



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

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

MATTER OF R-R-L-

DATE: JULY 14, 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, revoked approval of the petition. The Director concluded that the Petitioner did not demonstrate that she entered into her marriage with her spouse in good faith, resided with him during their marriage, or was battered or subjected to extreme cruelty by him during their marriage.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that the Director's decision violated the Petitioner's due process rights, she entered into her marriage in good faith, she resided with her spouse, and she was battered and subjected to extreme cruelty by her spouse.

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

#### I. APPLICABLE LAW

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for . . . good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services (USCIS)].

Section 204(a)(1)(A)(iii)(I) of the Act provides that an individual who is the spouse of a United States citizen may self-petition for immigrant classification if the individual demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the individual or a child of the individual was battered or subjected to extreme cruelty perpetrated by the individual's spouse. In addition, the individual 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.

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:

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . .Employment 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.

(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.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). 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 is a citizen of the Philippines, who entered the United States as a B-2 non-immigrant visitor. The Petitioner married R-B-,<sup>1</sup> a U.S. citizen, and subsequently filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), which, following the issuance of a request for evidence (RFE) and a response by the Petitioner to the RFE, was approved on October 1, 2013. Thereafter, the Director issued a notice of intent to revoke (NOIR) approval of the VAWA petition, as a full review of the record established that she had not demonstrated that she entered into her marriage with her spouse in good faith, resided with him during their marriage, or was battered or subjected to extreme cruelty by him during their marriage. The Petitioner timely responded to the NOIR. The Director found her response insufficient to overcome the proposed grounds for revocation, and thus, revoked approval of the VAWA petition. The Petitioner timely appealed.

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<sup>1</sup> Initials are used in this decision in order to protect individuals' identities.

(b)(6)

*Matter of R-R-L-*

### III. ANALYSIS

#### A. Joint Residence

The relevant evidence submitted below does not demonstrate that the Petitioner resided with her spouse and the Petitioner does not submit evidence on appeal to overcome this ground for denial. In her VAWA petition, the Petitioner states that she resided with R-B- from the time of her marriage in [REDACTED] 2008 until September 2011, and their last joint address was on [REDACTED] in [REDACTED] California. In order to establish that she shared a residence with R-B-, the Petitioner submitted the following documents: copies of federal tax returns from tax years 2008 through 2010; [REDACTED] savings account statements; a [REDACTED] account statement; a letter from [REDACTED] a vehicle registration renewal notice; [REDACTED] bills; a gas bill; a bill from [REDACTED]; an insurance bill; a water bill; a voter information card; a vote by mail application; and envelopes from [REDACTED]

Based on the following concerns with each piece of documentary evidence, this evidence does not establish that the Petitioner resided with R-B-. The tax returns do not indicate whether they were filed with the Internal Revenue Service. The [REDACTED] savings account statements are addressed to either the Petitioner or R-B- but do not indicate whether the account was jointly held, the statements are for limited periods of time ending June 21, 2011, and September 22, 2011, and reflect a very low balance and no record of any deposits or withdrawals. The [REDACTED] account statement is addressed solely to the Petitioner and is for a period of time after their claimed joint residence ended. The letter from [REDACTED] the gas bill, the bill from [REDACTED] (which lists an incorrect address for the Petitioner), insurance bill, and water bill are all only addressed to the Petitioner. Conversely, the vehicle registration renewal notice, the [REDACTED] bills, the voter information card, the vote by mail application, and the envelopes from [REDACTED] are all only addressed to R-B-.

In addition, the Petitioner submitted a number of photographs of herself, R-B-, and other persons. Some of the photographs depict what appears to be the Petitioner's marriage ceremony and the others depict social gatherings. The photographs of the couple are undated, taken at unspecified locations, and contain no description of the significance of the events photographed and, accordingly, are insufficient to establish the Petitioner's marital residence with R-B-.

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). Here, the Petitioner submits several personal statements and statements from other individuals.

In her personal statement, which is dated March 15 of an unknown year, the Petitioner indicates that, following their wedding in [REDACTED] she moved to [REDACTED] where she and R-B- rented a room on [REDACTED] and then moved to an apartment in March 2009, which was close to where her ex-husband, J-L-, and his wife lived, and R-B- moved out of that apartment on September 26, 2011. The remainder of the Petitioner's personal statement focuses on the claimed abuse. The

(b)(6)

*Matter of R-R-L-*

Petitioner does not describe her joint residences with R-B-, their shared belongings, and residential routines, or provide any other substantive information sufficient to demonstrate that she resided with R-B- during their marriage.

The statements from the Petitioner's children, her brother, her friends, and other family members, submitted with the VAWA petition, also do not discuss whether the Petitioner jointly resided with R-B-. The statement from C-R-L-, J-L's wife, indicates that she and her son visited the Petitioner and R-B- at their apartment but she does not provide any other information regarding the couple's joint residence. Similarly, G-A- writes that she spent time with the Petitioner and R-B- at their "household" after they married but she does not provide any information regarding their joint residence. In her letter dated September 18, 2011, M-T- confirms that the Petitioner and R-B- rented a room in her house on [REDACTED] from May 2, 2008, until March 7, 2009, but, in light of the noted deficiencies in other evidence of record, this letter is not sufficient to demonstrate joint residency.

