



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

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

MATTER OF J-O-T-R-

DATE: JAN. 4, 2016

**MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION**

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

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Acting Director, Vermont Service Center, denied the petition and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

**I. APPLICABLE LAW**

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 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).

**II. RELEVANT FACTS AND PROCEDURAL HISTORY**

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the Petitioner resided jointly with his U.S. citizen spouse, was battered or subjected to extreme cruelty by her, and entered into the marriage in good faith. In our decision on appeal, we concluded that the preponderance of the relevant evidence did not demonstrate that the Petitioner resided jointly with his spouse, was battered or subjected to extreme cruelty by his spouse, and that he married his spouse in good faith. Our previous decision is incorporated herein by reference.

On motion, the Petitioner submits a brief, a supplemental personal declaration, and an additional declaration from his father. He asserts that these declarations overcome the lack of detail in the record regarding his alleged joint residence and good-faith marriage with his U.S. citizen spouse,

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S-C-<sup>1</sup> The Petitioner also argues that “non-physical behavior” by S-C- was psychological abuse amounting to extreme cruelty.

### III. ANALYSIS

We review these proceedings *de novo*. A full review of the record does not establish the Petitioner’s eligibility for the following reasons.

#### A. Joint Residence with U.S. Citizen Spouse

In his supplemental personal declaration submitted on motion, the Petitioner states that he and S-C- moved into an apartment together on [REDACTED] in California. The Petitioner claims that the apartment he and S-C- shared was a studio, with a combined living room and bedroom and one full-sized bed. He recounts that they divided the household responsibilities, with the Petitioner handling the dishes, laundry, and trash while S-C- cooked and cleaned the rooms. He asserts that they did not invite many friends over because the apartment was a studio. He describes the layout of the apartment and lists some shared belongings and furnishings. The Petitioner’s supplemental declaration on motion contains some additional detail regarding his alleged joint residence with S-C-. However, as we noted in our decision on appeal, the Petitioner previously submitted an altered lease for the apartment he claimed to have shared with S-C-, the statements of the Petitioner’s apartment manager and neighbor conflicted with the Petitioner’s claims regarding the residence of S-C- in the apartment, and the Petitioner does not explain how his father could have lived with him and S-C- in a studio apartment. The Petitioner’s supplemental declaration and the supplemental declaration of his father submitted on motion do not address or overcome this contrary evidence and, accordingly, are insufficient to support the Petitioner’s claim that he resided jointly with his spouse.

#### B. Battery or Extreme Cruelty

The relevant evidence submitted on motion does not demonstrate that S-C- subjected the Petitioner to battery and extreme cruelty during their marriage. According to the supplemental personal declaration submitted on motion, S-C- became abusive after the Petitioner’s father moved into their apartment in May 2010. He alleges that S-C- “[c]ame and went as she pleased” and that she and her friends were loud and left empty beer bottles in the apartment, disregarding the needs of the Petitioner’s elderly father. He also indicates that S-C- called him names, yelled at him, refused to assist with household chores, and accused the Petitioner’s father of ruining their marriage. The Petitioner further claims that S-C- once returned home late at night after drinking alcohol and punched the Petitioner in the stomach after he told her to stop drinking because she was pregnant. He states that, after she punched him, S-C- told him that he was not the father of her child. The Petitioner indicates that he was humiliated by the fact that S-C- became pregnant with another man’s child during their marriage.

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<sup>1</sup> Name withheld to protect the individual’s identity.

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With regard to his claim of battery or extreme cruelty, the Petitioner provides some additional detail on motion regarding one incident in which he claims S-C- punched him in the stomach. Although the Petitioner on motion alleges that S-C- called him names, drank alcohol, was loud and created messes at his apartment, insulted his father, and lied to him about the paternity of her child, this “non-physical behavior” by S-C-, as the Petitioner labels it in his brief on motion, does not amount to psychological abuse or a pattern of violence qualifying as extreme cruelty. In addition, the supplemental declaration by the Petitioner’s father submitted on motion does not provide any details regarding battery or extreme cruelty, other than to mention that the Petitioner and S-C- had “relationship problems as described in [his] previous [a]ffidavit.” His father’s previous declaration, as we noted in our decision, lacked probative details and did not describe any behavior that involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the preponderance of the evidence does not demonstrate that S-C- subjected the Petitioner to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

