



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

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

MATTER OF F-O-A-W-

DATE: JAN. 27, 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). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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:

(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.

....

(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 Ghana who last entered the United States on October 19, 2009, as a B-2 visitor. The Petitioner married R-W-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2010, in [REDACTED] Minnesota. The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 28, 2014. The Director issued a request for evidence (RFE) of battery or extreme cruelty and good-faith marriage. The Petitioner responded to the RFE with a letter from her attorney and additional evidence. The Director found the evidence insufficient to establish that the Petitioner was battered or subjected to extreme cruelty by R-W- during their marriage and that the Petitioner entered into the marriage with R-W- in good faith. The Petitioner filed a timely appeal. On appeal, the Petitioner provides a brief and a letter from [REDACTED] MSW, LICSW, the Petitioner's current mental health therapist.

## III. BATTERY OR EXTREME CRUELTY

The preponderance of the evidence does not establish that the Petitioner was battered or subjected to extreme cruelty by R-W- during their marriage. On appeal, the Petitioner asserts that she submitted sufficient evidence to establish that she was subjected to emotional abuse.

In her personal declaration, submitted with the Form I-360, the Petitioner stated that the first year of her marriage with R-W- was "happy and flourishing" but that, starting in late-2012, R-W- began coming home late and often spent nights at his father's house. The Petitioner reported that she challenged R-W- regarding his changed behavior and he reacted by complaining about her cooking, insulting her for speaking accented English, calling her derogatory names, and swearing at her. The Petitioner recounted that R-W- withdrew money from their joint account and later denied that he had done so. The Petitioner notes that she learned, in the summer of 2013, that R-W- was having an affair and that he and his girlfriend were expecting a baby in [REDACTED]. According to the Petitioner, she was "confused, petrified, devastated, and mentally and emotionally drained" to learn of R-W-'s adultery and that she remains "emotionally and physically in pain." The Petitioner stated that did not mention the problems in her relationship with R-W- to her family or friends because R-W- demanded that she not disclose details of their married life and that she heeded that demand because she learned that R-W- "had been in jail for a crime he committed many years ago . . . [and] in so many words he let [her] know that you don't mess with someone who did jail time."

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

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The Petitioner did not report in her personal declaration any incidents of battery and her reports of emotional abuse lack sufficient, probative detail to demonstrate that she was subjected to extreme cruelty. As noted above, the Petitioner alleged that R-W- complained about her cooking, insulted her accent, called her derogatory names, swore at her, withdrew money from their joint account, and was involved in an extramarital affair. However, the Petitioner's description of these actions was vague and she did not provide the timeframes of any particular incidents, other than to mention that her relationship with R-W- began to deteriorate in late 2012. Nor did the Petitioner describe the circumstances leading up to the acts to which she claims R-W- subjected her.

The Petitioner also provided two letters with the Form I-360. The Petitioner's cousin, [REDACTED], wrote that he has known R-W- for "about two years" but he did not provide any information regarding how he knows R-W-, whether he observed R-W- and the Petitioner interacting with each other, or any details regarding specific incidents of battery or extreme cruelty. Similarly, Staff Sergeant [REDACTED] the fiancé of the Petitioner's sister, indicated in a letter filed with the Form I-360 that he is based in Germany with the U.S. Army and that the Petitioner and R-W- moved to "our house" in July 2010. Mr. [REDACTED] did not provide any details regarding specific incidents of battery or extreme cruelty by R-W- directed at the Petitioner.

In response to the RFE, the Petitioner submitted an affidavit in which she states that R-W- treated her "with disrespect, indignity and even as a human being." She also relates that R-W- abused her emotionally and mentally, and became "full of tantrums totally devoid of decorum which has really affected [her] and [her] confidence as a woman." However, the Petitioner's affidavit does not provide any details regarding specific incidents of battery or extreme cruelty, or explain with more detail what actions R-W-'s "tantrums" consisted of and relate how they affected her confidence as a woman. Accordingly, the Petitioner's personal declaration and affidavit lack the probative detail necessary to establish her claim of having been subjected to battery or extreme cruelty.

