



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

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

MATTER OF A-D-

DATE: OCT. 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), concluding that the Petitioner had not demonstrated that he had been subjected to battery or extreme cruelty as required to establish his eligibility under section 204(a)(1)(A)(iii) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submitted a brief and claimed that the evidentiary record sufficiently established the requisite abuse. We subsequently issued a notice of intent to dismiss (NOID), notifying the Petitioner of inconsistencies in the record relating to whether the Petitioner entered into marriage with his spouse in good faith and resided with her. The Petitioner timely responded to the NOID with a supplemental statement and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. 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.

The eligibility requirements are explicated in the regulation 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 United States 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.

.....

(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 are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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[.]

....

(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. ANALYSIS

The Petitioner, a citizen of Senegal, last entered the United States October 11, 2000, as a B-2 nonimmigrant visitor. The Petitioner married K-M-¹ a U.S. citizen, in Rhode Island. The Petitioner filed the instant VAWA petition on November 18, 2014, which the Director denied.

Upon review of the record, as supplemented on appeal, the Petitioner has not overcome the basis for denial as he has not established that his spouse subjected him to battery or extreme cruelty. Additionally, the record does not demonstrate that he entered into marriage with K-M- in good faith and that he resided with her.

A. Battery or Extreme Cruelty

The Director properly determined that the Petitioner did not establish that his spouse subjected him to battery or extreme cruelty during their marriage. In his written statements below, the Petitioner recounted the deterioration of the couple's relationship after their marriage. He indicated that K-M- stopped working after their marriage and that he supported both of them. The Petitioner recalled how his spouse began drinking often and coming home drunk, cursed at him, and demanded money for unreasonably expensive items on many occasions. The Petitioner noted generally that there were

¹ Name withheld to protect the individual's identity.

various incidents where K-M- had “crazy outbursts” and broke or threw things at him. He referenced an incident where his spouse smashed a television set after demanding money and another where she threw a chair at him because he did not have money to purchase a dress for her. Similarly, the Petitioner stated that, on another occasion, K-M- tossed his clothes into the garbage after pouring food items all over them. In his first statement, the Petitioner asserted that this incident happened “[e]arly in 2013” and did not recall what triggered the altercation. However, in his second statement, he specified, without further explanation of his recall, that this incident happened in August 2013 and was triggered because K-M- needed money to go celebrate her friend’s birthday and he had suggested that she not go. Although the Petitioner stated that these incidents occurred and provided some information, he did not provide sufficient probative details to demonstrate that his spouse’s conduct rises to the level of battery or extreme cruelty. The Petitioner also asserted without further elaboration that K-M- regularly disrespected him in front of his friends, threatened him with deportation, refused to help him with his immigration papers, and made threats to file false criminal charges that he hurt her. Once again, the Petitioner’s general account of his spouse’s conduct is not sufficiently probative to establish the requisite abuse.

The record also contains the statements of the Petitioner’s friends, [REDACTED] and [REDACTED]. [REDACTED] in his statement, indicated that the Petitioner’s spouse “suddenly” changed her attitude towards the Petitioner and that she often abused the Petitioner because of his immigrant status. However, although he indicated that he witnessed K-M- “being very disrespectful” towards the Petitioner, [REDACTED] did not reference or describe in probative detail any particular instances of battery or extreme cruelty that he witnessed or that the Petitioner recounted to him.² [REDACTED] in his initial statement, indicated that the Petitioner often discussed K-M-’s demands for money and “crazy” behavior towards him, including threatening to file false criminal charges, breaking the television set, and throwing things. However, [REDACTED] account of the claimed abuse only generally referenced what the Petitioner relayed to him and he too did not provide substantive information of any specific incident of claimed battery or extreme cruelty. [REDACTED] also recalled that in early 2013, at the Petitioner’s request, he went and saw the damage K-M- did to the Petitioner’s clothes. However, apart from the general description of the damage and his recall that the Petitioner attributed the damage to his wife, [REDACTED] again did not provide any probative information about the incident. Significantly, in a subsequent statement, [REDACTED] inconsistently stated that the Petitioner appeared to be doing well and was happy, apart from the monetary demands K-M- made, which was the Petitioner’s the “only complaint.” He did not explain why in his earlier statement he had claimed that the Petitioner had recounted several incidents of claimed abuse by K-M-.

On appeal, the Petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) failed to acknowledge the systematic humiliation and degradation to which K-M- had subjected him and which established an overall pattern of violence. Further, relying on *Hernandez v. Ashcroft*, the Petitioner contends that USCIS erred in not recognizing that his spouse exerted control over him through her continuous demands for money, her “crazy outbursts” when he refused, and her threats

² [REDACTED] second statement did not address the Petitioner’s claim of battery and extreme cruelty by K-M-.