C. Good-Faith Entry into Marriage

In our prior decision, we determined that the Petitioner had not established good-faith entry into his marriage with S-C- because the Petitioner’s personal declaration and statements by his father and a friend submitted below did not provide sufficient detail about how he and S-C- met, their courtship, engagement, wedding, and shared marital experiences. On motion, the Petitioner submits a supplemental personal declaration which provides additional details regarding how they met, their courtship, how he proposed, the wedding ceremony, and several shared marital experiences. The Petitioner asserts, in his supplemental personal declaration submitted on motion, that he met S-C- on July 4, 2008, at a restaurant in [REDACTED]. He states that he was at a bar when S-C- approached him. He indicates that he was surprised because women do not typically approach him, but that S-C- seemed to want to get to know him, and they spoke for about 30 minutes. According to the Petitioner, S-C- asked for his telephone number and told him that she would like to see him again. The Petitioner recalls that he was surprised and excited at the exchange because he had never had a girlfriend. He claims that S-C- later called him and they arranged a first date at a shopping mall in [REDACTED]. The Petitioner states that he and S-C- got to know each other and that he told her about his family and about the fact that he had never been in a relationship before. He asserts that he fell in love with S-C- because she was “understanding and sweet.”

According to the Petitioner, he was hesitant to introduce S-C- to his family because of cultural differences, but S-C- met his sister and father at a birthday dinner for the Petitioner at his sister’s home on November 4, 2008. He recounts that the dinner went well and that his family was glad that he had met someone he cared about. The Petitioner indicates that he and S-C- dated for three months and went out together on weekends to shopping malls and movie theaters, and became sexually intimate. The Petitioner claims that he proposed to S-C- on Valentine’s Day of 2009 during dessert at a restaurant. He states that he presented her with a half-carat engagement ring and that she immediately accepted his proposal. The Petitioner also indicates that his family was shocked at his decision to marry S-C- due to their cultural biases, but that he told them he wanted to spend the rest

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of his life with S-C-. He recounts that they married on [REDACTED] 2009, in a small chapel, and that they had agreed to invite only immediate family members to the wedding. The Petitioner explains that he did not inform his coworkers and employer about his relationship with S-C- because of the cultural biases of those individuals. According to the Petitioner, he and S-C- had a two-night honeymoon in [REDACTED] Nevada. He asserts that, after they were married, they watched movies together at home, went shopping, and went out to eat at restaurants.

As for the Petitioner's claim of good-faith marriage, the Petitioner's supplemental personal declaration on motion does not offer significantly more detail than his previous submissions. On motion, he describes how he felt during his first meeting and date with S-C-, states that his family and coworkers had cultural biases against his relationship with her, and describes some of his and S-C-'s shared interests and activities during their courtship and marriage. However, in the remainder of the Petitioner's supplemental declaration, he discusses similar events and activities to those which he discussed in the declaration he submitted in response to the Director's request for evidence. The Petitioner's description of his proposal in his supplemental declaration is nearly the same as his description of that event in his previous declaration, aside from his statement on motion that the ring was a half-carat and that he discussed his plans with his family prior to proposing. The Petitioner does not provide sufficient additional probative detail on motion regarding his wedding ceremony or reception, except to state that it occurred at a small chapel and that only immediate family attended. In addition, while the Petitioner provided some details in the supplemental declaration regarding their marital routines and described their apartment and its furnishings, it does not materially add to the information contained in his previous declaration and, as such, is insufficient to support the Petitioner's claim of a good-faith marriage.

As additional evidence on motion, the Petitioner provides a supplemental declaration from his father. The Petitioner's father states that he first met S-C- at a lunch for the Petitioner's birthday, that he noticed that the Petitioner and S-C- shared many interests, and that he was happy for the Petitioner. According to the Petitioner's father, the Petitioner and S-C- often visited him while they were dating and told him about their shared experiences, including a visit to an amusement park. The Petitioner's father claims that the Petitioner informed him of his decision to propose to S-C- and showed him the engagement ring. The Petitioner's father asserts that the Petitioner and S-C- continued visiting him during the beginning of their marriage, and told him they were expecting a child. Although the Petitioner's father provides some additional information on motion regarding the Petitioner's courtship and decision to marry S-C-, the Petitioner's father does not mention the Petitioner's wedding to S-C- or their shared marital experiences, despite the Petitioner's claim that his father lived in a studio apartment with the Petitioner and S-C- for several months. The information from Petitioner's father on motion is also insufficient to support the Petitioner's claim of a good-faith marriage.

Additionally, the supplemental declarations of the Petitioner and his father submitted on motion contain several inconsistencies with each other and the Petitioner's initial declaration. On motion, the Petitioner states that S-C- asked for his telephone number at their first meeting, suggested they meet again, and later called him, and that he was surprised at these events because he did not have

experience with relationships. By contrast, in the declaration he submitted with the Form I-360, the Petitioner stated that S-C- “agreed to give [him] her cell number and to go on a date with [him].” Furthermore, the Petitioner’s father asserts on motion that he first met S-C- during a birthday lunch for the Petitioner, while the Petitioner claims in his supplemental declaration on motion that he introduced S-C- to his family at a birthday dinner.

#### 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 motion to reopen and motion to reconsider are denied.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of J-O-T-R-*, ID# 15242 (AAO Jan. 4, 2016)