



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

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

MATTER OF P-O-

DATE: DEC. 14, 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 United States 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 dismissed a subsequent appeal. The matter is now before us again on a motion to reconsider. The motion 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.

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

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

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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:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, 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 Service.

....

(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.

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Nigeria, who last entered the United States on September 18, 1983, as a F-1 nonimmigrant student. The record indicates that she was married four times in the United States. The Petitioner married her third spouse, W-O-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2001, and they divorced on [REDACTED] 2008. A Notice to Appear was issued on January 29, 2008, and filed with the immigration court that same year, placing the Petitioner into removal proceedings, which remain pending.<sup>2</sup> The Petitioner thereafter married her fourth spouse, R-C-<sup>3</sup>, also a U.S. citizen, on [REDACTED] 2009. Their marriage was annulled on [REDACTED] 2011.

The Petitioner filed the instant Form I-360 on July 23, 2012, based on her relationship with R-C-. The Director issued a notice of intent to deny (NOID) the petition because the Petitioner had not established, among other things, that she entered into her marriage to R-C- in good faith and she had not overcome

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<sup>1</sup> Name is withheld to protect the individual's identity.

<sup>2</sup> The Petitioner's removal proceedings were administratively closed on April 30, 2015. Section 204(g) of the Act applies until proceedings are terminated. 8 C.F.R. § 245.1(c)(8)(ii)(D). Administrative closure does not result in a final order and is not equivalent to the termination of removal proceedings. *Matter of Bavakan Avetisyan*, 25 I&N Dec. 688, 695 (BIA 2012). Therefore the Petitioner remains in proceedings for the purposes of her eligibility under section 204(a)(1)(A)(iii) of the Act.

<sup>3</sup> Name is withheld to protect the individual's identity.

evidence in the record indicating that she entered into her prior marriage to W-O- for the purpose of evading immigration laws, thereby triggering the statutory bar to approval of her petition under section 204(c) of the Act. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition, and the Petitioner timely appealed.

Based on our *de novo* appellate review, we independently found that there was substantial and probative evidence establishing that the Petitioner entered into her prior marriage with W-O- in an attempt to evade the immigration laws and consequently, section 204(c) of the Act barred approval of her Form I-360. We further found that beyond the Director's decision the instant petition could not be approved because the Petitioner had not demonstrated that she was exempt from the bar under section 204(g) of the Act. We dismissed the Petitioner's appeal accordingly. We now incorporate by reference our September 30, 2014, decision.

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 asserts that we erred as a matter of law, fact, and policy in denying her petition. We review these matters on a *de novo* basis. A full review of the record does not establish the Petitioner's eligibility. Consequently, the motion will be denied for the following reasons.

### III. ANALYSIS

#### A. Section 204(c) of the Act

Section 204(c) of the Act, states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation implementing section 204(c) of the Act in these proceedings is found at 8 C.F.R. § 204.2(a)(1)(ii), which states:

*Fraudulent marriage prohibition.* Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an individual who has attempted or conspired to enter into a marriage for the purpose of evading immigration laws. *See Matter of Tawfik*, 20 I&N Dec. 166, 167 (BIA 1990) (citing *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988)). An adverse section 204(c) determination requires the denial of any subsequent visa petition for immigrant classification filed on behalf of such an individual, regardless of whether he or she ultimately received a benefit through the attempt or conspiracy. *See Tawfik*, 20 I&N Dec. at 167-68; *see also Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978) (section 204(c) determination is to be made by the District Director on behalf of the Attorney General<sup>4</sup> during the adjudication of a subsequent visa petition). The evidence of the attempt or conspiracy to enter into a marriage in order to evade immigration laws must be documented in the individual's file and must be "substantial and probative." *See Tawfik*, 20 I&N Dec. at 167. U.S. Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence originating from prior USCIS proceedings involving the individual. *See id.*; *Rahmati*, 16 I&N Dec. at 539. However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Tawfik*, 20 I&N Dec. at 168.

In our prior decision on appeal, we considered *de novo* all the relevant evidence in the record and made an independent determination that substantial and probative evidence demonstrated that the Petitioner had entered into a prior marriage with W-O- for the sole purpose of obtaining immigration benefits, and thus, section 204(c) of the Act prohibited approval of her Form I-360. In sum, the record contained documentation submitted in support of a Form I-130, Petition for Alien Relative, W-O- filed on behalf of the Petitioner in 2003, which indicated that both W-O- and the Petitioner had filed separate federal income tax returns for tax years 2001 through 2003, each reflecting their marital status as "single." W-O- had also listed an address other than the residence he purportedly shared with the Petitioner, as reflected on his Form G-325A, Biographic Information, and the Form I-130. Although in response to a December 2004 NOID, the Petitioner and W-O- later filed amended joint income tax returns and W-O- explained in his January 2005 statement that the address on his original tax returns was his mother's address which he used for his small business, neither explained why they originally filed as "single" and why W-O- used his mother's address on his tax return. The record of the 2003 Form I-130 proceedings also included the results of an investigation, which found that the Petitioner and W-O- were not residing together. Additionally, the couple's August 2006 sworn interview, relating to a second Form I-130 that W-O- filed on the Petitioner's behalf, disclosed several inconsistencies upon which the Director relied

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<sup>4</sup> This authority is now exercised by the Secretary of the Department of Homeland Security (Secretary).