of deportation. See 345 F.3d 824, 840 (9th Cir. 2003). In *Hernandez*, the U.S. Court of Appeals for the Ninth Circuit recognized the “substantial evidence regarding the cycle of violence” in the petitioner’s relationship there that acted as a backdrop for finding that other nonviolent actions of the petitioner’s abusive spouse constituted extreme cruelty. 345 F.3d at 837, 840 (emphasis added). As this case arose outside of the Ninth Circuit, *Hernandez* is not a binding precedent. Moreover, the majority of circuits have held, contrary to *Hernandez*, that extreme cruelty is a discretionary determination not subject to judicial review. *Bedoya-Melendez v. U.S. Att’y Gen.*, 680 F.3d 1321 (11th Cir. 2012); *Rosario v. Holder*, 627 F.3d 58 (2d Cir. 2010); *Johnson v. U.S. Att’y Gen.*, 602 F.3d 508 (3d Cir. 2010); *Stapanovic v. Filip*, 554 F.3d 673 (7th Cir. 2009); *Wilmore v. Gonzalez*, 455 F.3d 524 (5th Cir. 2006); *Perales-Cumpean v. Gonzalez*, 429 F.3d 977 (10th Cir. 2005).

Even if we were to defer to *Hernandez* as persuasive authority, the facts constituting extreme cruelty in *Hernandez* are not analogous to K-M-’s actions as described in the record. The petitioner in *Hernandez* was subjected to years of her abusive spouse’s cycle of violence including brutal beatings and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, periods of contrition and emotional manipulation to convince the petitioner to return to him after she had sought refuge with a relative in the United States. *Hernandez* at 829-32, 840-41. The *Hernandez* court determined that the petitioner’s husband’s non-physical actions “in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that ‘may not initially appear violent but that are part of an overall pattern of violence.’” 8 C.F.R. § 204.2(c)(1)(vi).” *Id.* at 840. In this case, the Petitioner’s statements and the supporting affidavits do not set forth sufficient probative details to demonstrate that K-M-’s actions established an overall pattern of violence or that she exerted control over the Petitioner or otherwise, subjected the Petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The Petitioner further contends that the Director erred by applying a more stringent standard than the preponderance of the evidence standard required in these proceedings and further notes that USCIS is required to consider “any credible evidence” in adjudicating VAWA petitions pursuant to section 204(a)(1)(J) of the Act. Although the Petitioner is correct that USCIS must consider any credible evidence relevant to the petition, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS].” Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Under this standard, USCIS is not required to find the Petitioner’s evidence sufficient to establish his eligibility, particularly where, as here, we have specifically noted deficiencies in the record that the Petitioner has not overcome on appeal. On appeal, counsel does not cite any specific relevant evidence that the Director overlooked and our review indicates that the Director considered all relevant, probative evidence and properly exercised discretion in determining its evidentiary value. The Petitioner’s statements below lack probative details about the referenced instances of claimed battery or extreme cruelty. As discussed, the statements of his two friends are insufficient to overcome this deficiency and to meet the Petitioner’s burden of proof by a preponderance of the evidence. We do not discount the harm the Petitioner’s spouse caused, but when considered in the aggregate, the relevant evidence does not establish that K-M- subjected him to battery during their marriage. The Petitioner’s statements and the other relevant evidence also do not indicate that her behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term

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is defined at 8 C.F.R. § 204.2(c)(1)(vi). Although the Petitioner recounted generally that K-M- threw and damaged items, cursed him, and threatened him, he did not provide a probative description of these events or any other specific interactions with her to show that her conduct resulted or threatened to result in physical or mental injury. See 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner also did not establish that any other acts were part of an overall pattern of violence. *Id.* Accordingly, the Petitioner has not established by a preponderance of the evidence that his spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

B. Entry into the Marriage in Good Faith

Although not raised in the Director's decision below, the present record also does not establish that the Petitioner entered into his marriage with K-M- in good faith.³ In his written statements below, the Petitioner provided some general details of the couple's initial meeting in July 2009, their proposal, and wedding. The statements also set forth basic information about K-M-'s family and where her family members resided. In addition, the Petitioner indicated that K-M- and he "waited" for two and half years before marrying and he referenced a honeymoon trip for [REDACTED] that the couple took. However, the details provided by the Petitioner in his statements are not sufficiently probative to establish the nature of the couple's marital relationship or the Petitioner's good-faith intentions. The statements also did not set forth any substantive information about the couple's courtship, their joint residences, or any of their shared experiences, apart from the claimed abuse, to demonstrate the Petitioner's good-faith intentions.

Further, the record indicates that during the two-year period in which he claimed to be "waiting" to marry K-M-, the Petitioner had a daughter with another woman, F-S-. The address for F-S- listed on his daughter's birth certificate is the same as the Petitioner's residence during that period. The Petitioner's statements acknowledged that he had another relationship during the time he claimed to be involved with K-M-. He indicated that he learned about his daughter one month prior to her birth in [REDACTED] and that he named his daughter after his own mother. The Petitioner asserted that he never resided with the mother of his child and he proffered a letter from F-S- indicating that she listed the Petitioner's address only to ensure they received the child's records as she was in the midst of changing residences. However, the Petitioner's own statements do not provide any explanations, and likewise, did not provide any probative details about his interactions with K-M- during this period and the circumstances under which they continued their relationship.