In response to the RFE, the Petitioner submitted a statement from R-B-, which she claims was written in response to a NOIR issued by USCIS on September 8, 2010, relative to a Form I-130, Petition for Alien Relative, R-B- filed on behalf of the Petitioner. That NOIR indicated that an investigation by USCIS revealed the following information: (i) a letter carrier serving the [REDACTED] address did not recognize a photograph of R-B- but recognized a photograph of J-L- and stated that the Petitioner and J-L- lived at that address; (ii) a lease for the apartment on [REDACTED] and with a term starting March 7, 2009, listed the Petitioner and J-L- as tenants and their four children as occupants; (iii) a handyman employed at the apartment complex on [REDACTED] could not identify a photograph of R-B-; and (iv) the property manager of the apartment complex on [REDACTED] likewise did not recognize a photograph of R-B- and informed USCIS that the Petitioner, J-L-, and their children lived at the apartment.

In his statement, R-B- attests that he and the Petitioner were married, but he does not provide any testimony regarding whether he resided with the Petitioner. R-B- does not describe the couple's home furnishings, their neighbors, any of their jointly-owned belongings, or their daily routines within their residence. With respect to the information contained in the NOIR related to the Form I-130, R-B- provides the following explanations: (i) the letter carrier serves a large apartment complex and the mail is delivered to an "isolated area" near the main entrance so the letter carrier would not recognize everyone who lives at the apartment complex; (ii) he and the Petitioner only needed to call the handyman once during their tenancy and he was not present when the handyman came to make the repair so he never met the handyman; (iii) the Petitioner and J-L- signed the lease for the apartment on [REDACTED] "due to a mutual arrangement agreed upon between [the Petitioner] and [J-L-] after their divorce" and because J-L- "wanted to be close to his children as they grew up and wanted to make certain that they had a decent place to live;" (iv) the Petitioner and J-L- informed him that they dealt with a female property manager so he did not know why USCIS relied upon statements from a male property manager; and (v) because J-L- visited his children often and is more sociable than he is, perhaps that is why the letter carrier, handyman, and property manager did not recognize his photograph.

(b)(6)

*Matter of R-R-L-*

The statement by R-B- that the Petitioner submitted in response to the RFE, does not establish that he and the Petitioner jointly resided during their marriage. In particular, R-B-'s statement submitted in response to the RFE differs significantly from R-B-'s statement that was actually submitted in response to the NOIR related to the Form I-130: both statements are dated the same date, October 4, 2010, but only the statement by R-B- submitted in response to the NOIR indicates that J-L- signed the lease because R-B- had a negative credit history and the Petitioner did not have a credit history; the other statement by R-B- provides an alternate explanation as to why J-L-'s name is on the lease. In addition, whether the Petitioner and J-L- dealt with a different property manager than the one USCIS officers spoke with is irrelevant as R-B- did not indicate whether he ever met the female property manager, and the Petitioner does not explain why all property managers would not have access to records regarding tenants. Similarly, R-B-'s explanation regarding why J-L- was identified through a photograph by the letter carrier and the handyman is based solely on conjecture.

Accordingly, the record does not establish by a preponderance of the evidence that the Petitioner resided with R-B- during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### B. Entry into the Marriage in Good Faith

The relevant evidence in the record does not demonstrate the Petitioner's entry into her marriage with R-B- in good faith.

The record contains the same documentary evidence referred to above with respect to joint residence and, for the reasons previously noted, this evidence is similarly insufficient to establish that the Petitioner entered into her marriage with R-B- in good faith. In particular, the [REDACTED] account statements does not reflect that it was jointly owned by both spouses and the [REDACTED] account statement lists the Petitioner as the sole owner of the account. Accordingly, this evidence does not establish that the Petitioner entered into her marriage with R-B- in good faith. The unlabeled and undated photographs show the Petitioner and R-B- at their wedding and on other occasions but, without accompanying descriptive text, they do not establish the nature of their relationship or the Petitioner's good faith intentions and, accordingly, do not demonstrate that the Petitioner married R-B- in good faith.

Traditional forms of documentation are not required to demonstrate a petitioner's entry into marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). The Petitioner submits a personal statement, as well as several letters from relatives and acquaintances, in order to establish her good faith marital intentions.

In her personal statement, the Petitioner briefly explains that she met R-B- at a party and that he was "quiet, friendly and charming." She recalls that she lived in [REDACTED] and he lived in [REDACTED] but he would visit her every other weekend and she would visit him in [REDACTED] when she came to see her children, who lived with J-L-. The Petitioner states that R-B- proposed to her in late-2007

(b)(6)

*Matter of R-R-L-*

and they married on [REDACTED] 2008. She indicates that they married at a chapel, had a small reception afterwards, and her brother and sister, R-B-'s employer, and their friends attended the wedding. The Petitioner does not provide further probative details about her relationship with R-B-, their courtship, her intent when she married R-B-, their wedding ceremony and any following celebration, shared residences and experiences, apart from the claimed abuse, to establish that she entered into the marriage with R-B- in good faith.

