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

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

MATTER OF Y-E-G-

DATE: MAR. 22, 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). 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. We dismissed a subsequent appeal and denied a motion to reopen. We concluded that the Petitioner did not establish that she entered into her marriage with her U.S. citizen spouse in good faith, resided with him, and that he battered or subjected her to extreme cruelty.

The matter is now before us on a second motion to reopen. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that she entered into her marriage with her U.S. citizen spouse in good faith, resided with him, and that he battered and subjected her to extreme cruelty.

Upon review, we will deny the motion to reopen.

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).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The additional evidence the Petitioner submits with this motion includes: a brief; a psychoemotional and marital dynamics assessment from [REDACTED] and the transcript of an August 10, 2000, interview of the Petitioner and her spouse, J-G-,' that an officer of the legacy-Immigration and Naturalization Service (INS) conducted in relation to a Form I-130, Petition

¹ Name withheld to protect the individual's identity.

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for Alien Relative, filed by J-G- on the Petitioner's behalf. The Petitioner also submits the following documents, all of which were previously submitted and considered in our decisions on appeal and on the first motion: a statement from J-G-; a Domestic Incident Report (DIR), dated [REDACTED] 2005; a DIR, dated [REDACTED] 2006; an undated Crime Victims Board Eligibility Decision; an Incident Information Slip, dated [REDACTED] 2006; a letter from [REDACTED], dated September 14, 2006; a letter from [REDACTED], dated May 26, 2005; a letter to J-G- from the U.S. Department of Education, dated June 25, 2005; partial copies of letters from the Social Security Administration addressed to the Petitioner and J-G-, dated April 25, 2006, and May 2, 2006, respectively; a letter to the Petitioner and J-G- and a copy of a tax return from the U.S. Internal Revenue Service; an undated letter to J-G- from [REDACTED] a summary of assessment from [REDACTED] dated January 31, 2007; undated letters from [REDACTED] and a disposition from the Criminal Court of the [REDACTED] dated November 28, 2006.

Our previous decisions of September 22, 2014, and May 12, 2015, are incorporated here by reference. The issue again before us on motion is whether the Petitioner has demonstrated that she entered into her marriage with her U.S. citizen spouse in good faith, resided with him, and that he battered or subjected her to extreme cruelty.

III. ANALYSIS

A. Joint Residence

The Petitioner does not present any previously-unsubmitted evidence with this motion relevant to whether she resided with J-G- during their marriage. In the brief on motion, the Petitioner's counsel restates arguments that were made by the Petitioner on appeal and in the brief submitted by her counsel with the prior motion and which we addressed in our prior decisions. The Petitioner's counsel also makes several new and unsupported claims in the brief on motion, including, as a means of explaining a significant inconsistency in the record of proceedings regarding when the Petitioner and J-G- ceased their claimed joint residence, that "[s]ex, drugs, and Merengue were the order of the day . . . [in their] distorted, nonfunctional relationship" and, therefore, this explains why the couple's claimed date of last joint residence post-dated the issuance of a restraining order obtained by the Petitioner. This factual averment by the Petitioner's counsel is not supported by relevant evidence in the record of proceedings and we do not consider as credible evidence the unsupported factual claims of counsel. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The Petitioner does not provide additional evidence with this motion to resolve the significant inconsistencies in the evidence in the record of proceedings which we noted in our prior decisions and, accordingly, the Petitioner does not overcome our previous findings that she did not reside jointly with J-G- during their marriage. Upon review, the relevant evidence in the record of proceedings is insufficient to establish by a preponderance of the evidence that the Petitioner resided with her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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B. Entry into the Marriage in Good Faith

In our decisions on the appeal and the first motion, we noted the absence of probative evidence demonstrating the Petitioner's good-faith entry into her marriage. In particular, in our decision on the first motion, we noted inconsistencies in the Petitioner's description of the couple's wedding ceremony and that a photograph of their wedding ceremony showed their wedding cake at City Hall when the Petitioner claimed that the post-wedding social gathering was in a home. In the brief submitted with this motion, the Petitioner's counsel claims that "[t]he City hall photo was to supplement their wedding album [*sic*] as this was a preset room with a wedding cake and bottles of champagne, all provided for show and to enhance the experience. Many couples took advantage of the décor and paid nominal fee for the opportunity." This factual claim by the Petitioner's counsel is not supported by any relevant evidence in the record of proceedings and, again, we do not consider as credible evidence the unsupported factual claims by counsel. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