The record includes the statements of the Petitioner's friends, [REDACTED] and [REDACTED] both of whom indicated that they attended the couple's wedding and spent time together on various occasions. However, their description of those occasions is not sufficiently probative to demonstrate their knowledge of the Petitioner's good-faith marital intentions in marrying K-M-.

³ 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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The documentary evidence in the record is also insufficient to establish the Petitioner's good-faith marital intentions. The Petitioner's marriage certificate and the four undated photographs of the Petitioner and K-M- on two unspecified occasions establish a legal marriage and that a relationship existed, but without probative testimony, they do not evidence the nature of the relationship between the Petitioner and his spouse. The remaining documentary evidence, including three rental agreements for the claimed marital residence in [REDACTED] Rhode Island for 2011 through 2013; joint automobile insurance; the Petitioner's health insurance record listing K-M- as a beneficiary; 2012 joint tax returns and tax transcript; the Petitioner's employer letter listing K-M- as a beneficiary on his life insurance policy; and life insurance beneficiary designation form predating their marriage, are similarly insufficient to establish the Petitioner's marital intentions given other inconsistent documentation in the file. For instance, the letter from [REDACTED] the Petitioner's landlord, indicated only that the Petitioner occupied the second floor of her home for nearly four years since May 2011, but made no reference to K-M- ever residing there. Additionally, as noted in our NOID, K-M-'s signature on the 2012 and 2013 rental agreements are inconsistent with her signature on the couple's marriage certificate. Although the Petitioner explained in his NOID response that the difference in the signatures can be explained because K-M- had signed their marriage certificate but had printed her name on both leases, it remains unclear why K-M- would sign her name differently on different documents. In addition, the 2011 rental agreement for the lease period beginning May 2011 is inconsistent with the Petitioner's Form G-325, Biographic Information, dated August 5, 2014, in which he stated that he did not commence residing at the residence until a year later in May 2012. Regardless, as we noted in our NOID, publicly available records do not reflect K-M-'s use of the Petitioner's claimed marital residence, or any other residence, in Rhode Island. Rather, they show that she has only ever maintained a valid driver's license in Massachusetts. In response to our NOID, the Petitioner reasserted that he and K-M- resided together at their claimed marital residence. He also submitted the certificate of title, the vehicle registration record, and payoff letter for an automobile loan that he undertook for one of his two vehicles. However, the documents reflect that the vehicle was registered in his name only. The Petitioner also provided additional evidence of automobile insurance covering K-M-. However, although this shows that the Petitioner had K-M- listed on his automobile insurance, it is insufficient to establish his eligibility in the absence of probative testimony and where the record as a whole does not establish his good-faith marital intentions.

Accordingly, when viewed in the totality, the preponderance of the relevant evidence, including the deficiencies in the Petitioner's statements and the statements of his friends, and the inconsistencies in the documentary evidence submitted below and on appeal, does not demonstrate that the Petitioner entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

C. Joint Residence

The relevant evidence in the record does not demonstrate that the Petitioner resided with his spouse. The Petitioner asserted on his VAWA petition and in his written statement that he resided with K-M- from the date of their marriage in [REDACTED] 2011 through November 2013 and that they last resided together at their shared residence in [REDACTED] Rhode Island. However, as indicated, the Petitioner's 2014 Form G-325 indicated that he did not move into the marital residence until the

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following year in May 2012. Moreover, his written statements provided no probative testimony regarding the Petitioner's shared residences.

The statements of the Petitioner's friends and his landlord also do not establish his shared residence with his spouse. The letter from the landlord does not identify K-M- as a tenant occupying the second floor of the residence, although the Petitioner claims that she resided with him there for nearly two years. The Petitioner's friend, [REDACTED] does not address the couple's joint residence in his letters at all. Although [REDACTED] identified the Petitioner's claimed marital address and indicated that he visited the couple there on multiple occasions, including their wedding, his letters did not provide substantive, probative information of the shared residence or any specific occasion or shared experience with the couple there.

Finally, as noted, publicly available records only show K-M- as having resided and worked in Massachusetts and do not show that she ever resided in Rhode Island, including at the claimed marital residence. The documentary evidence in the record below shows that the Petitioner added K-M-'s name on various accounts and agreements, including rental agreements, automobile insurance, beneficiary designations on his life and health insurance, and an employer letter. However, they do not establish that the Petitioner and his spouse resided together in the absence of probative, credible testimony.

In sum, the record contains inconsistent information regarding the Petitioner's shared residence with his spouse, and his statements lack probative details about his shared marital residence and history. The statements of the Petitioner's landlord and friends and the documentary evidence in the record are insufficient to overcome this deficiency. Upon *de novo* review, the evidence of record does not establish by a preponderance of the evidence that the Petitioner resided with his spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

III. CONCLUSION

On appeal, the Petitioner has not overcome the Director's ground for denial, as he has not established that his U.S. citizen spouse subjected him to battery or extreme cruelty. In addition, the record does not establish that he entered into marriage with his U.S. citizen spouse in good faith and that he resided with her. Accordingly, the Petitioner has not demonstrated his eligibility 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.

ORDER: The appeal is dismissed.

Cite as *Matter of A-D-*, ID# 66341 (AAO Oct. 3, 2016)