The statements and letters submitted by the Petitioner are also not sufficient because they do not describe the Petitioner's marital intentions and offer little insight into the Petitioner's good faith intentions in marrying R-B-. Her brother indicates that he approved of the Petitioner's marriage to R-B- but he does not indicate whether he was present at their wedding or if he has insights as to his sister's intent in marrying R-B-. G-A- states that, as of June 18, 2011, the date of her letter, the Petitioner and R-B- "operate as a very happy family," "appear to be very devoted to one another and their children," and they "live happily as husband and wife." She does not, however, provide any context for what she actually observed regarding how the Petitioner's claimed good faith intent in marrying R-B- was manifested. Similarly, M-T- indicates in her September 19, 2011, letter that the Petitioner and R-B- "live happily together as husband and wife," although she also states that the Petitioner and R-B- moved from her house in March 2009 and she does not indicate whether she had any contact with them since then. In addition, R-B-'s statement does not provide any relevant, substantive information regarding the Petitioner's good faith intentions in entering the marriage and, instead, only discusses where they lived.

Accordingly, the record does not establish by a preponderance of the evidence that the Petitioner entered into her marriage with R-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 R-B-. In her personal statement, the Petitioner asserts that the serious problems in their marriage started when R-B- began hosting "wild drinking parties" at their apartment on a weekly basis. She indicates that these parties started to occur in the beginning of 2010 and were usually on Thursdays and Fridays when the Petitioner was not at home and R-B- was off work on those days. She recalls that the apartment manager called her attention to the noise and their neighbors complained. When the Petitioner confronted him about the parties, she reports that R-B- yelled at her and threatened to harm her children, told her that she had to do what he said because she needed him for immigration status, and threatened to withdraw his petition for her.

According to the Petitioner, R-B- also demanded money for the parties and threatened to withdraw his petition if she did not give him money. He also told her children to leave their apartment when she was not home and reportedly nearly punched her oldest son when she was not home. The Petitioner recounts that R-B- also threw clothes and a laundry basket at her, punched a hole in a wall, cursed her in their native language, and that she and her children had to leave the apartment when he had visitors. She reports that, on September 26, 2011, R-B- hosted a party for fifty "young boys"

and the manager called her. In response, the Petitioner and her brother and sister went to the apartment where R-B- yelled at and attempted to punch her brother. The Petitioner called the police, the partygoers fled, and two officers arrived at the apartment and told R-B- to pack his things and directed that the lock to the apartment be replaced.

The Petitioner provides statements from her family members in support of her claim that R-B- battered her or subjected her to extreme cruelty. Her oldest daughter indicates that her mother was “abused emotionally by [R-B-];” her oldest son states that R-B- almost punched him; her youngest daughter indicates that she was scared around R-B-; and her youngest son reports that he “could not stand [R-B-s’s] attitude to all of us, especially to my mom.” Her brother indicates in his statement that “there were several occasions when [he] witnessed [R-B-] torture . . . [the Petitioner] emotionally, mentally, and sometimes even threatened her with physical harm.” Her brother also indicates that R-B- tried to attack him more than once when he tried to prevent R-B- from hitting the Petitioner, and R-B- threw a punch at him but missed. The statements of the Petitioner’s children contain generalized observations of R-B-’s behavior and do not provide sufficient details regarding any incidents of battery or extreme cruelty directed at the Petitioner. In addition, the statement by the Petitioner’s brother is not supported by information in the Petitioner’s personal statement, in which she makes no mention of being tortured by R-B- or that her brother intervened on her behalf on multiple occasions to prevent R-B- from hitting her.

The relevant evidence in the record does not indicate that R-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 R-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.

#### D. Due Process Claim

The Petitioner states on appeal that the doctrine of *res judicata* prevents USCIS from looking at her VAWA petition again and revoking its approval.

The fact that a petition approved under section 204 of the Act may be revoked “at any time, for good and sufficient cause” demonstrates that the approval of a VAWA petition is not an unalterable, unreviewable decision subject to *res judicata*. See section 205 of the Act. Decisions subject to *res judicata* may not be revisited or reopened at all. Moreover, the Petitioner has been afforded all the process that is required in revocation proceedings under section 205 of the Act, as described at 8 C.F.R. § 205.2. Specifically, the Director issued a NOIR, advising the Petitioner of the reasons for seeking to revoke approval of the VAWA petition and allowing the Petitioner 33 days to respond with additional evidence. In addition, the Petitioner had the opportunity to appeal the Director’s adverse decision to us, and submit further arguments or evidence in rebuttal to the grounds for revocation. Based on the evidence in the record of proceedings, the Director had good and sufficient cause to revoke approval of the Petitioner’s VAWA petition under section 205 of the Act.

*Matter of R-R-L-*

#### 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-R-L-*, ID# 17360 (AAO July 14, 2016)