



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

MATTER OF A-R-

DATE: MAY 31, 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 established that she jointly resided with her spouse, was battered by or subjected to extreme cruelty by her spouse, and entered into the marriage with her spouse in good faith.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence.

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.

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:
- .....

(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.

(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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character*. A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

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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:

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . 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.

(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 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

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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, a citizen of Guinea, married R-R-<sup>1</sup> a U.S. citizen, in [REDACTED] New York. The Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and the Director issued a request for evidence (RFE) establishing that the Petitioner jointly resided with R-R-, was battered by or subjected to extreme cruelty by her spouse, and entered into the marriage with R-R- in good faith. The Petitioner submitted additional evidence in response to the RFE, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner submitted a timely appeal. On appeal, the Petitioner submits additional evidence.

## III. ANALYSIS

### A. Joint Residence

The Petitioner indicated that she was already living at the [REDACTED] address in [REDACTED] New York, when R-R- moved in with her after their wedding. On the Form I-360, the Petitioner indicated that she and R-R- lived together at the [REDACTED] address from [REDACTED] 2006 until July 2009.

However, in her personal statement submitted in response to the RFE, the Petitioner relates that R-R- left their apartment in 2008 and went to live with his granddaughter. On appeal, the Petitioner submits an additional personal statement, in which she explains that R-R- first left their apartment for two weeks in January 2008, came back, and then left again for good in the third week of July 2009. She states that her initial personal statement indicated that he moved out in 2008 because he would occasionally leave their apartment to stay with his granddaughter for several weeks and then

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

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return. While her second personal statement clarifies her version of the actual ending date of their claimed joint residence, that date is inconsistent with the information provided by [REDACTED]

In her letter, dated November 1, 2011, [REDACTED] states that she has been a neighbor of the Petitioner's for seven years; she met R-R- five years ago, and the Petitioner and R-R- "are residing" at their claimed joint residence. [REDACTED] testified in her 2011 statement that the Petitioner and R-R- "are residing" together; however, if R-R- moved out of the apartment for good in 2009, he would not have been living with the Petitioner at the time [REDACTED] wrote her letter.

The Petitioner also submitted letters from [REDACTED] and [REDACTED]. In his first letter that the Petitioner submitted in response to the RFE, [REDACTED] indicates that R-R- moved out of the apartment he shared with the Petitioner in the end of 2007, which predates the July 2009 date claimed by the Petitioner by at least eighteen months. [REDACTED] also wrote a separate letter, which the Petitioner submits on appeal, in which he clarifies that the last time the Petitioner came to spend the night at his apartment was in December 2007 so he assumed that R-R- had left their apartment after that date. He also states in this same letter that he never asked the Petitioner regarding whether she and R-R- still lived together after that point because he did not want to pry into their relationship.

[REDACTED] who is [REDACTED] wife, writes in her letter that she recalls two occasions in 2007 when she picked up their children at the Petitioner's and R-R-'s claimed joint residence. She further states that she was invited to "many dinners" at the Petitioner's and R-R-'s apartment. [REDACTED] recalls that he "constantly" visited the Petitioner and R-R- with his children and that she and R-R- babysat for his children. [REDACTED] indicates in a letter that she is a friend of the Petitioner and that she had lunch with her and R-R- at their apartment one week after the couple married and she visited them on several occasions until the beginning of 2007.

The letters submitted on the Petitioner's behalf do not support that the Petitioner and R-R- resided together during their marriage because the letters are not sufficiently detailed. Except for [REDACTED] none of the writers provide the address of the apartment where the Petitioner and R-R- lived. All of the writers testify to being at the Petitioner's and R-R- apartment on numerous occasions, but none of them provide the approximate timeframes for their visits, or describe the Petitioner's and R-R-'s apartment and routines during their visits.

The Petitioner submitted two leases for her and R-R-'s claimed joint residence, one of which reflects a lease term from December 1, 2007, until November 30, 2008, for monthly rent of \$198; the other lease is for a term of December 1, 2008, through December 1, 2009 for monthly rent of \$203. The Petitioner also submitted her "customer copy" of several money orders as evidence that she paid rent in the 2006 and 2007 years; however, none of the customer copies are for amounts corresponding to the monthly rent, as they are for amounts ranging from \$20.00 to \$240.00. The Petitioner also does not present any evidence from the leasing agency, [REDACTED] to demonstrate that her "customer copies" of the money orders were used to paid rent, as she claims.

