



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

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

MATTER OF R-A-A-

DATE: MAY 26, 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) 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 section 204(c) of the Act statutorily barred approval of the Form I-360, Petitioner for Amerasian, Widow(er), or Special Immigrant, because the Petitioner had not overcome substantial, probative evidence in the record indicating that she had entered into her previous marriage to R-R-¹ for the purpose of evading immigration laws. The Director further concluded that the Petitioner had not demonstrated that she entered into her subsequent marriage to R-H-² in good faith and that she resided with him. The Director denied the Petitioner's motion to reopen and reconsider. We dismissed a subsequent appeal. On appeal, we concluded that section 204(c) of the Act did not bar approval of the petition because the record did not contain substantial and probative evidence that the Petitioner entered into her previous marriage to a U.S. citizen for the purpose of evading immigration laws. However, we dismissed the appeal because the Petitioner did not establish that she entered into her subsequent marriage to her abusive U.S. citizen spouse in good faith or that she resided with him.

The matter is now before us again on a motion to reopen. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that the evidentiary record below and on appeal demonstrates that she entered into marriage with her spouse in good faith and resided with him.

Upon review, we will deny the motion to reopen.

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

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I. APPLICABLE LAW

A motion that does not meet the applicable requirements shall be denied. 8 C.F.R. § 103.5(a)(4). A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Consequently, the motion will be denied for the reasons set forth herein.

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, a citizen of Ghana, last entered the United States on September 23, 1996, as a G-2 nonimmigrant. The Petitioner married R-H-, a U.S. citizen, on [REDACTED] 2009, in Maryland.³ The record indicates that the couple thereafter divorced, but the record does not include a divorce judgment.⁴ The Petitioner filed the instant Form I-360 on October 16, 2012, based on her relationship with R-H-. The Director denied the Form I-360 and a subsequent motion to reopen and reconsider. On appeal, we withdrew the Director's determination in part, but dismissed the appeal. The Petitioner now files a timely motion to reopen.

III. ANALYSIS

In our prior decision on appeal, incorporated by reference here, we withdrew the Director's decision in part to find that the record lacked substantial, probative evidence indicating that section 204(c) of the Act barred approval of the Petitioner's Form I-360. However, we dismissed the Petitioner's appeal, finding that the Petitioner had not established that she entered into marriage with her U.S. citizen spouse in good faith and that she resided with him. Upon a full review of the record, as supplemented on motion, the Petitioner has not overcome the grounds for denial.

³ As our prior decision adequately set forth the facts of these proceedings, we recite here only the facts relevant to our decision on motion.

⁴ On motion, the Petitioner submits a statement from R-H- indicating that the couple is now divorced. The Petitioner must indicate in any subsequent filings whether or not she is divorced from R-H-, and if so, must submit evidence of the termination of that marriage.

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A. Entry into Marriage in Good Faith

The record does not establish that the Petitioner had entered into marriage with her spouse, R-H-, in good faith. In her written statement below, the Petitioner indicated that she met R-H- at [REDACTED] in Maryland on November 16, 2008. She stated that they exchanged phone numbers and spoke with each other several times a day. The Petitioner recalled that R-H- proposed to her on Valentine's Day in 2009 and that they were married on [REDACTED] 2009, at the courthouse in [REDACTED] Maryland. However, aside from this brief narrative touching on their relationship prior to the alleged abuse, the Petitioner did not further describe in any probative detail the circumstances of meeting her spouse, their courtship, engagement, wedding, residence, or any of their shared experiences.

The relevant supporting statements in the record below also did not contain substantive information regarding the Petitioner's intentions in marrying R-H-. The Petitioner's cousin, [REDACTED] who resided in New York, indicated that the relationship between the Petitioner and R-H- was going "pretty good" until the Petitioner called him one day to tell him that R-H- had not returned home for several days. However, apart from this general assertion, [REDACTED] does not address the Petitioner's marital intentions or describe in probative detail any specific interaction or occasion that he shared with the Petitioner and R-H-. The Petitioner's coworker and friend, [REDACTED] in a January 13, 2014, letter, recalled that he met R-H- at the couple's apartment on [REDACTED] in Maryland and that R-H- took the Petitioner and him to help him buy a car. He indicated that he visited the couple at their apartment several times for dinner and that R-H- loved the Petitioner's cooking. However, the letter does not address the Petitioner's good faith marital intentions or provide probative details about any of his visits with the couple and their interactions to demonstrate the Petitioner's marital intentions.

