



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

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

MATTER OF L-S-A-

DATE: NOV. 24, 2015

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), § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the Petitioner married her U.S. citizen spouse in good faith. The Director also concluded that approval of the petition was barred by section 204(g) of the Act because the Petitioner married her U.S. citizen spouse while in removal proceedings, and that she had not demonstrated eligibility for the *bona fide* marriage exemption under section 245(e) of the Act. On appeal, the Petitioner submits a brief.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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 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)(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:

.....

(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].

.....

(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:

(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.

In addition, the regulations require that to remain eligible for immigration classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), 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 or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(iii) states, in pertinent part:

*Marriage during proceedings—general prohibition against approval of visa petition.* A visa petition filed on behalf of an alien by a United States citizen . . . shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . removal proceedings, or judicial proceedings relating thereto. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)[8] of this chapter, except that the burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exemption to section 204(g) of the Act as follows:

*Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –*

(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

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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 corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

*Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner claims to have last entered the United States on August 31, 2002 without inspection, admission, or parole. She was placed into removal proceedings on October 2, 2003. She married J-C-,<sup>1</sup> a U.S. citizen, on [REDACTED] 2006, in [REDACTED], New York. On December 10, 2007, an Immigration Judge granted her application for withholding of removal. She filed the Form I-360 on October 6, 2014. The Director issued a request for evidence (RFE) of, among other things, the Petitioner's good-faith marriage. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish that the Petitioner married J-C- in good faith. Therefore, the Director denied the petition on the grounds that the Petitioner had not married J-C- in good faith and was not eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act. Additionally, the Director found that approval of the petition was barred by section 204(g) of the Act, and that the Petitioner had not established eligibility for a waiver under section 245(e) of the Act by demonstrating by clear and convincing evidence that the marriage was *bona fide*.

We review these proceedings *de novo*. The Petitioner has established by a preponderance of the evidence that she married J-C- in good faith, but she has not demonstrated by clear and convincing evidence that her marriage was *bona fide*. Therefore, we will dismiss the appeal.

## III. GOOD-FAITH MARRIAGE AND SECTION 204(G) OF THE ACT

A preponderance of the evidence establishes that the Petitioner married J-C- in good faith. Therefore, she has met the requirement at section 204(a)(1)(A)(iii)(I)(aa) of the Act, and she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act. However, approval of the petition is barred by section 204(g) of the Act because the Petitioner married J-C- while in removal proceedings. The Petitioner has not met her burden of showing by clear and convincing evidence that her marriage to J-C- was *bona fide*. Therefore, she has not established eligibility for the *bona fide* marriage exemption at section 245(e) of the Act.

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

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In her brief on appeal, the Petitioner asserts that the Director erred in concluding that she did not marry J-C- in good faith. She contends that the Director found that she is an abused spouse of a U.S. citizen and that she submitted sufficient evidence to meet all requirements. She emphasizes that she married J-C- in 2006, is still married to him, and still lives with him. She claims that it was very difficult for her to obtain the documentation she submitted to support her claim of good-faith marriage because J-C- is constantly watching her and is opposed to her obtaining residency. The Petitioner asserts that she entered into marriage with J-C- because she loved him and believed he loved her.

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 exemption 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, a petitioner must establish 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, 8 U.S.C. § 1154(a)(1)(J); *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, a petitioner must establish good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 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 Petitioner submitted a personal declaration with the Form I-360. In her declaration, she stated that she met J-C- in March 2004 at an office where he worked in [REDACTED]. She claimed that she was “captivated,” found him very handsome and charming, and believed he had a “dignified personality.” The Petitioner indicated that she introduced herself and began a friendship with J-C-. She recalled that she thought J-C- was “very kind, very friendly and very thoughtful . . . .” She stated that she began thinking about him frequently and was excited to see him. She claimed that J-C- asked her out on a date “[a]round June 2004” and that she was very happy that he was interested in her. The Petitioner asserted that she and J-C- began dating frequently, but only her close friends knew about their relationship. She stated that she began to fall in love with J-C- because he was affectionate toward her and made her feel loved. She indicated that she and J-C- began living together in May 2005 and decided to get married in [REDACTED] 2006. According to the Petitioner, their relationship went well at first. She recounted that she “continued to work” at J-C-’s office, they attended parties and went sailing together, and “everything was perfect.” The Petitioner stated that J-C-’s behavior began to change after they had been married for two years, and that he became abusive toward her. She asserted that she loved J-C- and was not sure why his behavior changed.

