



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

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

MATTER OF N-R-I-

DATE: OCT. 5, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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 of the Vermont Service Center denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition), concluding that the Petitioner did not establish that she entered into her marriage with R-B-¹ in good faith, that she resided with him, that R-B- battered or subjected her to extreme cruelty, or that she is a person of good moral character. We dismissed the Petitioner's appeal, finding that although the Petitioner established that R-B- subjected her to battered or extreme cruelty during their marriage, she did not establish that she entered into marriage with R-B- in good faith, that she resided with him, and that she was a person of good moral character. We also determined that the Petitioner did not establish a qualifying relationship with R-B- and her eligibility for immediate relative classification based on such a relationship because she did not submit evidence of the legal termination of her prior marriage.

On motion to reopen and reconsider, the Petitioner submits additional evidence and reasserts her eligibility.

Upon review, we will deny the motions.

I. LAW

A motion to reopen is based on evidence of new facts. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). The

¹ Initials are used throughout this decision to protect the identities of the individuals.

Petitioner's submission on motion contains new evidence and assertions, but does not establish error in our prior decision.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The 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. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

In dismissing Petitioner's appeal, we found that evidence she submitted lacked probative value sufficient to overcome the Director's decision and that other evidence provided little evidentiary value in light of countervailing evidence in the record. With the motion the Petitioner submits a brief; a self-affidavit; and affidavits from others in support of the Petitioner's claim of joint residence with and good faith marriage to R-B- and of her good moral character. She also submits copies of previously-submitted material in addition to new evidence, including a certificate of divorce from Nigeria; a letter from a bank with three bank deposit slips for an account bearing the names of the Petitioner and R-B-; a 2013 rental lease extension; a 2014 Internal Revenue Service (IRS) tax refund check to the Petitioner and R-B-; auto insurance identification cards from 2012; a 2015 water bill showing the names of the Petitioner and R-B-; medical records for the Petitioner; and police clearance letters.

The evidence in the record of proceedings, including that submitted on motion, does not overcome our prior decision. Although evidence submitted on motion establishes that the Petitioner is a person of good moral character and demonstrates that she has a qualifying relationship with a U.S. citizen and would be eligible for immediate relative classification, the Petitioner has not established that she entered into her marriage with R-B- in good faith and resided with him during their marriage. She also has not demonstrated that our previous decision regarding these grounds was based on an incorrect application of law or policy.

A. Joint Residence

In dismissing the Petitioner's appeal, we found that relevant evidence submitted below did not demonstrate that she resided with R-B- and that she did not submit sufficient probative evidence on appeal to overcome this ground for denial. We determined that the evidence did not set forth a clear timeline of shared residences or provide sufficient probative information to establish that the Petitioner resided with R-B- during their marriage. We specifically determined, in part, that the Petitioner's personal statements differed from the information gathered by USCIS investigators during a site visit and that her personal statements did not provide substantive information sufficient to demonstrate that she resided with R-B-. We found that the documentary evidence submitted by the Petitioner did not demonstrate that she and R-B- resided together and that although the statements by a former neighbor, M-C-, and the Petitioner's pastor, J-A-, indicated that there may

have been some connection between R-B- and the Petitioner, they were not sufficient to establish their joint residence.

On motion, the Petitioner contends that she and R-B- shared a residence and addresses the 2012 site visit by USCIS investigators at her [REDACTED] residence. The Petitioner states that her sons let investigators into the residence and that she informed them that R-B- had left for work in a Toyota Corolla that they shared. She further describes the investigators' visit and states that she identified for them items and rooms she shared with R-B-. The Petitioner's assertions, however, are inconsistent with the record of the 2012 investigation which states that the Petitioner herself let investigators into her residence and told them R-B- had gone to a mechanic shop to hang around with friends. The investigation report states the Petitioner told investigators that R-B- drove a Toyota Corolla that they shared, but a neighbor reported having never seen the vehicle. In response to a request for evidence from the Director, the Petitioner maintained that the car had always been parked in the garage and in her statement on motion asserts again that they shared the vehicle. Insurance documents from 2012 showing the [REDACTED] address, however, indicate that the Petitioner listed only a Honda van, and thus do not support that a car belonging to R-B- was housed at the [REDACTED] address where the Petitioner's maintains that she and R-B- shared residence. The Petitioner's statements on motion do not resolve these discrepancies.

A bank letter submitted on motion indicates that an account for the Petitioner and R-B- was opened in March 2009 and closed in December 2010 and the Petitioner submits three deposit slips showing deposits to that account, in March 2009 for \$1,000 and \$300 and in January 2013, for \$40 even though the bank letter states the account was closed in 2010. Although these documents show that the Petitioner had an account with R-B-, the record does not indicate regular or consistent access by both the Petitioner and R-B- to establish the comingling of funds.

