



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

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

MATTER OF P-W-H-

DATE: DEC. 4, 2015

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) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition and we summarily dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

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 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 record in this case indicates that the Petitioner was in removal proceedings at the time of her marriage. In such a situation, section 204(g) of the Act prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien's right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the Petitioner resided outside of the United States for two years after her marriage, which forms the basis for the instant proceedings. Accordingly, section 204(g) of the Act bars approval of this petition unless the Petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, which states:

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Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The eligibility requirements for immigrant classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act are explained at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) of the Act

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Kenya who entered the United States as an F-1 nonimmigrant student on January 20, 2009. On February 8, 2012, the Petitioner was placed in removal proceedings. The Petitioner married K-H-¹ a U.S. citizen, on [REDACTED] 2013, thus subjecting herself to the bar on approval of immigrant petitions based on marriages entered into while the alien is in removal proceedings at section 204(g) of the Act. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on April 25, 2014.² The director subsequently issued a request for evidence (RFE) of the Petitioner's good-faith entry into the marriage and her eligibility for

¹ Name withheld to protect the individual's identity.

² The Petitioner's marriage to K-H- terminated in a divorce on [REDACTED] 2015.

the bona fide marriage exemption from section 204(g) of the Act. The Petitioner responded with additional evidence, which the Director found insufficient to establish eligibility. The Director denied the Form I-360 because the Petitioner did not establish that she complied with the provisions of section 204(g) of the Act and was therefore eligible for immediate relative classification. The petitioner timely appealed the denial of the Form I-360, which we summarily dismissed.

The Petitioner has filed a motion to reopen and a motion to reconsider. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, the Petitioner submits a brief and additional evidence. We review these proceedings *de novo*.

III. ANALYSIS

A. Section 204(g) of the Act

Because the Petitioner married her spouse while she was in removal proceedings and did not remain outside of the United States for two years after their marriage, she must establish the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992); *see also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”). To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act; 8 C.F.R. § 245.1(c)(8)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

The Director determined that the Petitioner did not establish the *bona fides* of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. The regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B) provides that the types of documents an alien may submit to establish eligibility for the bona fide marriage exemption include, but are not limited to: (1) Documentation showing joint ownership of property; (2) Lease showing joint tenancy of a common residence; (3) Documentation showing commingling of financial resources; (4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary; (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration

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officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

In her initial affidavit, the Petitioner stated that she met K-H- in August 2012 at a birthday party. She recalled that K-H- asked her to dance and at the end of the dance they exchanged contact information. She recalled that they communicated with each other and went out to dinner together and cooked at her home. The Petitioner recounted that on December 12, 2012, during dinner at a restaurant, K-H- proposed to her, and that she quickly accepted his marriage proposal. She recounted that two weeks later K-H- moved into her home and helped her with her child from another relationship and also helped pay the bills. The Petitioner stated that she and K-H- were married at a county courthouse and a few of their friends attended the civil marriage ceremony. She stated that afterwards they went out to dinner and then to a dance. The Petitioner recalled that K-H- was helpful with household chores, and he would give her flowers and spend time with her. She stated that they once went to [REDACTED] and met K-H-'s sisters and cousins. In response to the RFE, the Petitioner added that she wanted to have a child with K-H- and that he took care of her daughter when she had to go somewhere. The Petitioner, however, only briefly described meeting K-H- and did not discuss her courtship, subsequent engagement, joint residence, or any of her shared experiences with K-H- in probative detail, apart from the abuse.

The Petitioner also submitted letters from her neighbors, [REDACTED] and her friend, [REDACTED] stated that she was friends with the Petitioner and K-H- and visited the couple, but her affidavit focused mainly on the marital abuse. [REDACTED] attested to the Petitioner's residence with K-H- but stated that she did not get to know the Petitioner personally and saw that she was "living with a guy" and "did not know who he was" until the Petitioner told her that he was her spouse. [REDACTED] only briefly stated that he saw the Petitioner together with K-H- and her baby. Their letters provided no detailed observations of the Petitioner's interactions with K-H- during the couple's courtship or marriage. The Petitioner also provided text messages between herself and a neighbor, [REDACTED] stating that "someone" resided with the Petitioner, but the messages do not contain any probative information.

The Petitioner provided photographs, utility and cellular telephone bills, a towing service bill and a vehicle certificate of title as documentary evidence. Although the Petitioner submitted one joint cellular telephone bill, the utility bills are addressed to the couple but in the Petitioner's name only as the account holder. The towing service bill shows K-H- as the customer and the vehicle certificate of title is in the Petitioner's name only. The six undated photographs of the Petitioner and K-H- taken at unspecified locations are of little probative value without detailed testimony from the Petitioner.

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On motion, the Petitioner contends that her own affidavit, the shared utility bills, statements from her friends, and evidence of her shared residence demonstrate that she entered into a *bona fide* marriage with K-H-.³ A full review of the evidence does not establish the Petitioner's good-faith entry into the marriage by clear and convincing evidence. As discussed above, the Petitioner generally described the first time she met K-H-, and she did not describe her courtship, engagement, marital residence and shared experiences with K-H- in meaningful detail such that it would support her good-faith marriage claim. None of the Petitioner's acquaintances discuss in probative detail their observations of the Petitioner's interactions with or feelings for K-H- during the couple's courtship or marriage. On motion, the Petitioner submits a single cable bill addressed to her and K-H-. While the Petitioner submitted some documentation showing a shared residence, her testimonials and the statements from her neighbors and a friend do not demonstrate her good-faith marital intent. Accordingly, the Petitioner has not demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. The petitioner has therefore not established that she is exempt from section 204(g) of the Act.

B. Eligibility for Immediate Relative Classification

Because the Petitioner is not exempt from section 204(g) of the Act, she has also not demonstrated her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

IV. CONCLUSION

On motion, the Petitioner has not demonstrated that she complied with the provisions of section 204(g) of the Act, and therefore she is not eligible for immediate relative classification based on her marriage to a U.S. citizen. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of P-W-H-*, ID# 15587 (AAO Dec. 4, 2015)

³ The Petitioner refers to a psychological evaluation by [REDACTED] a student therapist who diagnosed her with PTSD. However, the evaluation focuses predominately on abuse in the Petitioner's marriage and only briefly discusses the Petitioner's courtship with K-H-.