



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

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

MATTER OF R-K-

DATE: MAY 3, 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 evidence did not establish that the Petitioner had a qualifying relationship with a U.S. citizen spouse and was eligible for immediate relative classification based on that relationship.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the additional evidence demonstrates that she has a qualifying relationship with a U.S. citizen spouse and is eligible for immediate relative classification based on that relationship.

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 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.

An individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she is an alien: "who was a bona fide spouse of a United States citizen within the past 2 years and . . . who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse" Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

....

(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.

....

(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:

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(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.

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(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 Zambia who married C-W-¹ a U.S. citizen, in ██████████ Massachusetts on ██████████ 2001. C-W- filed a Form I-130, Petition for Alien Relative on the Petitioner's behalf that was approved on May 1, 2002. The Form I-485, Application to Register Permanent Resident or Adjust Status filed by the Petitioner in conjunction with the Form I-130 was also approved, and the Petitioner became a conditional resident in August 2002.

The Petitioner and C-W- jointly filed a Form I-751, Petition to Remove Conditions. On August 31, 2006, the Director of the Boston, Massachusetts District Office, terminated the Petitioner's conditional residency, noting that the Petitioner appeared for an interview on the Form I-751 without C-W- and informed the interviewing officer that she and C-W- were separated and that she had filed for divorce but the divorce was not yet finalized. The District Director subsequently denied the Form I-751 for C-W-'s failure to appear at an interview pursuant to 8 C.F.R. § 216.4(b)(3), and the Petitioner was placed into removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a. The Petitioner did not appear at a properly-scheduled and –noticed removal hearing and an immigration judge subsequently ordered the Petitioner removed *in absentia* to Zambia in January 2007.

The Petitioner was arrested by agents from U.S. Immigration and Customs Enforcement (ICE) in the ██████████ New York on ██████████ 2011. On a Form I-213, Record of Deportable/Inadmissible Alien, completed at the time of her arrest, the Petitioner's marital status was checked as "single."

The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 11, 2014. The Director issued a request for evidence (RFE) that the Petitioner resided with C-W- during their marriage, entered her marriage with C-W- in good faith, and was battered or subjected to extreme cruelty by C-W-. The Director also issued a notice of intent to deny (NOID) the

¹ We provide the initials of individual names throughout this decision to protect identities.

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Form I-360 based on whether the Petitioner established a qualifying relationship with a U.S. citizen spouse, as the Petitioner's statements in the Form I-751 proceeding and her marital status information on the Form I-213 indicated that she and C-W- were no longer married. The Petitioner responded to the NOID but the Director found her response insufficient and denied the Form I-360. The Petitioner timely appealed.

III. ANALYSIS

A. Qualifying Relationship

The Petitioner has not established a qualifying relationship with a U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

In response to the RFE and NOID, as well as on appeal, the Petitioner denies that she ever informed an officer within the Boston, Massachusetts District Office that she filed for divorce from C-W-, or that she ever discussed her marital status with the ICE agents who arrested her. As we discuss below, however, we do not consider the Petitioner's denial credible evidence that she and C-W- remained married at the time she filed the Form I-360 because of the numerous inconsistencies in the record of proceedings that diminish the evidentiary value of both the Petitioner's testimony and the documentary evidence she submits to support her claims.

The Board of Immigration Appeals has held that, absent evidence that information on a Form I-213 is inaccurate or was obtained by coercion or duress, the information on a Form I-213 is inherently trustworthy. *See Matter of Ponce-Hernandez*, 22 I&N Dec. 794 (BIA 1999); *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988). The Form I-213 lists the Petitioner as being single in May 2011 and living in the ██████ New York. The narrative portion of the Form I-213 indicates that the Petitioner is "the sole provider for her █ year old USC child." The record of proceedings contains a copy of the Petitioner's son's birth certificate, which indicates that he was born on ██████ in ██████ Connecticut, which is a time when the Petitioner claimed to be living in ██████ Massachusetts with C-W-. No father's name is listed on the birth certificate, but the child's father's address is listed as ██████ Connecticut, and the Petitioner's address at the time of her son's birth is listed as ██████ Connecticut.