Also in response to the RFE, the Petitioner supplied an affidavit from her sister, [REDACTED] who states that she lived with the Petitioner, R-W-, and the Petitioner's son and that, after the relationship between the Petitioner and R-W- became abusive, R-W- moved out. Although she lived with the Petitioner and R-W- for some period of time, Ms. [REDACTED] does not describe any specific instances of battery or extreme cruelty which her sister may have experienced. The Petitioner also submitted letters in response to the RFE from the following individuals: her brother, [REDACTED] Staff Sergeant [REDACTED] and [REDACTED] MA LMFT. None of these letters mention any battery or extreme cruelty of the Petitioner by R-W-. The letter from Ms. [REDACTED] dated November 25, 2014, indicates that the Petitioner "has been under my therapeutic care for anxiety and depression related to domestic violence since 10/20/14 [and] [s]he has continued to be seen biweekly . . . ." However, this letter from Ms. [REDACTED] does not describe the nature of the domestic violence experienced by the Petitioner, such that we cannot determine if it constitutes battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The letter from Ms. [REDACTED] dated March 5, 2015, indicates that the Petitioner was referred to a new psychotherapist, [REDACTED] because Ms. [REDACTED] was leaving her position and that Ms. [REDACTED] recommended that the Petitioner see a psychiatric prescriber but her letter does not refer to or discuss the Petitioner and R-W-'s relationship. The Petitioner also submitted two

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prescriptions in response to the RFE. The Petitioner does not indicate why she was prescribed this medicine and any possible connection to her claim of battery or extreme cruelty by R-W-.

In her brief on appeal, the Petitioner asserts that the Director “minimize[d] the seriousness of the emotional violence perpetrated on the [Petitioner] by [R-W-].” The Petitioner mentions in her brief on appeal that she is submitting an additional letter from Ms. [REDACTED] and contends that this letter confirms that the Petitioner is receiving therapy due to emotional abuse by R-W-. The letter from Ms. [REDACTED], dated June 5, 2015, indicates that the Petitioner is a psychotherapy client who was recently transferred to her from Ms. [REDACTED]. Ms. [REDACTED] states that “[the Petitioner] is being seen for emotional stress and adjustment due to a change in marital status, recovery from emotional abuse by her ex-husband, and her current living situation.” Ms. [REDACTED] indicates that the Petitioner has also been seen by a psychiatric prescriber. However, the letter from Ms. [REDACTED] lacks probative details and does not describe any behavior by R-W- that involved threatened violence, psychological or sexual abuse, or would otherwise constitute 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 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.

#### IV. ENTRY INTO THE MARRIAGE IN GOOD FAITH

The preponderance of the evidence does not establish that the Petitioner married R-W- in good faith. In her personal declaration submitted with the Form I-360, the Petitioner stated that she met R-W- in May 2008 while she and her brother-in-law, [REDACTED] were shopping for a cell phone and that she saw Mr. [REDACTED] speaking with R-W- and that he and R-W- were friends. She indicated that R-W- introduced himself to the Petitioner and that R-W- “seemed talkative and wanted to know more about [her]” and that they ended their conversation by exchanging phone numbers. The Petitioner recounted that R-W- called her soon after to ask her for a date and that she agreed because R-W-’s “demeanor, gentleness, and smile” charmed her. She indicated that she and R-W- had a good time on their first date and on “many dates” that followed. According to her personal declaration, the Petitioner then left the United States but stayed in touch with R-W- until she returned in October 2009, after which she and R-W- had “more beautiful dates.” The Petitioner claimed that she and R-W- realized they were in love and wanted to build a life together and that R-W- proposed to her and she accepted. She recalled that they decided to marry as soon as possible in a civil ceremony on [REDACTED], 2010, and had a small reception for a few friends and family members. The Petitioner stated that she and R-W- lived in the basement of the home of her sister, [REDACTED] together with the Petitioner’s son. According to the Petitioner, while her wedding day was “one of the happiest days of [her] life” and that she and R-W- started their married life “full of love, caring, understanding, and mutual respect for one another,” the situation changed when R-W- turned from “a loving husband into a liar, deceiver, and abuser.”

The Petitioner describes her first meeting with R-W-, but does not otherwise provide probative details about their relationship. She does not provide any details regarding their first date, such as when it occurred or where they went, and she does not describe any of the “many” dates on which she and

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R-W- went both before they married. She also does not describe any shared interests or activities during their courtship. She did not state in detail how she felt about R-W-, other than to state that she was in love with him. The Petitioner also did not state when or where or how R-W- proposed or otherwise explain how they decided to get married. She did not describe their wedding plans in probative detail and only mentioned their wedding ceremony and reception, but did not provide any details regarding where they occurred, what happened at those events, or who attended. The Petitioner also did not discuss any shared interests, experiences, or marital routines as spouses. The Petitioner's declaration lacks sufficient detail to establish that she married R-W- in good faith.

