



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

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

MATTER OF D-T-N-N-

DATE: OCT. 4, 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), concluding that the evidence did not establish that the Petitioner had a qualifying relationship with a U.S. citizen spouse, was eligible for immediate relative classification based on that relationship, was battered or subjected to extreme cruelty perpetrated 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 a brief. The Petitioner claims that the Director did not properly analyze or consider the evidence in the record of proceedings.

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

I. LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an individual who is the spouse of a United States citizen may self-petition for immigrant classification if the individual demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the individual or a child of the individual was battered or subjected to extreme cruelty perpetrated by the individual's spouse. In addition, the individual 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 explained 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].

....

(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 . . . spouse, must have been perpetrated against the self-petitioner . . . 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 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

....

(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.

With regard to verifying an abuse spouse's immigration status, the regulation at 8 C.F.R. § 103.2(b)(17)(ii) states:

Assisting self-petitioners who are spousal-abuse victims. If a self-petitioner filing a petition under . . . section 204(a)(1)(A)(iii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration . . . status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

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).

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II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner, a citizen of Vietnam, married J-M-¹ in [REDACTED] 2014, in Oklahoma. The Petitioner filed the VAWA petition, based on her relationship with J-M-. Based on a preliminary review of the VAWA petition, the Director issued a notification that the evidence submitted by the Petitioner with the VAWA petition did not establish that she is a person of good moral character and entered into the marriage with J-M- in good faith. In response, the Petitioner submitted additional evidence. The Director subsequently issued a request for evidence (RFE), the Petitioner submitted additional evidence in response to the RFE, and the Director denied the VAWA petition. Upon our review of her appeal, we also issued an RFE for evidence that the Petitioner entered into her marriage with J-M- in good faith, as well as a subsequent notice of intent to dismiss (NOID) on the issue of the Petitioner's qualifying relationship to J-M-. The Petitioner timely responded to our RFE and NOID. We have reviewed all of the evidence in the record of proceedings.

III. ANALYSIS

A. Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The Director determined that evidence in the record did not establish a qualifying relationship with a U.S. citizen and the Petitioner's corresponding eligibility for immediate relative classification because the Petitioner did not establish J-M-'s U.S. citizenship, and we further indicated in the NOID that the Petitioner had not demonstrated her common law marriage to J-M-.

On appeal, the Petitioner has met her burden of establishing J-M-'s U.S. citizenship. With respect to whether the Petitioner and J-M- were legally married to each other, the Petitioner relates in her first and third personal statements that she and J-M- obtained a marriage certificate on [REDACTED] 2014, at the courthouse in [REDACTED] Oklahoma, and his cousin, who J-M- indicated was a licensed minister, performed a marriage ceremony the following day in [REDACTED] Oklahoma. The Petitioner indicates that, at the time of the ceremony, she expressed her concerns to J-M- that the ceremony might not be valid because they did not have witnesses to the marriage and she reports that J-M- told her that his cousin was a witness.

The Petitioner recalls that, after exchanging vows, she and J-M- signed the marriage certificate and she believed she was married. According to the Petitioner, J-M- told her family members that they were married and he emailed the marriage certificate to her family and attached it to a [REDACTED] message to her cousin. The Petitioner also submits receipts for a wedding ring for J-M- and a wedding dress for her, as well as photographs of her trying on wedding dresses. In his letter, L-K-L-, the pastor at the church they attended, states that the Petitioner told him that she and J-M- were married and J-M- "provided proof of their marriage via the marriage license." The Petitioner recalls that she and J-M- planned a church wedding for August 16, 2014, but she and J-M- were separated by that date and the church wedding did not occur.

¹ Name withheld to protect the individual's identity.

According to the regulation at 8 C.F.R. § 204.2(c)(2)(ii), “[p]rimary evidence of a marital relationship is a marriage certificate issued by civil authorities.” A marriage certificate was issued to the Petitioner and J-M- by the relevant civil authority in Oklahoma and the Petitioner submits a copy of the marriage certificate but the copy is not of the complete marriage certificate; the portion of the marriage certificate indicating the date on which the marriage ceremony was performed and the signatures of the officiant and witnesses is not included. The Petitioner recalls in her first personal statement that J-M- would not let her see the marriage certificate after the ceremony and, when she asked to see it, he refused and did not explain to her why she could not see it.

