



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

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

MATTER OF N-F-

DATE: MAR. 11, 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). 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The Director concluded that the Petitioner did not establish that his spouse battered or subjected him to extreme cruelty.

The matter is now before us on appeal. On appeal, the Petitioner submits a statement and no additional evidence. The Petitioner claims that the Director abused her discretion in denying his Form I-360, as the evidence he has submitted into the record of proceedings demonstrates that he suffered from abuse and extreme cruelty while in the United States.

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).

Section 204(a)(1)(J) of the Act 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 are explained further 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 . . . and must have taken place during the self-petitioner’s marriage to the abuser.

The evidentiary standard and guidelines for a Form I-360 filed under section 204(a)(1)(A)(iii) of the Act are explained further 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

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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.

## II. ANALYSIS

### A. Battery or Extreme Cruelty

On [REDACTED] 2011, the Petitioner married I-N-,<sup>1</sup> a U.S. citizen. The Petitioner filed the Form I-360 on November 18, 2014. In his personal statements, the Petitioner generally stated I-N- subjected him to verbal and mental abuse, demeaned him in front of her parents, their children, and friends, and went to bars at night while leaving him to care for their children. He indicated that I-N- threatened to take their children and to have him deported, and although he has never been physically injured, she would throw things at him. He further indicated that because of I-N-'s actions, he is depressed, unable to sleep and focus at work, and has panic attacks. In their letters of support, the Petitioner's family members and imam also generally described witnessing or having knowledge of I-N- "verbally, mentally, and sometimes physically" abusing the Petitioner. Although the Petitioner submitted documentation that he has been prescribed medication for anxiety, depression, and insomnia, and he reported on one occasion to the [REDACTED] Police that he and I-N- had "several verbal arguments . . . with no physical contact[.]" neither the Petitioner's statements nor those submitted on his behalf provided a probative description of any specific instance of the claimed verbal, mental, or physical abuse.

In addition, the Petitioner submitted letters from a doctor and a licensed psychologist, who similarly described I-N- as staying out all night and generally referred to her behavior as being verbally and physically abusive. The letters noted that I-N- would call the Petitioner names, use profanities, spit on him, and threaten to hit or to provoke him into fights with others. The letters also indicated that I-N- has interfered with the Petitioner's ability to work, which has resulted in his boss threatening to fire him on several occasions.

In the denial, the Director thoroughly analyzed and discussed the Petitioner's statements and evidence, specifying the insufficiencies in the Petitioner's evidence to demonstrate his claimed abuse.

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

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On appeal, the Petitioner does not provide any additional evidence to address the deficiencies raised in the Director's denial or articulate any error on the part of the Director, such as mischaracterizing or overlooking evidence in the record regarding the claimed abuse. Instead, the Petitioner refers to the legislative intent in providing for the protection of survivors of domestic violence and generally discusses how nonphysical acts may constitute extreme cruelty as defined in the regulations without connecting the discussion to the specific facts of his case.

As indicated by the Director, the Petitioner's statements and those submitted on his behalf did not provide a probative discussion of I-N-'s behavior and of specific interactions between the Petitioner and I-N-. Accordingly, the Petitioner has not established that I-N- battered the Petitioner, that her behavior included other actual or threatened violence, psychological or sexual abuse, that her actions were similarly part of any overall pattern of violence, or otherwise constituted extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi). Therefore, the record does not demonstrate by a preponderance of the evidence that I-N- subjected the Petitioner to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### B. Joint Residence

Beyond the decision of the Director, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner resided with I-N-.<sup>2</sup> On the Form I-360, the Petitioner indicated he resided with I-N- from January 3, 2010, until August 15, 2014, and they last resided together on [REDACTED] Michigan. In his statement submitted with the Form I-360, the Petitioner generally indicated that after they started dating in November 2009, they moved in together about two months later. He does not identify the residence where they initially resided together and provides no further probative details regarding any of their shared residences, living arrangements, shared belongings, and residential routines. In their personal statements, the Petitioner's family members and imam indicated that they have known the Petitioner and I-N- as a married couple, but they also did not discuss visiting the Petitioner and I-N- at any residences or otherwise discuss their joint residence.

In addition to the insufficiency of his evidence, the Petitioner has submitted contradictory evidence regarding his residence from 2010 to 2014, when he claimed to have resided with I-N-. On their marriage license application, dated January 24, 2011, the Petitioner attested to residing at an address on [REDACTED] Michigan, and I-N- attested to residing at an address on [REDACTED] in [REDACTED] Michigan. This contradicts his claim that he and I-N- began residing together in January 2010, about one year prior to the application for the marriage license. Moreover, on his Form G-325A, Biographic Information, dated September 19, 2012, the Petitioner attested to residing in an apartment on [REDACTED] Michigan, since January 2010.

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<sup>2</sup> We may deny an application or petition that does not comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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Although the Petitioner submitted a copy of an unfiled 2013 joint tax document and a letter of support listing himself and I-N- at the claimed residence on [REDACTED] the Petitioner's own statements and those submitted on his behalf do not provide a probative account of their shared residences, routines, shared belongings, and experiences, apart from the abuse during the more than four-year period during which he claimed to have resided with I-N-. Therefore, based upon this finding alone, the Petitioner has not established that he resided with I-N-. In addition, however, the Petitioner has provided inconsistent claims and evidence regarding the dates and locations of his residence during the period he claimed to have resided with I-N-. Accordingly, the Petitioner has not established, by a preponderance of the evidence, that he resided with I-N-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### III. 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 N-F-*, ID# 16240 (AAO Mar. 11, 2016)