



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

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

MATTER OF S-T-M-

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 the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director concluded that the Petitioner did not provide sufficient evidence to establish that he had entered into marriage with his U.S. citizen spouse in good faith.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and claims that the record sufficiently establishes that he entered into marriage with his U.S. citizen spouse in good faith.

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 United States citizen may 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 explained further 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 past . . . .

(b)(6)

*Matter of S-T-M-*

....

(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 standard and guidelines for a VAWA petition under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which provides, 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.

....

(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

### A. Good-Faith Entry into Marriage

In his statements, the Petitioner asserted that he met his U.S. citizen wife, S-C-<sup>1</sup> at a laundromat, that he caught her attention by asking her if her two children were twins, and that he helped her get change for her own laundry. He stated that they exchanged phone numbers, and when he called her that night she asked him to come to her apartment where they subsequently planned a first date at a [REDACTED]. The Petitioner explained that they soon became boyfriend and girlfriend, dated for two

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<sup>1</sup> Names withheld to protect the individuals' identities.

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years, married on [REDACTED] 2013, and had a post-wedding lunch at [REDACTED]. According to the Petitioner, S-C- moved in with him two months after their wedding when her prior lease ended. The Petitioner did not, however, provide details of any shared occasions during their two years of courtship, the marriage proposal, wedding ceremony, or honeymoon, or discuss their shared interactions and daily routines either before or after the wedding ceremony. Instead, the remainder of the Petitioner's statements focused on the abuse to which S-C- subjected him. Accordingly, the Petitioner's statements are insufficient to establish his good-faith entry into marriage with S-C-.

The Petitioner also provided statements from his family and friends, generally attesting that the Petitioner and S-C- had a *bona fide* marriage; however, these individuals primarily focused on describing S-C-'s abusive behavior toward the Petitioner. For example, the Petitioner's brother asserted that he and his wife shared a two-bedroom apartment with the Petitioner and S-C-. He claimed that S-C- moved into the apartment shortly after marrying the Petitioner, and that they were initially happy. The Petitioner's brother also stated that "the legitimacy of their union is absolutely out of the question" but that S-C- became abusive toward the Petitioner soon after their wedding. He did not, however, describe their relationship or provide any discussion to support his claim of the "legitimacy" of their marriage. Similarly, S-S-, the step-daughter of the Petitioner's brother, stated that the Petitioner had dated and married S-C-, and then focused on describing the abuse to which S-C- subjected the Petitioner. The Petitioner included an affidavit from his cousin, W-B-, who asserted that he had known the Petitioner all his life and attested that the marriage between the Petitioner and S-C- was valid. He indicated that he attended their wedding, spent time in their house on a regular basis, and that the Petitioner and S-C- had seemed happy. However, W-B- did not, for example, describe the Petitioner's wedding ceremony or any of the occasions that he visited the Petitioner and S-C- at the marital residence the Petitioner claims they shared.

The Petitioner submitted a statement from S-C- who stated that their marriage "totally and absolutely . . . was entered into in good faith." She asserts that her family and the Petitioner's family approved of their marriage and that "the loves [sic], care, respect and responsibility from [the Petitioner toward S-C- and her children] was never in short supply." S-C- explains that she and her children were "never homeless," and that the Petitioner engaged with her children, taking them to [REDACTED] and carnivals. The remainder of the S-C-'s statement consisted of her descriptions of her own behavior during the marriage, but she did not describe, for example, their courtship, wedding ceremony, honeymoon, and shared marital routines. Moreover, although S-C- discussed her own drug addiction and mental illness during the course of their marriage, her statement does not provide any discussion of the Petitioner's intentions toward her at the time he entered into their marriage.

The Petitioner also provided a letter from S-C- written to the Petitioner when she was incarcerated in [REDACTED] 2014. She requests money for supplies, notes that the Petitioner told her that he would give or get anything for her, and asserts that the Petitioner is the only one on her visitor list, but S-C- does not, for example, describe their marital relationship or the Petitioner's intentions toward her at the time he entered into their marriage.

(b)(6)

*Matter of S-T-M-*

The Petitioner's evidence of his good-faith entry into marriage with S-C- included some envelopes showing that documents were mailed to S-C- at the address on [REDACTED] that the Petitioner claims they shared. In addition, the Petitioner provided an Internal Revenue Service transcript showing that he filed his 2013 federal tax return claiming three exemptions as the head of household, rather than as a specified marital status.

On appeal, the Petitioner asserts that he has provided sufficient evidence of his good-faith entry into marriage with S-C-, and does not include additional evidence.

Although the Petitioner has submitted some documentary evidence in support of his claim to have entered into marriage with S-C- in good faith, the Petitioner's statements and those submitted on his behalf do not provide a probative account of his and S-C-'s courtship, wedding ceremony, shared residence, and shared experiences, apart from the abuse. Accordingly, the Petitioner's evidence is insufficient to establish by a preponderance of the evidence that he entered into his marriage with S-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### B. Joint Marital Residence

As an additional matter, the Petitioner has not established that he resided with S-C-.<sup>2</sup> On the VAWA petition, he asserted that he resided with S-C- from September 2013 to October 2014. Similarly, in his statements the Petitioner indicated that S-C- moved into his apartment after their [REDACTED] 2013 marriage. However, the Petitioner also provided a copy of the bail bond agreement he co-signed after his wife was arrested, which shows that as of [REDACTED] 2014, S-C- was residing at an address on [REDACTED] in [REDACTED] New Jersey, whereas the Petitioner was residing separately at his address on [REDACTED] in [REDACTED] New Jersey. Moreover, the Petitioner's administrative record contains documents that he provided in support of his prior Form I-485, Application to Register Permanent Residence or Adjust Status. These documents include a December 1, 2013, letter from the Social Security Administration to S-C- at her address on [REDACTED]. If S-C- was still residing at the address on [REDACTED] as of December 1, 2013, and through at least February 2014, then she was not residing with the Petitioner during this same period, as the Petitioner has claimed. Based on these discrepancies, the Petitioner has not submitted sufficient credible and probative evidence to establish that he resided with S-C-.

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<sup>2</sup> 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).

### III. 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 *S-T-M-*, ID# 08386 (AAO Oct. 3, 2016)