Based on a search of publicly available records, it does not appear that the marriage license or certificate issued to the Petitioner and J-M- were returned to the pertinent court clerk, as required by Oklahoma law. *See* 43 Okla. Stat. Ann. § 5(B)(1) (“the marriage license and certificate shall be returned to the court clerk”). Oklahoma law also requires that “[a]ll marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by . . . an ordained or authorized preacher or minister.” However, as held by the Supreme Court of Oklahoma in *In re Love’s Estate*, 142 P. 305 (Okla. 1914), a common law marriage, which does not comply with “statutes which direct that a license must be issued and procured, that only certain persons shall perform the ceremony, that a certain number of witnesses shall be present, and that a certificate of the marriage shall be signed, returned, and recorded,” may nonetheless be valid.

In order to establish a valid common law marriage in Oklahoma, the parties must establish by clear and convincing evidence that they entered their relationship by mutual agreement, consummated their relationship through cohabitation, and held themselves out as spouses. *Standefer v. Standefer*, 26 P.3d 104 (Okla. 2001), *see also Reaves v. Reaves*, 82 P. 490 (Okla. 1905) and *Draughn v. State*, 158 P. 890 (Okla. 1916).

We issued a NOID because the record of proceedings did not indicate that the Petitioner and J-M- established a valid common law marriage as required to demonstrate her qualifying relationship with a U.S. citizen and corresponding eligibility for immigrant classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. The Petitioner responded to the NOID with a brief and a letter from J-H-L-. In her brief, the Petitioner contends that she and J-M- entered their relationship by mutual agreement, consummated their relationship through cohabitation, and held themselves out as spouses. With respect to their mutual agreement, the Petitioner asserts that she and J-M- declared themselves to be married when the marriage ceremony was performed, and there is no evidence of duress on either party when they entered into their marriage. The Petitioner also claims that consummation by cohabitation is established because she and J-M- lived together after the marriage ceremony and until she and her son were taken by the police to a domestic violence shelter.

Finally, the Petitioner avers that she and J-M- held themselves out as spouses and provides examples of when they did so: J-M- emailed a photograph of the marriage certificate to the Petitioner’s family, invited them to attend a subsequent religious marriage ceremony, and J-M- encouraged the Petitioner to inform her family of their marriage; and J-H-L-, whose letter dated July

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23, 2015, was submitted in response to the NOID, states that the Petitioner told him that she and J-M- were married and, in August 2014, J-M- showed J-H-L- their marriage license.

Here, while the period of cohabitation following their marriage ceremony was brief, based on our *de novo* review, the Petitioner nonetheless establishes that she and J-M- entered into a valid common law marriage. The Petitioner and J-M- mutually agreed to their relationship, consummated their relationship through cohabitation, and held themselves out as spouses. Therefore, while the requirement to return their marriage license and certificate to the county clerk was apparently not followed, the marriage between the Petitioner and J-M- is a valid common law marriage.

Accordingly, the Petitioner demonstrates a qualifying relationship with a U.S. citizen and her corresponding eligibility for immigrant classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. We withdraw the Director's decision on this particular issue.

B. Battery or Extreme Cruelty

The evidence in the record of proceedings establishes that J-M- subjected the Petitioner to battery and extreme cruelty during the couple's marriage.

In the Petitioner's personal statements, she credibly and probatively describes acts of violence committed by J-M- against her during their marriage, including forced sex and other physical assaults. The Petitioner also provides a letter in support of her VAWA petition from [REDACTED] M.S., a licensed professional counselor with [REDACTED] which operates a domestic violence shelter in [REDACTED] Oklahoma. [REDACTED] indicates that she was contacted by a family member of the Petitioner who was concerned that J-M- might harm the Petitioner and [REDACTED] then contacted the local police department. [REDACTED] reports that the Petitioner resided temporarily at the [REDACTED] shelter and she spoke with the Petitioner a few times while she was at the shelter. [REDACTED] provides her professional opinion that the Petitioner was "isolated and controlled, and sexually abused by [J-M-]." In response to the RFE, the Petitioner submits a letter from [REDACTED] the Residential Services Director at [REDACTED] who states that the Petitioner resided at the [REDACTED] domestic violence shelter from August 15, 2014, to November 3, 2014. [REDACTED] reports that, based on the information provided by the Petitioner to the staff at [REDACTED] the Petitioner was battered and subjected to extreme cruelty by J-M-.