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in denying that petition on September 29, 2006, and concluding that the Petitioner had married W-O- to circumvent immigration laws. For instance, the record indicated that W-O- testified that the Petitioner did not have a middle name, notwithstanding the fact that he had filed and executed two Forms I-130 and supporting documentation bearing the Petitioner's full name, including her middle name. The Petitioner also inconsistently testified that W-O- bore no body markings while the latter stated that he had a three to four inch tattoo on his right arm.<sup>5</sup> There were also significant discrepancies in the couple's testimony describing the couple's purported joint residence and the events of the day preceding the interview date.

In our decision, we addressed the individual evidentiary deficiencies and ultimately found that the Petitioner had not overcome the adverse information in the record and did not establish her good faith intentions in marrying W-O-. In particular, we noted that despite the Director's NOID in these Form I-360 proceedings, which specifically requested evidence addressing whether the Petitioner entered into her marriage to W-O- for the purpose of evading U.S. immigration laws, the Petitioner did not submit a personal statement in response to the NOID or on appeal. The Petitioner's sole written statement in these Form I-360 proceedings does not address her marriage to W-O- or her marital intentions in marrying him. Our decision reviewed the Petitioner's NOID response, including the affidavits of [REDACTED] which we determined lacked substantive information regarding the Petitioner's and W-O-'s relationship and the Petitioner's good-faith marital intentions. Similarly, a psychological evaluation by [REDACTED] briefly recounted the Petitioner's account of her relationship with W-O-, but it also did not set forth any probative details to demonstrate the Petitioner's good-faith marital intentions. We also found that the remaining documentary evidence submitted in response to the NOID, including the Petitioner's medical records, a single joint bank statement with W-O- reflecting a minimal balance and activity, and joint tax records and correspondence, did not establish the Petitioner's good faith marital intentions, particularly where the Petitioner had not provided a statement describing in probative detail her relationship with W-O-. We note here also that the joint tax refund records for the couple from 2002 to 2004 all indicated they were issued in 2005, and as stated previously, the record contains no explanation for why W-O- and the Petitioner both originally filed their 2001 to 2003 tax returns separately, indicating their marital statuses as single despite their married status.

On motion, the Petitioner asserts that our determination that section 204(c) barred approval of the instant petition cannot be supported because there is no evidence demonstrating that the Petitioner entered into her marriage to W-O- to circumvent U.S. immigration laws. She asserts that she was not in removal proceedings at the time of her marriage to W-O- and thus, had no reason to circumvent U.S. immigration laws. Further, she maintains that in her own statements, she confirmed that she married W-O- for love and that the record contained "[n]umerous affidavits . . . of friends and relatives attesting to" her relationship with W-O-. As an initial matter, the fact that the Petitioner was not in removal proceedings is not determinative here, as individuals who lack permanent resident status in the United States may still have an incentive to enter into a fraudulent marriage to obtain such status, regardless of whether or not they are in removal proceedings. The Petitioner also does not identify the evidence in the record on which she relies to assert that she has established the *bona fides* of her marriage to W-O-.

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<sup>5</sup> Our prior decision mistakenly references the Petitioner as bearing the tattoo.

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In addition, although the Petitioner asserts that there is “no evidence” to support our 204(c) determination, she does not address on motion the inconsistencies and deficiencies raised in our prior decision in support of that determination. As discussed in detail in our prior decision and above, there are significant discrepancies in the record, which the Petitioner has not addressed, and her statement and the supporting statements of her family and friends lack probative details about the Petitioner’s relationship with W-O- to overcome the adverse information in the record and establish her good-faith marital intentions.

The Petitioner also notes on motion that she continues to suffer daily from a serious medical condition, since the beginning of her marriage to W-O-, when she was first diagnosed and underwent brain surgery. She indicates that this has adversely and significantly affected her life, causing her to focus more on her health and relationships than with documenting the *bona fides* of her marriages for immigration purposes. While we empathize with the difficulties the Petitioner has faced, we may not disregard the significant discrepancies and deficiencies in the record. As we noted in our prior decision, the Petitioner bears the burden in establishing her eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The record indicates that the Petitioner was afforded several opportunities in multiple proceedings before USCIS to offer evidence to rebut the derogatory evidence, but has still not addressed the major inconsistencies discussed herein. She has also not proffered evidence regarding the *bona fide* nature of her marriage to W-O- through her own probative and detailed statement.