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The Petitioner submitted a letter from an insurance company addressed to her with a notation in the address block that the letter is "for [R-R-]" and indicates that the insured party is R-R- but this letter only shows that R-R- used the [REDACTED] address, not that he lived there with the Petitioner. The record of proceedings also lacks evidence that the insurance policy was ever activated.

The Petitioner also submitted photographs, the majority of which depict the Petitioner and R-R- at gatherings outside of their claimed joint residence, with two photographs that purport to be of the couple in their apartment. The photographs reflect that the Petitioner and R-R- were together on two separate occasions but do not, on their own accord or when considered with the other relevant evidence, establish that the couple shared a joint residence during their marriage.

Accordingly, when viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the Petitioner resided with R-R-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### B. Battery or Extreme Cruelty

In her initial personal statement, the Petitioner states that R-R- pressured her to perform sexual acts in which she did not want to engage; verbally abused her by calling her names and threatening to have her arrested; and demanded that she give him money so he could pay off his debts. In her initial personal statement, the Petitioner generally describes incidents of physical and emotional abuse by R-R- without the details necessary for us to determine that R-R-'s behavior involved acts of or threatened acts of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Her second personal statement, which she submits on appeal, does not mention any incidents of battery or extreme cruelty by her spouse.

In his initial letter submitted in response to the RFE, [REDACTED] indicates that the Petitioner came to his apartment to spend the night and she was sometimes in tears. In his second letter, [REDACTED] recounts that, when the Petitioner spent the night at his apartment, she would sit up in bed "with her eyes wide staring at the wall," but that he never asked her why she behaved that way. [REDACTED] recounts in her letter that she witnessed R-R- yelling at the Petitioner on two occasions in 2007 and, when she asked the Petitioner why he was yelling at her, the Petitioner explained that he was angry because the Petitioner would not have sexual intercourse with him.

The letters from [REDACTED] and [REDACTED] do not demonstrate that R-R- subjected the Petitioner to battery or extreme cruelty. [REDACTED] specifically states that he was unaware of why the Petitioner was upset on those occasions that she stayed with him and, given the lack of details in the Petitioner's statement, we cannot conclude that these occasions were because of R-R-'s abuse. [REDACTED] also does not discuss his knowledge, if any, of any other incidents between 2007, when her visits to his apartment at night apparently ended, and July 2009, when the Petitioner claims R-R- left the apartment he shared with the Petitioner.

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letter also does not provide sufficient details regarding the two incidents she witnessed in which R-R- allegedly yelled at the Petitioner. And, like [REDACTED] does not discuss her knowledge, if any, of incidents of battery or extreme cruelty between 2007 and 2009.

The letters from [REDACTED] and [REDACTED] do not discuss the individuals' knowledge of any incidents of battery or extreme cruelty by R-R- against the Petitioner.

In response to the RFE, the Petitioner submitted a letter from [REDACTED] LCAT, in which she states that the Petitioner was emotionally and sexually abused by her spouse. [REDACTED] indicates that she met with the Petitioner on one occasion for 55 minutes and that the Petitioner related to her the same claimed incidents of abuse which the Petitioner also recounts in her initial personal statement, including that R-R- pressured her to engage in sexual acts in which she did not want to participate and insulted her. [REDACTED] reports that the Petitioner told her about several other incidents, which the Petitioner does not include in her personal statements, including that R-R- held her neck while she was sleeping, threatened to hit her, and threw glasses at the wall. While we do not question [REDACTED] expertise, we give her assessment little weight as credible evidence to support the Petitioner's claim because the Petitioner did not mention in her personal statements several of the significant incidents listed in the letter from [REDACTED] such as R-R- holding the Petitioner by her neck. In addition, [REDACTED] summary of the Petitioner's testimony is too general for us to conclude that the Petitioner was subjected to battery or extreme cruelty by her spouse.

Accordingly, the Petitioner has not provided credible evidence that R-R- battered her, or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted 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.

### C. Entry into Marriage in Good Faith

In her personal statement submitted in response to the RFE, the Petitioner states that she met R-R- in 2005 on a trip from [REDACTED] to casinos in [REDACTED] New Jersey. She recounts that R-R- proposed to her on July 17, 2005, at a casino in [REDACTED] and they celebrated by toasting with white wine and mineral water. The Petitioner recalls that, during the first year of their relationship, they would go for walks in parks, travel to [REDACTED] and laugh, talk and cuddle. She also relates that they married at city hall in [REDACTED] New York, on [REDACTED] 2006, several friends and neighbors attended, they all went to a restaurant after the ceremony, and R-R- and his friends later went to a bar.