The affidavits of the Petitioner's friends submitted on motion are also insufficient to establish her joint residence with R-B-. E-E-, a friend of the Petitioner, states that she visited the Petitioner's home on [REDACTED] in 2009 and saw R-B- there and that she also saw him when she visited the Petitioner's residence on [REDACTED] and at a restaurant that the Petitioner operated. M-C-, a former neighbor of the Petitioner at the [REDACTED] address and a friend of her sons, states that he visited there to play video games and basketball. He states that he saw R-B- there with the Petitioner and that they were sometimes laughing and sometimes tense. M-H-, who identifies himself as police officer, states that he met the Petitioner at her café and agreed to work off duty security there. He states that he saw the Petitioner and R-B- interact at the café, that he saw them leave together, and that he twice drove the Petitioner home to [REDACTED] because R-B- did not come to get her and they had only one car. Although they relate observances of a relationship between the Petitioner and R-B-, the affidavits do not describe in probative detail a shared residence or any interactions of the couple they observed at the claimed marital home sufficient to support the Petitioner's contention that she and R-B- resided together.

Addressing inconsistencies in documentation addressed in our appellate decision, the Petitioner states on motion that her marriage certificate was mailed to a [REDACTED] address of R-B-

because that was the address on his driver's license when they married. She states that a lease for an apartment on [REDACTED] listed her and R-B- as tenants from March 2009 to March 2010, but that her sister leased the apartment for her when she and R-B- married in 2008 and began living there. She states the lease was then transferred to her and R-B- in 2009. The Petitioner submits a 2013 lease extension for an apartment on [REDACTED] with her name listed as the tenant and with [REDACTED] on a signature line, but there is no specific identification of R-B- as included on the lease. The Petitioner contends that a driver's license number for R-B- is not included on automobile insurance documents because it was not required by the insurance company, but she claims that his name on the policy is sufficient to show that they lived together at the [REDACTED] address. As noted above, however, the insurance certificate does not list a Toyota Corolla that the Petitioner claims they shared while residing together on [REDACTED]. The IRS tax refund check, dated December 2014, includes the names of the Petitioner and R-B-, but lists a [REDACTED] address rather than [REDACTED] or [REDACTED] where the Petitioner maintains they shared residence. The Petitioner does not address or resolve these inconsistencies on motion.

The Petitioner's statement and additional evidence submitted on motion do not resolve inconsistencies in the record and are insufficient to establish that the Petitioner and R-B- shared joint residence as section 204(a)(1)(A)(iii)(II)(dd) of the Act requires.

B. Entry into Marriage in Good Faith

In dismissing the Petitioner's appeal, we found that the relevant evidence submitted below did not demonstrate that the Petitioner entered into her marriage with R-B- in good faith and that she did not submit sufficient evidence on appeal to overcome this ground for denial. We concluded, in part, that the Petitioner's initial personal statement did not provide probative detail regarding her relationship with R-B-, their courtship, wedding ceremony, and experiences. We determined that other evidence in the record of proceedings, notably a psychological diagnostic examination, contained material discrepancies with the information in the Petitioner's initial personal statement and, accordingly, diminished the weight of her initial personal statement. We noted that a statement from the Petitioner's former neighbor, M-C-, did not provide substantive information regarding his knowledge of their relationship and that the Petitioner's pastor, J-A-, indicated that church members visited the Petitioner and observed R-B- present, but he did not provide other information regarding his knowledge of the relationship between the Petitioner and R-B- or the Petitioner's marital intentions. We further found that although documents submitted by the Petitioner indicated some connection between R-B- and her, they did not provide probative information regarding the couple's courtship, wedding ceremony, shared residences, or shared experiences in order to demonstrate the Petitioner's marital intentions.

On motion, the Petitioner provides additional detail about meeting R-B-, including that she observed him at a hair salon in 2007 before they were introduced, how they introduced themselves to each other, that he gave her his telephone number, that they began courting in January 2008, that they first went to a Chinese restaurant, and that she told him about her life. The Petitioner states that R-B- took her many places, took her shopping, bought clothes for her and her children, and made her feel

special. She states that he listened to her, was kind, and she believed they could build a strong relationship because he seemed genuine and compassionate. The Petitioner maintains that she was living with her sister's family and would visit R-B- during the day time until they decided to move in together in March 2008 when her sister leased an apartment for her. She states that they had a March 2008 marriage at a courthouse when her sister was in Nigeria and her children were in school, and that she and R-B- then went to a Chinese restaurant to celebrate.

