



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

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

MATTER OF M-K-

DATE: JUNE 21, 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 had not shown she entered into her marriage in good faith and that she resided with her spouse.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that she has submitted sufficient evidence to establish her eligibility.

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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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.

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(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:

(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.

. . . .

(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. ANALYSIS

The Petitioner married her U.S. citizen husband, A-J-,¹ on [REDACTED], 2010, in New York and filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition) based upon that marriage.

A. Entry into the Marriage in Good Faith

The relevant evidence does not demonstrate the Petitioner's entry into her marriage in good faith. In her initial affidavit, the Petitioner stated that a mutual friend introduced her to her husband on Saturday, June 13, 2008, at a party.² She reported that she agreed to meet him at a movie, and the next Saturday

¹ Names withheld to protect the individuals' identities.

² June 13, 2008, was a Friday, not a Saturday.

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he picked her up and they went to dinner. She stated that they started seeing each other on a regular basis, and that she was surprised when A-J- proposed to her in August but realized she was deeply in love. The Petitioner stated that they later moved in together and were married but did not provide any further details of what she indicated was a more than two-year courtship and their relationship after marriage.

In contrast, in a subsequent personal statement, the Petitioner indicated that she met her husband on Saturday, June 13, 2010,³ two years later than she previously claimed. She again recalled that they went on a dinner date the following Saturday, and that they fell in love. In this statement, the Petitioner indicated that they moved in together prior to their marriage, and that they had a lot in common and had a good time. She generally described going shopping and to the park together, and visiting friends and family in July. She recalled that she was shocked when A-J- proposed in August 2010 and stated that he gave her flowers and small gifts, and that they went to the [REDACTED]. The Petitioner indicated that they were married on [REDACTED] 2010, that they had a good time after they were married, and that they went to church and the movies together and took her kids places. She also stated that they visited his family in New York for Thanksgiving.

In two subsequent statements, the Petitioner again stated generally that she entered into the marriage in good faith, and lived and shared bonds with her husband. She further added that her husband had bad credit. Although she submitted several statements, the Petitioner did not describe in probative detail how she met her husband, their ensuing courtship, engagement, wedding, or any of their shared experiences, aside from the abuse.

The statements submitted on the Petitioner's behalf do not provide any further substantive details in support of the Petitioner's claims. In her affidavit, S-W- indicated that she introduced the Petitioner and A-J- and stated that they went to the park one time. S-W- further recalled that the Petitioner married A-J- and that the Petitioner was happy. The Petitioner's friends, A-H- and E-K-, in nearly identical statements,⁴ stated generally that they know the Petitioner and A-J- were married and that when they visited the Petitioner and her spouse they shared "joint activities" and "common chores." A-H- and E-K- did not elaborate on their statements other than to indicate that on their visits, they "saw them sleep on the same bed, in the same room" None of the affiants provided any substantive information regarding specific occasions shared together and did not describe their observations of the Petitioner's interactions and relationship with A-J- prior to and during their marriage to establish the Petitioner's good-faith intent. The Director correctly concluded that these letters did not provide sufficient specific and detailed information demonstrating that the Petitioner married her husband in good faith.

³ June 13, 2010, was a Sunday, not a Saturday.

⁴ It is not clear who is the actual author of the common passages, but it is not likely that both individuals independently formulated the exact same wording. We acknowledge that these individuals have offered their support to this petition, but it remains that at least one of these individuals did not independently choose the wording of her letter.

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The Petitioner also submitted photographs of what appear to be the Petitioner and A-J- on their wedding day, a lease addendum, and joint statements from [REDACTED]. Some of the bank statements are dated after the Petitioner and A-J- were no longer living together and show low balances which the Petitioner explained were a result of her husband's poor financial management. The Petitioner also explained that she was unable to provide further joint documentation because A-J- did not allow her access to accounts. Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, affidavits or any other type of relevant credible evidence may be submitted. 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, as discussed, the Petitioner's statements and those submitted on her behalf did not provide a probative account to support her claims of good-faith intent.