The documentary evidence the Petitioner submitted below is also inadequate in demonstrating her good faith entry into her marriage to R-H-. The Petitioner provided a one-year lease for the couple's claimed joint residence on [REDACTED] for the period from October 29, 2010, to October 28, 2011. The lease lists three tenants, including the Petitioner and R-H-, but is not signed by R-H-. Moreover, the lease is for premises located at [REDACTED] but the Form I-360 and the Petitioner's Form G-325A, Biographic Form, dated September 26, 2012, submitted in these proceedings, as well as other joint documents the Petitioner proffered, indicate that the claimed marital residence during that period was [REDACTED]. The record offers no explanation for this discrepancy. The Petitioner also submitted two pages of a statement for a shared bank account with [REDACTED] for October to November 2012. However, according to the Form I-360, by November 2012, the Petitioner and R-H- had already been separated for half a year since February 2012, and the checks and deposit slip images on the statement reflect only the Petitioner's usage of the joint account. A single joint [REDACTED] bill for September 1, 2013, in the record is from a period nearly a year and half after the couple's separation. The record also includes the Petitioner's marriage certificate, which establishes a legal marriage and that a relationship existed between the Petitioner and R-H-. However, the marriage certificate and the remaining documentary evidence, including one page of a joint bank statement from February 2011 showing minimal activity; a single January 2011 family life insurance statement for R-H-; and a joint [REDACTED] bill from November

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2011, provide no insight into the nature of the Petitioner and R-H-'s relationship and the former's marital intentions, particularly in the absence of probative testimony from the Petitioner.

On motion, the Petitioner submits additional, new evidence, including a statement from R-H-, asserting the *bona fides* of his marriage to the Petitioner. R-H- recalls meeting the Petitioner on November 3, 2008, in contrast to the Petitioner's statement in which she asserted that they met on November 16, 2008. R-H- also described his courtship with the Petitioner and the couple's wedding. He stated that the Petitioner was the love of his life but their relationship did not work out and they eventually divorced. In his statement, R-H- recalled that after the wedding, they moved to [REDACTED] for approximately five months before moving to apartment [REDACTED] on [REDACTED] on October 26, 2009, where they remained approximately three years. This, however, is inconsistent with the Petitioner's 2012 Form G325A, in which she indicated that she continued to reside at her residence at [REDACTED] for over a year after her [REDACTED] 2009 marriage to R-H-. According to the Form G325A, the Petitioner did not move to [REDACTED] until May 2010 and only moved to [REDACTED] in October 2010. In addition, the lease provided for the [REDACTED] premises, apart from listing the wrong building number for the claimed marital residence, shows that the lease commenced in October 2010. As the couple separated in February 2012, this indicates that R-H- only resided at the couple's claimed [REDACTED] residence for a little over a year from October 2010, contrary to his assertion that he and the Petitioner resided there for three years from [REDACTED] 2009. These significant discrepancies are not explained in the record and undermine the probative value of R-H-'s written statement.

On motion, the Petitioner asserts we ignored specific evidence in the record, including the 2010 statements of the Petitioner and R-H-, an affidavit by [REDACTED] and the October 2010 lease for the [REDACTED] premises, all of which she submits now on motion. We note that apart from the lease, none of the specified items were submitted in these Form I-360 proceedings and are before us for consideration in the first instance. Upon review, the proffered evidence on motion is still insufficient to establish the Petitioner's good faith entry into her marriage to R-H-. The Petitioner and R-H-'s statements, dated August 24, 2010, submitted here on motion, were previously proffered in connection with the Form I-130, Petition for Alien Relative, which R-H- had filed on behalf of the Petitioner in 2009. The 2010 statements, however, focused specifically on, and attempted to explain, inconsistencies that arose in the Petitioner's and R-H-'s testimony during the Form I-130 interview. The statements do not overcome the noted deficiencies in the record addressed here, including the lack of probative testimony from the Petitioner in these proceedings regarding her good faith marital intentions and the discrepancies in the 2010 lease and R-H-'s written statement on motion. The Petitioner also submits a September 24, 2010, affidavit from [REDACTED] who indicated that he and R-H- worked together at [REDACTED] during 2005, and that R-H- introduced him to the Petitioner when the latter visited R-H- at the work place. However, according to the Petitioner and R-H-, they did not meet at R-H-'s workplace until several years later in 2008. Regardless, [REDACTED]

⁵ R-H- incorrectly referred to their claimed address as being on [REDACTED] not [REDACTED] as stated by the Petitioner and in the lease.

