



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

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

MATTER OF R-Z-T-

DATE: APR. 22, 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) section 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 has not established that she entered into her marriage in good faith, resided with her spouse, and that he subjected her to battery or extreme cruelty during the marriage.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that she has established that she entered into her marriage in good faith, resided with her spouse, and that he subjected her to battery or extreme cruelty during the marriage.

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 United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is

credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

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

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty*. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child, 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 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 togetherEmployment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

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(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.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of the Philippines, who entered the United States as a B-2 non-immigrant visitor. The Petitioner married, B-B-¹ a U.S. citizen, and subsequently filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The Director issued a request for evidence (RFE) of, among other things, the Petitioner's good faith entry into the marriage, joint residence, and the requisite battery and/or extreme cruelty. The Petitioner timely responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility.

III. ANALYSIS

A. Joint Residence

The relevant evidence submitted below does not demonstrate that the Petitioner resided with B-B-, and the Petitioner does not submit evidence on appeal to overcome this ground for denial. On the Form I-360, the Petitioner stated that she resided with B-B- from August 29, 2014, until December 12, 2014, and that their last joint address was on [REDACTED] California. The evidence includes a joint [REDACTED] account summary, which reflects the Petitioner's address in Japan and her spouse's address in California. The record also includes a copy of a consumer account from [REDACTED]

¹ Name withheld to protect the individual's identity.

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█ bank reflecting that the Petitioner was the sole owner of the account, greeting cards that are addressed to the couple on their wedding day, and a greeting card addressed to the Petitioner from B-B-'s son. In addition, the Petitioner submitted a number of undated photographs of herself, B-B-, and his son. Some of the photographs depict what appears to be the Petitioner's marriage ceremony and the others depict social gatherings and outings. The photographs of the couple are undated, taken at unspecified locations, and contain no description of the significance of the events photographed. They are therefore insufficient to establish the Petitioner's marital residence with B-B-. In her response to the RFE, the Petitioner stated that she was unable to submit additional evidence because B-B- kept all the information regarding their joint residence. The Petitioner further stated that she and B-B- had a joint banking account, which they used to deposit her savings and their wedding funds but that they used the funds from the account to purchase a vehicle for B-B-. She explained that this left the account with a zero balance and it was closed by the bank.

Despite the deficiencies of the record, traditional forms of joint documentation are not required, and a Petitioner may submit "affidavits or any other type of relevant credible evidence of residency." 8 C.F.R. § 204.2(c)(2)(iii). In her personal statements, the Petitioner generally recounted her meeting with B-B- on a dating website. She recalled that "he seemed to be a very special person" and they began a long distance relationship. She stated that she visited B-B- in █ and he visited her in Japan. Four months after they met, the Petitioner recalled that B-B- proposed to her and they married. The remainder of the Petitioner's statement focused on the claimed abuse. The Petitioner did not describe her residence with B-B-, their shared belongings, and residential routines, or provide any other substantive information sufficient to demonstrate that she resided with B-B- after their marriage.

On appeal, the Petitioner does not provide any additional personal testimony regarding the claimed joint residence. The statements from the Petitioner's friends and family, submitted on appeal, only confirm that the Petitioner and B-B-were married, but they do not establish that the Petitioner jointly resided with B-B-. The statement from the Petitioner's mother-in-law, █ who is an ordained minister, attests that she married the Petitioner and B-B-. However, her statement does not reference that the couple lived together and it does not provide any information regarding the couple's joint residence. The brief statement from B-B- attests that they were married, but he also does not provide any testimony regarding his joint residence with the Petitioner. B-B- does not describe the couple's home furnishings, their neighbors, any of the jointly-owned belongings, or any of their daily routines within the residence. Similarly, the statement from Petitioner's friend █ recounts helping the Petitioner find a place to live after she left her spouse, but it makes no reference to her joint residence with B-B-. On appeal, the Petitioner also submits a copy of her Yahoo Internet profile information listing her address as █. The profile is undated, however, and does not demonstrate that she resided there with B-B-. Accordingly, the record does not set forth a clear history or timeline of shared residences to establish by a preponderance of the evidence that the Petitioner resided with B-B- after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act

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B. Good-Faith Entry into the Marriage

The relevant evidence submitted below and on appeal does not demonstrate the Petitioner's entry into her marriage with B-B- in good faith. In her statement provided in support of her Form I-360, the Petitioner briefly explained that in November 2013, while she was living and working in Japan as a model and waitress, she met B-B- through an Internet dating website. She recounted that they frequently corresponded online and via Skype. The Petitioner recalled that once they agreed to meet, she flew to [REDACTED] to meet B-B-. She recalled that they spent a week together, went to the movies, and had a good time. The Petitioner recounted that during the Thanksgiving holiday, she went to Hawaii to visit friends. While there, she stated that she sent B-B- a post card because she "could not get him out of her head." She recalled that during one of their conversations, B-B- told her that he loved her and by Christmas Day, she finally confessed her love to him. In March 2014, the Petitioner stated that B-B- visited her in Japan and proposed to her. While on a later visit to meet B-B-'s family in the United States, the Petitioner explained that she married B-B- upon his suggestion. Subsequent to their [REDACTED] 2014 wedding, the Petitioner stated that she returned to Japan before returning to the United States in August 2014. She recalled that B-B- picked her up at the airport and shortly after her arrival, B-B- requested that she give him her savings so they could start their life together. The Petitioner did not provide further probative details about her relationship with B-B-, their courtship, wedding ceremony, shared residence and experiences, apart from the claimed abuse, to establish that she entered into the marriage with B-B- in good faith.