The Petitioner and C-W- were married at the time of the Petitioner's son's birth; yet, she did not list C-W- as her son's father and she did not indicate on the Form I-751 filed in August 2004 that she had this son or any other children. Furthermore, the Petitioner's personal statement, dated February 26, 2015, and submitted in response to the RFE, does not mention that she had a child during her marriage to C-W-, or provide any indication that she lived for any period of time in Connecticut or New York; yet, both the Form I-213 and her son's birth certificate show residences for the Petitioner in each of these states for at least some period of time in 2003 (Connecticut) and 2011 (New York). In addition, her son's birth certificate indicates that the father of her son also lived in ██████ Connecticut but the Petitioner never mentioned that she and/or C-W- lived anywhere but ██████ Massachusetts.

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In light of the inconsistencies between the Petitioner's statement and other evidence in the record of proceedings in terms of where she lived during her marriage to C-W-, as well as her lack of candor in disclosing the birth of her son on the Form I-751 and in her personal statement submitted in connection with this matter, her assertions that she and C-W- remain married at the time she filed the Form I-360 has diminished weight in light of the other evidence in the record of proceedings and are not credible evidence of a qualifying relationship with a U.S. citizen spouse. Similarly, the documentary evidence² that the Petitioner submitted in response to the RFE to establish that she and C-W- remain married is insufficient because it relates to sporadic periods of time starting in 2002 and ending in 2008 before the Petitioner's arrest by ICE in 2011. In addition, this documentary evidence has diminished weight because it consists, in substantial part, of correspondence that was mailed to the Petitioner and C-W- at an address in [REDACTED] Massachusetts during a time period when the Petitioner was, according to her son's birth certificate, a resident of Connecticut.

On appeal, the Petitioner provides a notice issued by the Registry of Vital Records and Statistics of the Massachusetts Department of Public Health indicating that a search of the index for all divorces filed in Massachusetts from 2002 through November 10, 2015, does not show a listing of a divorce for the Petitioner and C-W-. The Petitioner also provides on appeal an undated notice from "[t]he Clerk of the [REDACTED]" indicating that a search of records from 2004 to an unspecified date did not find a record of a judgement of divorce for the Petitioner and C-W-. Finally, the Petitioner submits on appeal a notice from the County Clerk and Clerk of the Supreme Court for [REDACTED], New York, indicating that a search was made in records from 2004 to November 20, 2015, and did not reveal a divorce judgment for the Petitioner and C-W-. In the Petitioner's brief on appeal, she contends that the documents from Massachusetts and New York, which she claims are the only states in which she has lived since she and C-W- married, establish that she and C-W- are not divorced.

Information on the Petitioner's son's birth certificate belies the Petitioner's assertion that she has only lived in New York and Massachusetts since marrying C-W- in 2001; as we previously discussed, the Petitioner is listed as residing in [REDACTED] Connecticut as of September 2003. The evidence from Massachusetts and New York that the Petitioner submits on appeal only establishes that no record of a divorce exists in the State of Massachusetts and in [REDACTED] New York. Such evidence does not rule out the possibility that the Petitioner was divorced in Connecticut, or another county within the State of New York, or any other state where she may have resided but did not disclose to us, as happened with her residence in Connecticut. Accordingly, the Petitioner has not overcome the Director's reasons for denying the Form I-360, specifically that by 2011, she and C-W- were divorced.

A divorced petitioner may only establish eligibility under section 204(a)(1)(A)(iii) of the Act as the battered spouse of a U.S. citizen if he or she files a Form I-360 within two years of: the death of the

² This evidence includes: statements from the [REDACTED] from September 10, 2001, to January 3, 2002, and from March 1, 2008, to March 31, 2008; an unsigned Internal Revenue Service form regarding e-filing of taxes for the 2011 tax year and an unsigned income tax return for tax year 2001; telephone bills from July 1, 2004, to July 31, 2004, from August 1, 2007, to August 31, 2007, and from June 1, 2008, to June 30, 2008; utility bills from July 25, 2006, to August 24, 2006, from January 23, 2007, to February 22, 2007, and from March 21, 2008, to April 22, 2008; cable bills from August 19, 2006, and November 19, 2008; vehicle insurance records dated December 1, 2007; a gas bill dated February 5, 2002; and life insurance documents dated January 26, 2002.