The evidence in the record of proceedings is sufficient to establish by a preponderance of the evidence that J-M- battered the Petitioner and that J-M-'s behavior constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, she has satisfied section 204(a)(1)(A)(iii)(I)(bb) of the Act, and we withdraw the Director's decision on this particular issue.

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C. Entry into Marriage in Good Faith

The evidence in the record of proceedings establishes that the Petitioner entered into her marriage with J-M- in good faith.

In her personal statement, the Petitioner credibly and probatively describes her courtship with J-M-, their wedding, and their shared residences and experiences. The Petitioner states that she met J-M- in February 2014 on an on-line dating website and they communicated via [REDACTED] on-line chatting, video-chatting, and texting. The Petitioner met J-M- in person on March 30, 2014, when she traveled to the United States to visit family members and to meet J-M-. She explains that she and J-M- drove from California to Oklahoma, where he lived, and she stayed in his apartment with him, met his family members, and traveled with J-M- to his worksites in Texas, Arkansas, Illinois, and throughout Oklahoma.

The Petitioner recounts that she fell in love with J-M- because she felt he was loving and caring. She recalls that J-M- introduced her to a Vietnamese church and she converted to Christianity. The Petitioner describes that she and J-M- became engaged and, when the pastor at the Vietnamese church was unable to marry them, J-M- arranged for his cousin, who J-M- claimed was a licensed minister, to marry them in [REDACTED] 2014, and they made plans for a religious ceremony that was to occur in August 2014. The Petitioner also states that her son came to live with her and J-M- in June 2014 and J-M- treated her son well.

In our RFE, we noted that the Petitioner indicates in a personal statement submitted in response to the Director's RFE that J-M- is the father of her daughter, who was born on [REDACTED]. The Petitioner reports that she did not list J-M-'s name on her daughter's birth certificate because the Petitioner did not "want to have anything more to do with him," but she subsequently initiated a paternity action in California on the advice of her social worker. We issued the RFE to allow the Petitioner to submit documents related to the paternity action. In response to the RFE, the Petitioner submits a personal statement, notifications that a child support action has been opened and reopened, and a notification regarding the status of this action.

In her personal statement submitted in response to our RFE, the Petitioner reiterates that J-M- is the father of her daughter and explains that she did not include his name on her daughter's birth certificate because he was abusive to the Petitioner and she was not sure if she wanted him involved in her daughter's life. The Petitioner then recounts that she decided it was unfair of her to deny her daughter a relationship with her father so she spoke on the telephone with J-M- in June 2015 to notify him of the birth of their daughter. She also indicates that, in that telephone call, J-M- accepted that he is the father of their daughter, seemed happy, and requested photos of their daughter.

In his letter, L-K-L-, the pastor at the church attended by the Petitioner and J-M-, indicates that he met the Petitioner and J-M- at the church and, while he declined to marry them, he agreed to allow them to use the church for their religious wedding ceremony. He also reports that he visited with the couple in an effort to resolve issues in their relationship. The Petitioner submits a letter from H-G-, the Petitioner's cousin, in which she states that the Petitioner sent her photographs of her and J-M-

traveling and spending time with the Petitioner's son. H-G- reports that they were a "happily married couple." J-H-L- indicates in his letter submitted in response to the NOID that he met the Petitioner and J-M- at church, he and his wife hosted them for lunch while the Petitioner and J-M- were engaged, and he observed that the Petitioner and J-M- "cared for each other very much and were both happily committed to one another in a loving relationship." The Petitioner's documentary evidence, which consists of greeting cards, receipts, a bank statement, and photographs, also supports the Petitioner's claim that she entered into the marriage with J-M- in good faith.

Accordingly, the Petitioner satisfies section 204(a)(1)(A)(iii)(I)(aa) of the Act, and we withdraw the Director's decision on this particular issue.

IV. CONCLUSION

On appeal, the Petitioner overcomes the Director's grounds for denial and establishes that her spouse is a U.S. citizen, he subjected her to battery and extreme cruelty, and she entered into the marriage with her spouse in good faith. Accordingly, the Petitioner is eligible 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 been met.

ORDER: The appeal is sustained.

Cite as *Matter of D-T-N-N-*, ID# 71379 (AAO Oct 4, 2016)