The record also contains: a [REDACTED] joint bank account summary; a copy of a consumer account application from [REDACTED] bank; a copy of flight information and hotel receipts from B-B-'s visit and stay in Japan; and photographs of the couple on their wedding day and on other social occasions. The joint bank account summary shows minimal transactions and there is no indication that this account was actively and jointly used by both spouses. The [REDACTED] account application lists the Petitioner as the sole owner of the account. The unlabeled photographs show the Petitioner and B-B- at their wedding and other occasions but without probative testimony, they do not establish the nature of the relationship or the Petitioner's good faith intentions. Likewise, without probative testimony, the hotel receipts and flight information is evidence that B-B- visited Japan and does not demonstrate that the Petitioner married him in good faith.

On appeal, the Petitioner submitted statements from B-B-, her mother-in-law [REDACTED] and her friends [REDACTED]. The Petitioner also submitted a copy of an [REDACTED] invoice and copy of payments made to her through a [REDACTED] account. The [REDACTED] bill was addressed solely to the Petitioner. The copies of two payments made to the Petitioner through [REDACTED] are dated in January 2015, after the Petitioner and B-B- separated and offer little insight into the Petitioner's good faith intentions in marrying B-B-. Further, the statements provided on appeal from the Petitioner's friends and family did not provide sufficient details to address the Petitioner's marital intentions. B-B-'s statement indicated that he and the Petitioner were married in [REDACTED] 2014. He attested that they married with the best of intentions. However, his brief statement does not provide relevant, substantive information regarding the Petitioner's good faith intentions in entering the marriage. In his statement, [REDACTED] stated that he met the Petitioner while shopping at a discount retail store. [REDACTED] stated that the Petitioner was sitting outside of the store with several

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items of luggage and told him she had nowhere to go. He recalled that he found a low cost [REDACTED] [REDACTED] for the Petitioner and from this point on, they developed a friendship. The remainder of his statement does not provide any details of the couple's marital intentions. None of the statements provided on appeal by the Petitioner's witnesses describe any particular visit or social occasion with the couple, or any interactions with the couple that would establish their personal knowledge of the relationship. Neither the Petitioner's statements, nor the letters from her family and friends, provide probative accounts of the couple's courtship, wedding ceremony, shared residence, or shared experiences. Accordingly, the record does not establish by a preponderance of the evidence that the Petitioner entered into her marriage with B-B- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

C. Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal does not demonstrate that the Petitioner was subjected to battery or extreme cruelty by B-B-. In her personal statements submitted in support of her Form I-360, the Petitioner asserted that during their first two months of living together, she and B-B- had "small marital" arguments. She recalled having difficulties filling the role of mother, babysitter, housewife and maid to B-B-. The Petitioner stated that she recalled feeling very lonely because when he was at home, instead of spending time with her, B-B- chose to play video games and drink. The Petitioner recounted that she and B-B- also had some financial difficulties. Since she did not work, and B-B- did not give her an "allowance," the Petitioner stated that she was forced to ask her mother for financial support. The Petitioner recounted that in October 2014, she realized that B-B- was not the man that he had portrayed himself out to be. She stated that when she confronted B-B- about being taken for granted, he yelled at her and told her to go back to Japan. She recalled that during this time, B-B- also became very jealous and would often accuse her of cheating on him. She further recalled that in December 2014, after an argument, B-B- pushed her off the bed and forced her to go to the airport. When B-B- spotted a police officer on the way to the airport, the Petitioner stated that B-B- turned around and returned home. After this incident, the Petitioner stated that she decided to leave B-B-.

On appeal, the Petitioner submits statements from B-B- and his mother attesting to her good faith entry into the marriage. Neither of their statements addressed the claimed abuse. Similarly, the statement from friend, [REDACTED] attests to the Petitioner's character, but makes no reference to the claimed abuse. The Petitioner's friend, [REDACTED] attests that the Petitioner confided in him about the hardships that she suffered since arriving in the United States. He also recalled that the Petitioner showed him some of the abusive text messages that she received from B-B-, but his statement is general in nature and does not provide any details of the Petitioner's claimed abuse. The Petitioner's letters and the other relevant evidence do not indicate that B-B-'s behavior involved psychological or sexual abuse, or otherwise constituted battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the Petitioner has not established that B-B- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of R-Z-T-*, ID# 16521 (AAO Apr. 22, 2016)