As noted above, the Petitioner submits with this motion the transcript of an interview of the Petitioner and J-G- with an INS officer regarding a Form I-130 filed by J-G- on behalf of the Petitioner. The Petitioner's counsel claims in the brief on motion that the transcript indicates that J-G- was "clearly impaired" during the interview because he allegedly could not answer "simple questions" and "his language was undignified, confused, full of expletives." According to Petitioner's counsel, this claimed impairment caused J-G- to lie to the INS officer when asked where he and the Petitioner went for their honeymoon. The characterization of J-G-'s behavior by the Petitioner's counsel is conjecture on counsel's part and, even if J-G- was impaired at the time of the interview, the Petitioner has not established how such impairment demonstrates her good-faith entry into her marriage. In the statement from J-G-, which the Petitioner again submits with this motion, J-G- confirms that he lied to the INS officer regarding their honeymoon because he "felt ashamed" but J-G-'s testimony on this particular issue carries little weight in establishing the Petitioner's good-faith entry into the couple's marriage. J-G- also does not mention in his statement whether he was impaired during the interview, as the Petitioner's counsel claims.

The psychoemotional and marital dynamics assessment from [REDACTED] which the Petitioner also submits with this motion, solely addresses the issue of battery or extreme cruelty, not the Petitioner's entry into the marriage with J-G- in good faith.

The additional, newly-submitted evidence the Petitioner presents with this motion does not describe her courtship with J-G-, their wedding ceremony, joint residence or shared experiences, and, accordingly, it does not provide probative insight into the Petitioner's marital intent. *See* 8 C.F.R. § 204.2(c)(2)(vii). The Petitioner does not establish by a preponderance of the evidence her good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

C. Battery or Extreme Cruelty

The Petitioner submits a psychoemotional and marital dynamics assessment from [REDACTED] with this motion. [REDACTED] indicates that he met with the Petitioner between June 24, 2015, and July 1,

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2015, and that he conducted a comprehensive clinical interview with the Petitioner, followed by a “mental status examination and specific psychometric tests (BAI, BDI-II, PTSDI, PAC) to assess the [Petitioner’s] psychological functioning, stressors and symptomatology.” ██████████ concludes that the Petitioner “has developed and still sustains a number of anxious-depressive and PTSD symptoms generated by . . . threats, intimidation, spousal abuse and harassment perpetrated by her estranged husband.” He also indicates that the Petitioner developed a “comorbid condition of Posttraumatic Stress Disorder . . . and . . . a Persistent Depressive Disorder.”

██████████ assessment of the causal connection between the Petitioner’s “anxious-depressive and PTSD symptoms” and the claimed abuse by J-G- is based on his interview of the Petitioner, and his assessment refers to incidents of violence between the Petitioner and J-G- not mentioned by the Petitioner anywhere in the record. For example, ██████████ indicates that the Petitioner reported to him that J-G- “choked me hard, so I couldn’t breathe.” The Petitioner does not mention in any of her statements an incident in which J-G- choked her and nor is this incident mentioned or referred to in any of the other evidence in the record of proceedings. ██████████ also states that J-G- threatened to kill the Petitioner and forced the Petitioner to abuse substances, but neither the Petitioner nor the affiants who submitted testimony on her behalf made similar claims. Accordingly, the psychoemotional and marital dynamics assessment of the Petitioner’s relationship to J-G- carries little weight in establishing that J-G- subjected the Petitioner to battery or extreme cruelty during the marriage.

Other than the psychoemotional and marital dynamics assessment from ██████████, the Petitioner does not provide with this motion any previously-unsubmitted evidence to provide further probative details of any specific incidents of claimed abuse. The Petitioner does not establish by a preponderance of the relevant evidence that her spouse subjected her to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

On motion, the Petitioner still does not establish that she entered into her marriage with her U.S. citizen spouse in good faith, resided with him, and that he battered or subjected her to extreme cruelty, as required under section 204(a)(1)(A)(iii) of the Act.

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 motion to reopen is denied.

Cite as *Matter of Y-E-G-*, ID# 16394 (AAO Mar 22, 2016)