The personal statement, which the Petitioner submits on appeal, does not provide any information relative to whether she entered into her marriage with R-R- in good faith. While the Petitioner's initial personal statement provides a chronology of her relationship with R-R-, it does not provide detailed information regarding the couple's courtship, their decision to marry, wedding ceremony, residences, and shared experiences sufficient to establish that she entered into the marriage with R-R- in good faith. See 8 C.F.R. § 204.2(c)(2)(vii).

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The letters of friends submitted by the Petitioner also do not establish her good faith intentions when marrying. [REDACTED] recounts in his first and second letters that he and his family attended the Petitioner's and R-R-'s marriage ceremony, joined the couple at a restaurant following the ceremony, and he came to their apartment for dinner after they married. [REDACTED] confirms that she and [REDACTED] and their daughter attended the marriage ceremony, went to a restaurant after the ceremony, and had many dinners with the Petitioner and R-R-. [REDACTED] relates that he met R-R- prior to the couple's marriage and that when R-R- told him to whom he was engaged, [REDACTED] told R-R- that he knew the Petitioner, as well. In her letter, [REDACTED] indicates that, when she visited the couple, she found R-R- to be pleasant and compassionate and that he reminded the Petitioner to take her medicine. These letters contain general information about a specific occasion that each letter writer spent with the Petitioner and R-R-, but the writers do not discuss their knowledge of how and when the Petitioner met R-R-, the couple's courtship and decision to marry, the couple's marriage ceremony, or their life together as spouses. In sum, the letters submitted by the Petitioner do not provide sufficient information to establish that the Petitioner entered into her marriage with R-R- in good faith.

The Petitioner also submitted several photographs of her and R-R- on the day of their wedding and at several gatherings on unspecified dates. These photographs confirm that she and R-R- were together on the day that they married each other and other days, but they do not establish that the Petitioner entered into the marriage with R-R- in good faith.

Accordingly, the Petitioner has not established by a preponderance of the evidence that she entered into her marriage with R-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

**D. Lack of Qualifying Relationship**

In addition, in our *de novo* review of the record of proceedings, we determine that the Petitioner does not establish that any prior marriages to which she may have been a party to were terminated prior to her marriage to R-R-. On the Petitioner's passport, which was issued in 1995, her first name is listed, followed by "epouse [F-]," and then an additional surname of ["C-]" is listed. When translated from French to English, "epouse" signifies a married person or spouse.<sup>2</sup> On the birth certificate submitted by the Petitioner, her name is listed as "[A-F-]" and, in the decision by the [REDACTED] Guinea, issued in place of her birth certificate, the Petitioner's name is listed as "[A-F-]."

On a Form G-325A, Biographic Information, submitted by the Petitioner with a Form I-130, Petition for Alien Relative, filed with U.S. Citizenship and Immigration Services (USCIS) in connection with her marriage to R-R-, the Petitioner lists a previous name she used as "[A-E-F-C-]," with "E" signifying "epouse." The Form I-130 also includes "epouse" in her listed names. In an interview on February 21, 2008, at the New York District Office of USCIS, regarding her marriage with R-R-, the Petitioner was asked by a USCIS officer: "Have you ever been married before?" to which she replied

<sup>2</sup> [www.collinsdictionary.com/translator](http://www.collinsdictionary.com/translator), last accessed May 3, 2016.

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“No. I break up along time.” The officer then asked “Were you ever legally married before?” and she replied “No. No.” The Petitioner’s somewhat ambiguous response to the USCIS officer’s first question indicates that she may have previously been married.

The listing of “epouse” by the Petitioner on the Form G-325A and by the government of Guinea on her passport, the inconsistencies between the Petitioner’s passport and birth records regarding her name, as well as the ambiguous information provided by the Petitioner in the interview with a USCIS officer, raise doubts regarding the Petitioner’s statement on the Form I-360 that her marriage to R-R- was her one and only marriage. If the Petitioner was previously married and she cannot establish that any prior marriages are terminated, her Form I-360 would also be denied due to a lack of a qualifying relationship with R-R-, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act, and her resulting ineligibility for immigrant classification under section 201(b)(2)(A)(i) of the Act.

#### IV. 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 A-R-*, ID# 11371 (AAO May 31, 2016)