The affidavit from the Petitioner's pastor, J-A-, states that he believes the Petitioner married in good faith, and that she and R-B- came to his church for counseling due to marital problems that he believes stemmed from financial problems, being from different cultures, and the abuse from R-G-. However, J-A- provides little detail, such as when the counseling sessions took place or their regularity. The Petitioner's affidavits make no mention of marital counseling with her pastor.

In her affidavit, E-E- contends that when the Petitioner was in the hospital in 2013 she saw R-B- there. The affidavit from J-A- also states that R-B- was by the Petitioner's side at the hospital and that he showed that he "really cared for her." However, in the Petitioner's affidavit below she maintained that R-B- did not come to the hospital when she was there, but rather informed her he was sending divorce papers. The psychological diagnostic examination indicated that the Petitioner reported that R-B- came once to the hospital to complain about her sons. In addition to these inconsistencies, the affidavits address K-B-'s behavior, but are not probative of the Petitioner's marital intentions.

The additional information in the Petitioner's statement on motion is general and insufficient to establish the Petitioner's good faith at the time of her marriage to R-B-. Affidavits of the Petitioner's friends state that she married R-B- in good faith, but are inconsistent with other evidence and lack probative detail of, for example, any interactions they observed between the Petitioner and R-B- during their courtship that would provide insight into the Petitioner's intentions when she entered into marriage with R-B-.

On motion, the Petitioner fails to establish that she entered into marriage with R-B- in good faith, as section 204(a)(1)(A)(iii)(I)(aa) of the Act requires.

C. Good Moral Character

Primary evidence of a VAWA self-petitioner's good moral character is his or her affidavit, accompanied by a police clearance or criminal background check from each place the Petitioner resided for six or more months during the three-year period immediately preceding the filing of the VAWA petition. 8 C.F.R. § 204.2(c)(2)(v). The Director determined that the Petitioner provided insufficient evidence to establish her good moral character because police clearances submitted by the Petitioner did not cover all names used nor did she submit other evidence of her good moral character. On appeal, we affirmed the Director's decision that the Petitioner did not submit the required clearances or background checks in all of the names she has used or an explanation for why they are not available.

On motion, the Petitioner submits letters from the [REDACTED] and [REDACTED] using multiple variations of her name and indicating no criminal records were found for a period of time that covers the requisite period before filing her VAWA petition. The Petitioner asserts that she has never been arrested, that she has never committed a crime or been convicted of a crime, and that she has no criminal record. She also submits affidavits from individuals knowledgeably attesting to her good character. With the evidence submitted on motion the Petitioner has established that she is a person of good moral character, as section 204(a)(1)(A)(iii)(II)(bb) of the Act requires.

D. Qualifying Relationship and Corresponding Immigrant Classification

In dismissing the appeal, we also found that the relevant evidence in the record of proceedings did not demonstrate that the Petitioner had a qualifying relationship with her U.S. citizen spouse and that she was therefore eligible for immediate relative classification. We noted that the regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires proof of the termination of the Petitioner's prior marriages and that evidence was not sufficient to demonstrate that the Petitioner's marriage to R-I- was lawfully terminated prior to her marriage to R-B-.

On motion, the Petitioner submits a Certificate of Divorce issued by the [REDACTED] Government in Nigeria along with a previously-submitted Customary Court [REDACTED] at [REDACTED]. Both documents indicate that the Petitioner's marriage to R-I- was dissolved on [REDACTED] 2006. According to the U.S. Department of State Visa Reciprocity Schedule for Nigeria, for marriages under Native Law and Custom a divorce decree may be issued by a Customary Court, traditional marriages may be formally dissolved by a Customary Court and a divorce decree issued by the court, and a legal method of divorce involves the bride or her family returning the bride price to the groom or his family.² Here, the Customary Court document granting divorce indicates that the Petitioner's marriage was contracted under Native Law and Custom, that the bride price was paid, and that the Petitioner deposited the amount with the court. Therefore, the Petitioner establishes that her prior marriage was terminated and demonstrates a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

III. CONCLUSION

The Petitioner does not establish that our prior decision was based on an incorrect application of law or policy with respect to whether she established that she shared joint residence with R-B- and entered into her marriage with him in good faith. Accordingly, the Petitioner remains ineligible for VAWA classification and the motion to reopen and reconsider will be denied.

² See U.S. Department of State, Visa Reciprocity Schedule, Nigeria, <http://travel.state.gov/content/visas/en/fees/reciprocity-by-country/NI.html>.

Matter of N-R-I-

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of N-R-I-*, ID# 554825 (AAO Oct. 5, 2017)