On appeal, the Petitioner contends that the discrepancies regarding the dates of when she met A-J- and their subsequent courtship are not material and that she has submitted sufficient evidence to show she married her husband in good faith. The Petitioner does not provide any further discussion on appeal regarding her good-faith intent, nor does she explain why she provided conflicting days and dates for when she met A-J-. Moreover, she does not explain how she could have erred in describing her courtship in terms of two years versus two months as well as providing conflicting information regarding whether they began living together before or after their marriage. In this case, the testimonial evidence submitted does not demonstrate the Petitioner's entry into her marriage in good faith. The Petitioner has not submitted a probative, detailed account of her intentions in marrying her husband and their relationship. Based on the insufficiency of the Petitioner's and affiants' brief statements alone, the Petitioner has not sustained her burden of proof in this matter. In addition to the insufficiency, however, the Petitioner has provided conflicting information about when she met her husband, the duration of the courtship, and the dates of their residence together. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, that the Petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Joint Residence

The relevant evidence submitted below does not demonstrate that the Petitioner resided with her husband. The Petitioner submitted [REDACTED] statements addressed to her and A-J- at their claimed joint address, but as stated previously, many of the statements are dated after the Petitioner and A-J- separated and were no longer living together. The Petitioner further submitted a copy of her lease addendum, dated February 28, 2010, on which A-J- is listed as a co-resident for the period covering May 1, 2010, through April 30, 2011. On her VAWA petition, the Petitioner indicated that she resided with A-J- at an address on [REDACTED] New Jersey from October 2008 until January 2011. In her affidavits, the Petitioner did not describe her and A-J-'s home or shared residential routines and belongings in any detail, apart from the abuse. In their affidavits, A-H- and E-K- generally indicated that on their visits, they "saw them sleep on the same bed, in the same room" These affidavits are not supported by any probative descriptions of their observations of the Petitioner's and A-J-'s shared residence or their visits there, and both affidavits contain statements with identical wording.

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In addition, the record contains numerous discrepancies concerning the Petitioner's claimed dates of residence with A-J-. As discussed previously, on her VAWA petition the Petitioner indicated that she began residing with her husband in October 2008, nearly two years prior to their marriage. In contrast, in her statement dated August 28, 2012, the Petitioner indicated that they did not begin residing together until June 2010. In a third statement, dated February 3, 2015, the Petitioner emphasized that her initial claim of residence beginning in October 2008, prior to their marriage, was correct.

The Petitioner's record also contains three Forms G-325, Biographic Information, dated August 26, 2010, April 18, 2011, and February 7, 2012, respectively. On each of these forms, the Petitioner listed her residence as an address on [REDACTED] from January 2001 through December 2008 and did not list her residence at the [REDACTED] address until January 2009. The Petitioner attempted to explain in a statement submitted below that her "Form G-325A contained a typing error." She did not, however, explain how she made the identical "typing error" in three separately dated submissions, signed under penalty of perjury.

In response to the Director's concern regarding why A-J- was not added to the lease, the Petitioner explained that although she and her husband were living together before they entered into the lease agreement, she "had to wait until the lease was due for renewal before his name could be added." If we accept the Petitioner's claim that she and A-J- began residing together in October 2008, this explanation is not credible given that the lease renewal indicates the prior lease was dated April 2, 2009, a time at which the Petitioner reiterates they were already living together.

The Petitioner's claim of joint residence, beginning in October 2008, nearly two years prior to their marriage, is further contradicted by the Petitioner's marriage certificate which indicates that A-J-'s address is [REDACTED] in [REDACTED] New Jersey.

On appeal, the Petitioner asserts that despite the discrepancies, she and A-J- lived together but does not provide any further statement discussing her claimed residence with her spouse. Although the Petitioner has submitted some documentation identifying her and A-J- at the [REDACTED] address, her affidavits, and the ones submitted on her behalf, do not provide sufficient probative testimony regarding her joint residence. On that basis alone, the Petitioner has not established that she resided with her spouse. In addition, however, the record contains numerous discrepancies relating to the dates the Petitioner claims to have resided with her spouse. Accordingly, the Petitioner has not demonstrated, by a preponderance of the evidence, that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

III. CONCLUSION

On appeal, the Petitioner has not established that she entered into marriage with her husband in good faith and that they resided together. 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.

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ORDER: The appeal is dismissed.

Cite as *Matter of M-K-*, ID# 14752 (AAO June 21, 2016)