In response to the RFE, the Petitioner submitted an affidavit in which she states that she entered into the marriage with R-W- in good faith and "right intensions [sic]," that married life was "promising and lovely," and that she proudly bore her spouse's name. However, the Petitioner's affidavit contains vague and general statements regarding her intentions and does not describe any details regarding any interests, experiences, or marital routines she and R-W- shared as spouses. Similarly, the supporting letters the Petitioner submitted in response to the RFE lack detail. The Petitioner's sister, [REDACTED] indicates that the Petitioner and R-W- were "fond of themselves when they met" and that their marriage was "true and genuine." Ms. [REDACTED] does not, however, provide any details regarding her sister's intent to enter into marriage in good faith. Similarly, Mr. [REDACTED] states in his letter submitted in response to the RFE that he witnessed the Petitioner and R-W-'s marriage ceremony and signed the marriage certificate on behalf of the Petitioner's family and that their marriage is "true and authentic" but Mr. [REDACTED] does not provide any probative details about his knowledge of the couple's marriage or, more importantly, the Petitioner's intent to enter into her marriage with R-W- in good faith. Staff Sergeant [REDACTED] also indicates that the Petitioner and R-W-'s marriage was "true" but provides no other information relevant to whether the Petitioner married and R-W- in good faith. The Petitioner also submitted several photographs in support of the Form I-360. However, the captions on the photographs are largely illegible and do not appear to indicate the subjects or all locations of the photographs.

In her brief on appeal, the Petitioner asserts that the Petitioner and R-W- were interviewed separately by U.S. Citizenship and Immigration Services (USCIS) on March 28, 2011, and that, in that interview, the Petitioner and R-W- provided "identical answers to questions testing their knowledge of each other" and the Petitioner lists several issues on which their answers allegedly matched. The Petitioner refers to an interview that was conducted by USCIS pursuant to the review on a Form I-130, Petition for Alien Relative, filed by R-W- on behalf of the Petitioner. However, the record of proceedings indicates that USCIS denied the Form I-130, in a decision dated March 30, 2012, in which USCIS cites significant discrepancies in the information gleaned from the Petitioner and R-W- at the March 28, 2011, interview. The record of proceedings indicates that the decision by USCIS to deny the Form I-130 was appealed to the Board of Immigration Appeals (Board) and, on August 28, 2014, the Board dismissed the appeal and agreed with USCIS that "were numerous discrepancies and a lack of knowledge of matters that a couple would be expected to know displayed at the March 28, 2011 interview."

In addition, although they are similar, the parties, statutory provisions and benefits procured through sections 204(a)(1)(A)(i), relating to the Form I-130, and 204(a)(1)(A)(iii), relating to the Form I-360, of the Act are not identical. R-W- was the petitioner and bore the burden of proof in the Form I-130

adjudication, in which he was required to establish his citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i); 8 C.F.R. §§ 204.1(f), 204.2(a)(2). In contrast, in this case, the Petitioner bears the burden of proof to establish not only the validity of their marriage, but also that she entered the marriage in good faith. Section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I); 8 C.F.R. § 204.2(c)(1)(ix). The Petitioner was notified in the RFE and by the Director's decision that additional evidence was required to show that she entered the marriage in good faith and she had several opportunities to submit additional documentation. As previously discussed, the evidence submitted by the Petitioner, in the form of her personal statement and letters from family members do not provide sufficient detailed and probative evidence of her entry into the marriage with R-W- in good faith.

The Petitioner also argues in her brief on appeal that the Director erred in not finding that the existence of a joint bank account in the name of the Petitioner and R-W- was sufficient to support a finding that the Petitioner married R-W- in good faith. However, the Director indicated only that the statements provided by the Petitioner regarding this account did not indicate whether both she and R-W- had access to and used the account and the Director also noted that the statements reflected a negative balance and minimal activity in the account. We find no error in the Director's decision to not find a good-faith intent on the Petitioner's part to marry R-W- in light of the information about the joint account and the evidence in the record as a whole.

The evidence of record does not provide sufficient probative detail regarding the Petitioner's relationship with R-W- to establish by a preponderance of evidence that she married him in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

## V. 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 or that she married her U.S. citizen spouse in good faith. Therefore, the Petitioner is 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). Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-O-A-W-*, ID# 15347 (AAO Jan. 27, 2016)