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spouse; the renunciation or loss of the spouse's citizenship due to an incident of domestic violence; or the divorce between the couple, if the petitioner demonstrates a connection between the legal termination of the marriage and the battering or extreme cruelty by the spouse. See section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act. Here, the Petitioner filed the Form I-360 in September 2014, which is more than two years after her arrest by ICE in [REDACTED] 2011, pursuant to which she was listed as "single" on the Form I-213. Accordingly, she did not have a qualifying relationship with a U.S. citizen spouse at the time of filing the Form I-360 because she was outside of the two-year period described at section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act.

B. Eligibility for Immediate Relative Classification

As the Petitioner has not established a qualifying spousal relationship to a U.S. citizen based on her former marriage to C-W-, she necessarily has also not demonstrated her corresponding eligibility for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on that relationship, as required under 204(a)(1)(A)(iii)(II)(cc) of the Act.

C. The Remaining Eligibility Criteria

Even if the Petitioner and C-W- remained married at the time of filing the Form I-360, the Petitioner would be ineligible for classification as an abused spouse of a U.S. citizen because the evidence does not establish that: she and C-W- shared a joint residence during their marriage; C-W- subjected her to battery or extreme cruelty during their marriage; and she married C-W- in good faith.

As we previously discussed, we give diminished evidentiary value to the Petitioner's statement because information that the Petitioner provides conflicts with other evidence in the record.

Regarding joint residence, we previously discussed that the Petitioner's February 2015 statement does not mention her 2003 residence in [REDACTED] Connecticut or her residence in New York in 2011. The Petitioner also indicates in this statement that C-W- left their home in Massachusetts in December 2012 and never came back; however, her arrest by ICE places her in New York in [REDACTED] 2011, which indicates that she would have left the claimed marital home prior to C-W- in December 2012. In addition, on the Form I-360 filed on September 11, 2014, the Petitioner did not provide a date on which she and C-W- ceased living together, thus implying that they still resided together, but she mentioned in her February 2015 statement that C-W- left the marital home in December 2012. Overall, the record of proceedings does not contain a coherent timeline of the Petitioner's and C-W-'s residences during their marriage to demonstrate that they jointly resided together as a married couple, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Regarding the issue of battery or extreme cruelty, the Petitioner discusses incidents of abuse, most of which occurred in the claimed marital home in [REDACTED] Massachusetts during a time period that spans from approximately 2002 until December 2012. Because some of the incidents that the Petitioner describes would have occurred during the Petitioner's residence in [REDACTED] Connecticut while pregnant, and while living in New York at the time of her arrest by ICE, we give the Petitioner's statement little weight as evidence that C-W- subjected her to battery or extreme cruelty. We also give diminished weight to the affidavits from [REDACTED] and [REDACTED]

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because they describe incidents occurring between the Petitioner and C-W- between 2002 and 2012 and the Petitioner has not submitted credible evidence that she and C-W- were living together in Massachusetts as claimed during the same time period. Accordingly, the Petitioner does not establish that C-W- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Finally, the Petitioner does not establish that she entered into her marriage with C-W- in good faith because we give diminished weight to her personal statement, which is the only testimonial evidence in the record of proceedings from the Petitioner concerning her and C-W-'s courtship, wedding ceremony, and shared experiences. *See* 8 C.F.R. § 204.2(c)(2)(vii). indicates that C-W- "was very nice during the dating days" and that he was very personable and states that C-W- became her friend when he married the Petitioner but neither individual provides details about their interactions with the couple or their knowledge of the Petitioner's intent when marrying C-W- in 2001. Accordingly, the preponderance of the relevant evidence does not establish that the Petitioner's entry into marriage with C-W- was in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not overcome the grounds for denial of the Form I-360 because she has not established a qualifying spousal relationship with a U.S. citizen and consequently, has also not demonstrated her corresponding eligibility for immediate relative classification based on that relationship. We also determine in our *de novo* review that the Petitioner does not establish that: she and C-W- shared a joint residence during their marriage; C-W- subjected her to battery or extreme cruelty during their marriage; and she married C-W- in good faith.

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-K-*, ID# 16645 (AAO May 3, 2016)