Accordingly, our independent and *de novo* review of the record establishes that there is substantial and probative evidence, documented in the record, demonstrating that the Petitioner entered into her prior marriage with W-O- for the sole purpose of evading U.S. immigration laws. *See Tawfik*, 20 I&N Dec. at 167. Consequently, section 204(c) of the Act applies to bar approval of the instant petition.

B. Entry into the Marriage in Good Faith

In our prior decision, incorporated here, we also determined under our *de novo* review that the Petitioner had not demonstrated that she entered into her most recent marriage with R-C in good faith. On motion, the Petitioner generally references the record and notes that “there is no federal dictate or mandate about the kind of life the married couple must lead.” The Petitioner does not identify any legal or factual error in our determination warranting reconsideration. As discussed in our prior decision, the Petitioner’s statement in the record provided only a general account of her relationship with R-C- and did not set forth in any probative detail the circumstances of their meeting, courtship, wedding, or shared residences and experiences to establish her good-faith marital intentions. The statements of the Petitioner’s relatives and friends similarly lacked substantive information regarding their knowledge of the relationship and the Petitioner’s marital intentions. [REDACTED] evaluation focused primarily on the abuse and recounted only what the Petitioner relayed about her relationship with R-C-. We further found that the remaining documentary evidence in the record was insufficient to establish the Petitioner’s good-faith marital intentions,

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particularly in the absence of a probative account from the Petitioner of her relationship with R-C-.<sup>6</sup> As noted, the Petitioner has not identified any legal or factual error in our determination. Accordingly, we reaffirm our prior finding that the preponderance of the relevant evidence does not establish that the Petitioner entered into marriage with R-C- in good faith.

C. Section 204(g) of the Act further Bars Approval

The Petitioner has also not overcome our prior determination that section 204(g) of the Act bars approval of the instant petition. The record indicates that the Petitioner was in removal proceedings at the time of her marriage to R-C-. 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 Petitioner married R-C- while she was in removal proceedings and the record does not indicate that she remained outside of the United States for two years after their marriage. Consequently, her petition here cannot be approved pursuant to section 204(g) of the Act unless she establishes the *bona fides* of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. Section 245(e) of the Act states, in pertinent part:

*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.

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<sup>6</sup> In addition to the deficiencies in the record noted here, we note that the Petitioner’s statement indicated that she met R-C- in “2208” in California. In response to the Director’s NOID, the Petitioner did not correct this error and instead, counsel of record provided a detailed account of the Petitioner’s and R-C-’s 2007 meeting and subsequent courtship, an account that was not part of the Petitioner’s statement. However, according to [REDACTED] report, the Petitioner met R-C- a few years earlier in 2005. The record contains no explanation for this inconsistency.

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- (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.

As discussed in our prior decision, 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 (5<sup>th</sup> Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”). Demonstrating eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act requires the petitioner to establish his 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 her good faith entry into the marriage to R-C- 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.

On motion, the Petitioner asserts that clear and convincing evidence establishes her good faith entry into her marriage with R-C-. However, as we have already determined that the Petitioner has not established her good-faith entry into her marriage to R-C- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she necessarily has not demonstrated the *bona fides* of her marriage under the applicable heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

#### D. Qualifying Relationship and Eligibility for Immediate Relative Classification

Because the petitioner has not complied with sections 204(g) and 204(c) of the Act, she has also failed to demonstrate 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). Moreover, beyond the Director's decision,<sup>7</sup> the record reflects that the Petitioner does not have a qualifying relationship with R-C- because her marriage to R-C- was annulled in California on [REDACTED] 2011, prior to the filing of this petition. *See* Cal. Fam. Code § 2210 (West 2011)(causes for annulment); *Goff v. Goff*, 125 P.2d 848, 852 (Cal. Dist. Ct. App. 1942)(An “annulment”

<sup>7</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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).

proceeding is maintained on the theory that for some cause existing at time of marriage no valid marriage ever existed, even though marriage be only voidable.). As the Petitioner has failed to establish that she had a qualifying relationship as the spouse of a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act, she is ineligible for immigrant classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act, for this additional reason.

#### IV. CONCLUSION

On motion, the Petitioner has not overcome substantial and probative evidence in the record demonstrating that her prior marriage to W-O- was entered into for the purpose of evading the immigration laws. Approval of the petition based on her subsequent marriage to R-C- is, therefore, statutorily barred pursuant to section 204(c) of the Act. Additionally, the Petitioner has not demonstrated that she married R-C- in good faith, and approval of her petition is also barred by section 204(g) of the Act. She has also not established that she had a qualifying relationship as the spouse of a U.S. citizen and her eligibility for immediate relative classification. The Petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

In these 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. at 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of P-O-*, ID# 14721 (AAO Dec. 14, 2015)