



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

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

MATTER OF P-V-B-

DATE: FEB. 12, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM 1-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks classification as an immigrant 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 Director, Vermont Service Center, denied the petition. The Administrative Appeals Office rejected the subsequent appeal. The matter is now before us on motion to reopen and reconsider. The motion will be denied.

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 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 for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

....

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other

(b)(6)

Matter of P-V-B-

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 Antigua who last entered the United States on January 28, 2013, as a B-2 nonimmigrant visitor. The Petitioner married J-B-¹ a U.S. citizen, on [REDACTED], in [REDACTED] Rhode Island. The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on January 27, 2014. The Director issued two requests for evidence (RFE) of, among other things, the Petitioner's joint residence and good faith marriage with J-B-, and the requisite battery or extreme cruelty. The Petitioner responded to the RFEs with additional evidence which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner filed an appeal which we rejected as untimely.

The Petitioner filed a timely motion to reopen and reconsider on July 24, 2015. A motion to reopen must state the new facts to be proved 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). On motion, the Petitioner submits evidence that the appeal was received by the Vermont Service Center on Monday, January 26, 2015, or 34 days after the date of the Director's decision. Accordingly, our determination that the Petitioner did not timely file her appeal is hereby withdrawn.

III. ANALYSIS

We review these proceedings *de novo*. On motion, the Petitioner has not established that she was subjected to battery or extreme cruelty by J-B- during their marriage or that they married in good

¹ Name withheld to protect the individual's identity.

(b)(6)

Matter of P-V-B-

faith and shared a joint residence. The claims and evidence submitted on appeal and motion do not overcome the Director's grounds for denial.

A. Battery or Extreme Cruelty

Although the Petitioner has established on motion that she timely filed her appeal, the preponderance of the evidence does not establish she was battered or subjected to extreme cruelty by J-B- during their marriage. In her personal affidavit, submitted with the Form I-360, the Petitioner stated that two days after she and J-B- were married on [REDACTED], J-B- was arrested for vandalizing someone's car. She stated that after this arrest, "everything started going downhill" when she discovered that J-B- had a criminal history that she did not know about. The Petitioner stated that when J-B- was released on bail, she asked him about his arrests and he became upset. She recounted that J-B- cursed at her but then apologized and begged her to stay with him. The Petitioner stated that she decided to stay with him but that in September 2013 during an argument between her and J-B-'s cousin, J-B- stormed out of the house and that this was the last time she saw him. She stated that she later found out that he withdrew \$2000 from their joint account, leaving her with very little money to support herself and her children. In addition, the Petitioner stated that she lost the use of a car that she thought belonged to J-B- but in fact belonged to his cousin who later started harassing her along with J-B-'s mother. The Petitioner did not further describe this harassment or otherwise provide details about J-B-'s treatment of her necessary to establish the requisite abuse.

The Petitioner also submitted two letters from [REDACTED], a homeless shelter for women and children, and two letters from the [REDACTED]. The letters from the shelter confirmed that the Petitioner and her children received temporary shelter at [REDACTED] from October 28, 2013, to November 6, 2013. The first letter did not indicate that the Petitioner's stay at the shelter was connected to the claimed abuse. The second letter added that the Petitioner referred herself for shelter "due to extreme domestic violence in her marital relationship" but did not provide any probative details about the claimed abuse. In the letter from [REDACTED] and [REDACTED] with [REDACTED] they stated that the Petitioner became "fearful, depressed, overwhelmed and had trouble coping with the trauma that she had undergone" in her marriage. In a second letter from [REDACTED], she stated that the Petitioner has attended 15 therapy sessions with [REDACTED] to treat her depression and anxiety that are "due to recent traumatic events occurring during her brief marriage." While we do not question [REDACTED] professional expertise, their brief assessments provided no substantive information regarding the claimed abuse.

