U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-M-D-

DATE: SEPT. 30, 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, concluding that the Petitioner had not established that she entered into the marriage in good faith and that her former spouse subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that her U.S. citizen former spouse subjected her to battery or extreme cruelty and that she entered into their marriage in good faith.

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.

Section 204(a)(1)(J) of the Act further states, in pertinent part:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall

> consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

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

> (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[.]
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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. ANALYSIS

The Petitioner is a citizen of Angola, who last entered the United States as a B-2 non-immigrant visitor. The Petitioner married her second spouse, J-D-, [1] a U.S. citizen, and later filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, (VAWA petition).

A. Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal does not demonstrate that the Petitioner was subjected to battery or extreme cruelty by J-D-. The Petitioner submitted below: personal statements and letters from her friends, J-Y-A and C-N-A-B-; affidavits from her pastor, V-N- and from her father-in-law, C-S-D-; a copy of J-D's prior Criminal History; a record of J-D-'s psychological evaluation; a copy of J-D's completion of domestic violence counseling certificate; and a record from the

In her personal statements, the Petitioner recounted that things started well in her marriage to J-D-, but that later, "things became a nightmare." She recalled that because J-D- had a felony conviction, it was difficult for him to find employment and that when they argued over his lack of employment, J-D- became angry and left the house. On another occasion, after they argued over the discrepancies in their United States Immigration Services' (USCIS) interview, the Petitioner recounted that J-D- once again left the home. She later found out that he went to stay at another woman's apartment. The Petitioner explained that J-D-'s fear of interrogation and his Attention Deficit Disorder (ADD) contributed to the discrepancies during his USCIS interview.

The Petitioner recounted that once in 2010, she suggested to J-D- that he should return to school to learn a trade. She stated that he became angry, pushed her, and threatened to beat her up. She further stated that she did not call the police for fear that he would harm her. She recounted about a time when the power was shut off in their apartment for three months, J-D- did not reside with her and returned only when the power was turned back on. Upon his return, J-D- brought women into

[1] Initials are used in this decision to protect the identities of the individuals.

their home, asking her to sleep in the in living room while he slept in the bedroom with the women. The Petitioner recalled that in February 2011, she and J-D- were evicted from their apartment and they went to live with a friend. The Petitioner recounted that after an argument in March 2012, J-D- left the home and she never saw him again. The Petitioner's statement did not contain sufficient probative details that J-D- battered her or subjected her to extreme cruelty.

In a subsequent statement, the Petitioner recounted that during the time that the electricity was turned off in her home, J-D- called her periodically to see if it had been turned back on. When she told him that it was not, she stated that J-D- called her names. The Petitioner further stated that J-D- told her that he slept with other women because they gave him money and she was unable to do so. The Petitioner recounted that in March 2012, before they were separated, J-D slapped her and told her that she was not worth anything. She recalled that her friend, who was in the house at the time, saw her crying and screamed at J-D- telling him to leave the house or she would call the police. The Petitioner recounted that when J-D- left that day she never saw him again. The Petitioner did not further describe this incident.

The letters from the Petitioner's friends also did not demonstrate abuse during the Petitioner's marriage to J-D-. In her letter J-Y-A- stated that she has known the Petitioner for years and that when J-D- and the Petitioner were evicted from their residence in 2010, she offered them a place to stay. She recalled that during the time that J-D- and the Petitioner resided at her home, she observed the strain in their marriage. She related that they frequently argued over J-D-'s inattentiveness, his staying out late, and his lack of financial and emotional support for the Petitioner. J-Y-A did not provide substantive details of specific incidents of battery or extreme cruelty, nor did she provide a substantive description of her contemporaneous observations of the effects of any abuse on the Petitioner. The Petitioner's friends C-N-A-B-, her Pastor N-V-, and the Petitioner's father-in-law C-D-, all attested to the Petitioner's good faith entry into her marriage to J-D-, but they did not address the claimed abuse.

The record from the [redacted] showed that the Petitioner sought counseling for depression. The counselor's notes reflected that the Petitioner reported concerns relating to stress from deportation and the effect that it has on her relationship with J-D-. However, the counselor's notes did not provide additional, probative details regarding any specific incidents of abuse.

In order to demonstrate that J-D- had a history and propensity for violence, the Petitioner submitted her spouse's prior criminal history, a psychological exam of J-D- completed when he was [redacted] years old, and evidence that J-D- completed Domestic Violence Counseling. The criminal history records reflect that J-D- was arrested for burglary and first degree assault of person on the property. The arrest occurred in 2006, three years prior to the Petitioner's marriage to J-D-. The psychological exam was completed when J-D- was [redacted] years old, 11 years before the Petitioner met J-D-. The completion of the domestic violence counseling was part of a court ordered condition of probation, stemming from the 2006 arrest and not for abusive behavior towards the Petitioner. Accordingly, less weight is given to this evidence and without probative testimony, the record does not demonstrate that J-D- battered or subjected the Petitioner to extreme cruelty.

