED] in which they state generally that the Petitioner and C-F- had problems in their marriage; [REDACTED] and [REDACTED] indicate that C-F- hit the Petitioner, but do not explain the basis for their knowledge that she did so. Similarly, the letters from C-F- and [REDACTED] which the Petitioner submitted with the Form I-360, do not provide any information relevant to the Petitioner's claim that C-F- subjected him to battery or extreme cruelty.

The [REDACTED] list and on-line article regarding people booked into the [REDACTED] demonstrate that C-F- has a criminal record, but it does not necessarily follow that, because of her criminal history, she subjected the Petitioner to battery or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In her first mental health status report, [REDACTED] states that the Petitioner claimed that C-F- "was violent and destructive to [him], [their] home, or the store." [REDACTED] also quotes the Petitioner, who told her the following:

I keep thinking she will come to the house or at the store and demand money or destroy my things like she has done. This happened again about 20 days ago so. She came to the house and was kicking my door. I let her in and she was demanding money and when I said no, she broke windows in my house.

In the second mental health status report, [REDACTED] notes that the Petitioner reported to her essentially the same information as he did during the previous evaluation. In neither mental health status report does [REDACTED] report that the Petitioner ever told her about any specific incidents of battery or extreme cruelty by C-F- occurring during the couple's marriage. In addition, [REDACTED] mental health status report regarding what the Petitioner told her about the [REDACTED] 2014, incident differs considerably from the version contained in his personal statements and the Incident Report. First, as reported in his personal statements and the Incident Report, the incident occurred twelve days, not twenty days, prior to his first evaluation by [REDACTED]. Second, as recounted in his personal statements and the Incident Report, the Petitioner reported that C-F- broke a window, while he indicated to [REDACTED] that C-F- broke more than one window. These inconsistencies cast doubt on the accuracy of the information contained in the Petitioner's statements, the Incident Report, and the mental health status reports and,

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accordingly, diminish their value as credible evidence that C-F- subjected him to battery or extreme cruelty.

In response to the RFE, the Petitioner submitted a letter from [REDACTED] in which she indicates that “[C-F-] would harass [the Petitioner] for money . . . [and] . . . would show up at [his] place of employment and cause a scene if he did not give her money.” She also states that, “[a]ccording to [the Petitioner], [C-F-] even assaulted him at work.” [REDACTED] does not, however, explain the basis for her knowledge of the incidents described in her letter. The Petitioner also submitted letters from [REDACTED] in response to the RFE but the authors of these documents only indicate that, in essence, the Petitioner is a good person; they do not mention C-F- or offer any insights into the abuse claimed by the Petitioner.

The preponderance of the relevant evidence does not demonstrate that the Petitioner was battered or subjected to extreme cruelty by C-F- as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

D. Qualifying Relationship

The Petitioner and C-F- were divorced on [REDACTED] 2014, and the Petitioner filed the Form I-360 on September 15, 2014. U.S. Citizenship and Immigration Services (USCIS) may not approve a Form I-360 for a petitioner who divorced prior to filing the VAWA self-petition, unless the divorce occurred within two years of the Form I-360 filing date and the petitioner can demonstrate a connection between the legal termination of the marriage and battering or extreme cruelty by the U.S. citizen spouse. *See* section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Here, as the preponderance of the relevant evidence does not establish that the Petitioner was battered or subjected to extreme cruelty by C-F-, the Petitioner cannot demonstrate the required causal connection between the legal termination of his marriage and battering or extreme cruelty by C-F-. Accordingly, the Petitioner does not have a qualifying relationship with a U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.⁴

E. Joint Residence

In addition, in our *de novo* review of the record of proceedings, we determine that the Petitioner does not establish that he resided with C-F-. The Petitioner’s statements and those submitted on his behalf do not provide sufficient information about his shared residences, routines, and experiences with C-F-, apart from the alleged abuse. In his personal statements, the Petitioner relates that he and C-F- moved in together after their marriage and that he paid for all expenses, including rent and food but he does not describe their shared residence, any routines in their shared residence, or experiences he had with C-F- in their shared residence. In addition, the record of proceedings contains inconsistent

⁴ The Petitioner’s divorce renders him ineligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act, as does the section 204(g) bar to the approval of the Form I-360. *See* section 204(a)(1)(A)(iii)(II)(cc) of the Act; 8 C.F.R. § 204.2(c)(1)(iv).

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information regarding the dates, locations, and circumstances of the Petitioner's claimed joint residence with C-F-. In her letter dated [REDACTED], C-F- states that she and the Petitioner do not yet live together, which is inconsistent with the letter from [REDACTED], who indicates that the Petitioner and C-F- lived with him starting on [REDACTED]

Accordingly, when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner resided with C-F- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

IV. CONCLUSION

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). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of Y-R-C-*, ID# 16471 (AAO Apr. 20, 2016)