On appeal, the Petitioner submitted a third letter from [REDACTED] repeating that the Petitioner referred herself to the shelter and reported domestic violence in her marital relationship. The letter did not, however, provide any probative evidence that J-B- battered or subjected the Petitioner to extreme cruelty as defined by the regulations. On motion, the Petitioner does not provide additional evidence regarding the claimed abuse. Accordingly, the preponderance of the evidence does not establish that the Petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

(b)(6)

Matter of P-V-B-

B. Joint Residence

The preponderance of the evidence does not establish that the Petitioner resided jointly with J-B- during their marriage. On the Form I-360, the Petitioner indicated that she resided with J-B- from June 2012 to December 2012, and that their last address together was on [REDACTED] Rhode Island. In her personal affidavit, the Petitioner stated that she met J-B- through a mutual friend in April 2012 and first visited him in person in the summer of 2012 with her children. She stated she did not return to the United States until January 2013 and that they lived with J-B-'s cousin. This information is inconsistent with the information provided in the Petitioner's Form I-360, as the Petitioner was still in Antigua during the time she claims she lived with J-B-. The Petitioner also recalled that J-B- proposed on the day that she gave birth to her child who was born on [REDACTED]. The Petitioner explained that she then sold her belongings in Antigua so that the two could get an apartment together and that they got married on [REDACTED]. The Petitioner further recounted that J-B- left her in September 2013 and that she never saw him again. Apart from describing the claimed abuse, the Petitioner did not discuss her alleged shared residence with J-B-. She did not mention details such as furnishings, shared belongings, or marital routines which would support a finding that she and J-B- resided together.

As supporting evidence, the Petitioner submitted bank documents from [REDACTED] jointly addressed to the Petitioner and J-B-. However, this evidence does not provide sufficient information to overcome the lack of detail in the Petitioner's affidavit and the inconsistent information listed on her Form I-360. On appeal, the Petitioner did not submit additional evidence to establish that she resided with J-B- during their marriage. On motion, the Petitioner likewise does not address the joint residence requirement. Accordingly, the Petitioner has not demonstrated by a preponderance of credible, relevant evidence that she resided with J-B- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

C. Good Faith Marriage

Additionally, the preponderance of the evidence does not establish that the Petitioner married J-B- in good faith. The Petitioner submitted a personal affidavit, bank documents, and photographs of J-B- with her and her children. In her affidavit, the Petitioner stated that she met J-B- through a mutual friend and communicated with him by telephone and text messages. She stated that she met J-B- in person for the first time in the summer of 2012 when she came to the United States with her children to visit. She stated that they really connected and had fun as a family. The Petitioner recounted that towards the end of her visit, she discovered that she was pregnant and that after a doctor's appointment, it became clear that J-B- was not her baby's father. The Petitioner stated that that J-B- told her that it was okay, gave her hug, and said that they were a family. The Petitioner stated that she and her children returned to the United States in January 2013 and that J-B- treated her like a queen. She recounted that on the day that she gave birth to her son, J-B- proposed and the two were married on [REDACTED]. The Petitioner did not further describe their wedding, shared interests, experiences, or marital routines as spouses. The bank documents show minimal transactions and do not demonstrate that the Petitioner and J-B- used it for marital expenses. The photographs show

(b)(6)

Matter of P-V-B-

only that the two were photographed together on one occasion in [REDACTED] and on one occasion with her children in May 2013. Without probative testimony, the photographs are insufficient to demonstrate the Petitioner's good faith intent in marrying J-B-. On motion, the Petitioner does not submit additional evidence regarding her marital intentions. Accordingly, the evidence of record does not demonstrate by a preponderance of evidence that the Petitioner married J-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

The preponderance of the relevant evidence does not establish that the Petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse. Furthermore, the evidence does not demonstrate that the Petitioner resided jointly with her spouse and married her spouse in good faith. Therefore, the Petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of P-V-B-*, ID# 15448 (AAO Feb. 12, 2016)