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brief affidavit provides no probative details of any of his interactions with the Petitioner and R-H- and of the visits to their home that he recalled making.

The documentary evidence that the Petitioner submits on motion raises further discrepancies. For instance, the Petitioner proffers copies of federal tax returns for herself and R-H-, which they filed as “married filing separately.” Although R-H-’s tax returns in the record for 2009 and 2010 indicate that the Petitioner and R-H- were married, they do not reflect the couple’s claimed shared residences during the relevant periods as the Petitioner has asserted in these proceedings. Both tax returns indicated that R-H- resided at a [REDACTED] residence at the time the tax returns were prepared in early 2010 and 2011⁶ respectively. In contrast, the Petitioner’s 2012 Form G-325A indicated that the Petitioner was residing at [REDACTED] in early 2010 after she married R-H- in 2009 and then at [REDACTED] in early 2011. The Petitioner did not submit a written statement on motion and her August 2010 statement from the earlier Form I-130 proceedings does not address the discrepancies in the addresses. R-H-’s August 24, 2010, statement, however, explained that the tax preparer had not updated the address and R-H- had not bothered changing it since it had no tax consequences. We do not find R-H-’s explanation reasonable, given that he had already been married and at a different residence for two years by the April 15, 2011, deadline for his 2010 tax returns. Although the Petitioner also submits copies of R-H-’s amended 2010 tax returns, on their face, they were prepared solely to change R-H-’s address to the claimed marital residence and there is no evidence the updated return was ever filed. The remaining documentary evidence submitted on appeal, including the Petitioner’s tax returns for 2009 through 2012; the previously discussed 2010 lease for the premises on [REDACTED] and several photographs of the Petitioner and R-H- on unspecified dates and occasions; do not evidence the nature of the Petitioner and R-H-’s relationship and are insufficient to overcome the lack of probative testimony from the Petitioner regarding her good faith marital intentions and the significant noted discrepancies in the record.

The Petitioner contends on motion that nothing in the record contradicts the evidence of the Petitioner’s good faith marital intentions. To the contrary, the record contains discrepancies between the Petitioner’s assertions in her Form I-360 and Form G-325A and other documentary evidence, for which the Petitioner has not provided reasonable explanations. The Petitioner’s statement and the supporting statements of the Petitioner’s friends do not provide any probative details about the Petitioner’s relationship with R-H- or her good faith marital intentions. The Petitioner’s remaining documentary evidence offers little insight into the nature of her relationship with R-H- and is insufficient to overcome the noted deficiencies. Accordingly, when viewed in the totality, the Petitioner has not demonstrated by a preponderance of the evidence that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

⁶ Although the tax returns are not dated, we note that the deadline for filing taxes for each tax year is April 15th of the following year.

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B. Joint Residence

The relevant evidence in the record also does not demonstrate that the Petitioner resided with her spouse. The Petitioner did not provide a timeline of, or describe in any probative detail, her shared residences with R-H-. However, she asserted on her Form I-360 that she resided with R-H- from [REDACTED] 2009 through February 2012 and that they last resided together at their shared residence at [REDACTED]. The 2012 Form G-325A that the Petitioner submitted in these proceedings indicated that she moved to this residence in October 2010, and she identified the residence as her current address at the time she filed the Form I-360 in October 2012. In addition, the Petitioner submitted some documentary evidence, addressed jointly to the Petitioner and R-H- at the [REDACTED] address. However, the record includes an October 2010 lease for the period from October 29, 2010, to October 28, 2011, identifying the Petitioner, R-H-, and one other individual as the tenants. As previously noted, the lease is not signed by R-H-, but significantly, the lease is for premises identified as [REDACTED]. On motion, the Petitioner proffers a statement from R-H-, dated June 3, 2015, which raised additional discrepancies in the record regarding the couple's shared residence. R-H- recounted moving with the Petitioner to [REDACTED] for approximately five months after their [REDACTED] 2009 wedding and stated that they thereafter moved to [REDACTED] that same year in October, where they resided for about three years. In contrast, the Petitioner's 2012 Form G325A, indicated that after the couple's [REDACTED] 2009 marriage, she resided at [REDACTED] for approximately one year, something that R-H- did not recall at all in his statement. The Form G-325A further showed that the Petitioner only moved to [REDACTED] in May 2010 and to [REDACTED] in October 2010, in which case, the couple would only have jointly resided there for just over a year, not three years as claimed by R-H- in his statement on motion.