On appeal, the Petitioner submits her previously submitted documents, reasserts her eligibility, and contends that she has provided sufficient evidence to establish that J-D- subjected her to battery and extreme cruelty. However, the Petitioner's descriptions of the claimed incidents of abuse are generalized and vague, and lacked substantive, detailed information sufficient to demonstrate that she was subjected to battery and extreme cruelty during her three-year marriage. The Petitioner's testimony and those of the affiants who submitted testimony on her behalf are insufficient to establish that her spouse's actions were comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the Petitioner has not established by a preponderance of the evidence that J-D- subjected her to battery or extreme cruelty during the marriage as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act..

B. Good-Faith Entry into the Marriage

The relevant evidence submitted below and on appeal does not demonstrate the Petitioner's entry into her marriage with J-D- in good faith. To establish good faith marriage, the Petitioner submitted personal statements, a letter from her friends, affidavits from her pastor, an affidavit from her father-in-law, a marriage certificate, federal income tax return for 2009, and photographs.

The marriage certificate shows that the couple entered into a legal marriage, but it is not sufficient to establish good faith marriage. The photographs showed the Petitioner and J-D- at their wedding and one other social occasion, but without probative testimony, they do not establish the nature of the relationship or the Petitioner's good faith intentions in entering into the marriage. The federal tax return for 2009 indicates that the Petitioner is married and lists J-D- as her spouse. However, it is not signed and does not indicate whether it was filed with the Internal Revenue Service. The collection letter from the utility company showed that both the Petitioner's and J-D-'s names were on the utility bill, but it does not indicate their relationship to one another. Accordingly, this documentary evidence does not establish that the Petitioner entered into her marriage with J-D- in good faith.

In her first personal statement, the Petitioner briefly recounted how she met J-D- through her church. She recounted that they dated for about a year before they were married. The remainder of her statement focused on the claimed abuse in the relationship. The Petitioner did not provide further probative details about her relationship with J-D-, their courtship, wedding ceremony, shared residence and experiences, to establish that she entered into the marriage with J-D- in good faith.

In a subsequent statement, the Petitioner recounted that she met J-D- in the summer of 2008 at the [redacted] She stated that during their courtship, she and J-D- spent time in church, socialized with friends and family, and dined with J-D-'s family during the Christmas holidays. The Petitioner recounted that in August 2009, J-D- gave her a ring, proposed marriage, and [redacted] months later, they wed at the courthouse. The Petitioner stated that J-D-'s father and stepmother were present for the nuptials and that afterwards, they celebrated with family and friends at her father-in-law's house. The remainder of the Petitioner's statement addressed the claimed abuse in the marriage. In her subsequent personal statement, the Petitioner provided some additional details but she provides only a cursory description of their decision to marry, their wedding

ceremony, and specific experiences that she shared with J-D- during their marriage.

Likewise, the statements of the Petitioner's friends lacked substantive information regarding their knowledge of the relationship and the Petitioner's marital intentions. In her statement, J-Y-A- stated that she has known the Petitioner for a long time and that she met J-D- though the Petitioner. J-Y-A- also indicated that the couple resided with her for one year after their marriage, but she did not describe any specific contact with the Petitioner and J-D-. In her letter, C-N-A-B- stated that she was a family friend of the couple. She recalled that she used to go to church and socialize with them, but she did not further address her interactions with the Petitioner and J-D- during the couple's marriage. Neither friend provided substantive information that would establish the Petitioner's intentions in entering into the marriage.

The Petitioner's pastor, N-V- stated that he met the Petitioner through the and that she was a member of the church choir and an active member of the church community. He recalled that the couple attended pre-marital counseling at the church and he observed that the couple loved each other but did not provide probative details about his knowledge of their relationship.

In his statement, the Petitioner's father-in-law, C-D- attested that the Petitioner met his son at church. He recalled that he and his wife encouraged the couple to get married because the Petitioner was a good influence on his son. He recounted that he and his wife attended the couple's wedding. In his statement, C-D- did not further address his interactions with the Petitioner and J-D- during the couple's marriage, or his knowledge of the Petitioner's good-faith marital intentions.

On appeal, the Petitioner offers little insight into the her good faith intentions in marrying J-D- As the Petitioner's statements, nor the letters from her friends and family, provide probative accounts of the couple's courtship, wedding ceremony, shared residence, or shared experiences, the record does not establish by a preponderance of the evidence that the Petitioner entered into her marriage with J-D- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

III. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility. 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 R-M-D-*, ID# 7978 (AAO Sept. 30, 2016)