The relevant statements addressing the Petitioner's shared residence with R-H- include those from [REDACTED] and [REDACTED] in a brief letter, dated August 19, 2010, indicated that she had been renting two bedrooms to the Petitioner and R-H- at [REDACTED] since May 5, 2010. However, the letter does not specify whether she had any personal knowledge that the couple actually resided there together. [REDACTED] letter indicated that he resided in New York while the Petitioner and R-H- resided in Maryland and made no reference to whether he had ever visited or interacted with the Petitioner and R-H- at their claimed residence on any occasion. [REDACTED] did reference visiting the couple on multiple occasions at their home in [REDACTED] but he does not set forth the specific address of their residence or provide any substantive information about the claimed residence and his visits there. These statements and the documentary evidence submitted below, including a single page of a bank statement for a joint bank account with [REDACTED] two pages of an October 2012 [REDACTED] joint bank account statement and a 2013 [REDACTED] bill from a period after the Petitioner and R-H- separated; a 2011 joint [REDACTED] bill; and R-H-'s January 2011 statement for family life insurance, do not overcome the inconsistencies identified in the record and the lack of credible, probative testimony from the Petitioner.

On motion, the Petitioner resubmits a copy of the 2010 lease for the [REDACTED] residence; tax returns for the Petitioner and R-H-; an affidavit from [REDACTED] and August 2010 statements from the Petitioner and R-H- submitted in prior Form I-130 proceedings. The Petitioner and R-H-'s statements from 2010 do not specifically address the couple's shared residences, apart from attempting to explain

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certain discrepancies in the addresses on the couple's tax returns in the record, as discussed further below. [REDACTED] indicated that he was invited to the couple's home, but he does not identify the couple's address or provide a probative description of the residence or any of his visits and interactions with the couple there. Moreover, as noted previously, [REDACTED] indicated that he worked with R-H- at [REDACTED] in 2005 and met the Petitioner there. This is inconsistent with the Petitioner and R-H-'s statements that they met in November 2008. The Petitioner's tax returns for 2009 through 2011⁷ reflect various claimed marital residences that are generally consistent with those she set forth on the Form G-325A. However, R-H-'s tax returns for 2009 and 2010, in which he indicated that he was married filing separately, reflect an address at [REDACTED] where the Petitioner has never claimed to reside with R-H-. R-H- explained in his August 24, 2010, statement, that he never bothered to have his tax preparer change the address since there did not appear to be any adverse tax implications, and the Petitioner proffered an amended 2010 tax return for R-H-, amending only R-H-'s address to reflect the marital residence. The Petitioner, however, never addressed this inconsistency, and R-H-'s explanation, provided in response to the Director's NOID in the earlier Form I-130 proceedings, is not reasonable given that by the time R-H- filed his 2010 tax returns in 2011, he had already been married and had been residing at a different residence for approximately two years.

Contrary to the Petitioner's assertion on motion that nothing in the record contradicted the Petitioner's claim that she resided with R-H-, a full review of the record disclosed several inconsistencies between the Petitioner's statements regarding the marital residence history, as set forth in her Form I-360 and Form G-325A and in other evidence in the record, including R-H-'s statement proffered on motion and the 2010 lease for the purported marital residence. The Petitioner has not provided any probative testimony about her shared residences with R-H- and the record does not provide any explanations for the inconsistencies identified in the record. The general statements of friends and the remaining documentary evidence are insufficient to overcome the deficiencies in the record to establish the Petitioner's shared residence with R-H-. Accordingly, the relevant evidence of record, considered cumulatively, does not establish the Petitioner's joint residence with R-H-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner resided with her spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

IV. CONCLUSION

On motion, the Petitioner has not overcome the grounds for denial, as she has not demonstrated that she entered into marriage with her U.S. citizen spouse in good faith and resided with him. She is consequently ineligible for immigrant classification 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.

⁷ The Petitioner's 2010 taxes were amended at a later point sometime to reflect the claimed marital residence.

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ORDER: The motion to reopen is denied.

Cite as *Matter of R-A-A-*, ID# 16566 (AAO May 26, 2016)