The Petitioner did not provide the date on which she met J-C-, the location of the office where they met, or explain the reason for their presence at that office. She also did not describe their dating relationship in any detail by discussing specific dates or activities they shared during their courtship. Furthermore, she did not explain why they decided to get married, nor did she mention their wedding

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plans, their wedding ceremony, and reception or other celebration. Although she stated that she and J-C- shared activities and interests after their wedding, she discussed them only in general terms.

As additional supporting evidence for the Form I-360, the Petitioner submitted statements from two friends. [REDACTED] claimed that she was present at the wedding of the Petitioner and J-C-, and that she “know[s] them to be a loving couple” who reside together. [REDACTED] similarly stated that she was present at the wedding. [REDACTED] also claimed that she got to know J-C- well, and that J-C- employs her in his office, where she sees the Petitioner. Despite claiming to have attended the wedding of the Petitioner and J-C-, neither [REDACTED] nor [REDACTED] provided a description of the wedding. They did not, for example, state when and where it occurred, whether they played a role in the ceremony, who else attended, what they observed during the event, or provide any other details. Additionally, although both [REDACTED] and [REDACTED] claimed to have known the Petitioner and J-C- well, they did not mention any specific times they socialized with the couple, nor did they describe the couple’s interactions, shared interests, or activities in any probative detail. Due to the general nature of these statements, they provide little support for the Petitioner’s claims.

The Petitioner also submitted numerous photographs of her and J-C- together and with other individuals. The photographs are generally unlabeled, but they show that the Petitioner and J-C- were together on many occasions and socialized with others at various events. Although photographs alone are not sufficient to establish a petitioner’s intentions in marriage, in this case, the photographs are so numerous and clearly depict an established, long-term relationship that they provide support for the Petitioner’s claim that she married in good faith. However, the photographs are generally not labeled, and the record is otherwise lacking in detail. The photographs are, therefore, not sufficient to show by clear and convincing evidence that the marriage was *bona fide*.

The Petitioner also submitted numerous bank statements, bearing the names of the Petitioner and J-C-, for 2005 through 2013. Although the bank statements list few transactions per month, the Petitioner also provided copies of checks, signed by J-C-, matching transactions listed in several of the bank statements. The checks and bank statements, when viewed together, demonstrate that the joint bank account was used to pay rent for the shared apartment of the Petitioner and J-C-. Additionally, the Petitioner provided numerous utility bills, listing her name and that of J-C-, for the apartment she shares with J-C-, covering periods between 2005 and May 2015. She also included the utility service application, scheduling utility setup at the shared apartment on July 6, 2005. Furthermore, the Petitioner submitted various credit card bills, some of which are addressed to her only and others of which are addressed to J-C- only. Although these credit card bills do not list the names of both the Petitioner and J-C-, all bear the address where the Petitioner has resided with J-C- since 2005. Additional evidence includes life insurance policies, listing J-C- as the policy holder and the Petitioner as the beneficiary, a 2014 Water Department newsletter addressed to the Petitioner and J-C- at their shared apartment, a car insurance policy listing J-C- as the policyholder and the Petitioner as an additional insured, and two roadside assistance memberships with identity cards for the Petitioner and J-C-.

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Finally, the Petitioner submits on appeal leases for her shared apartment with J-C- for every year they have lived together. The first lease begins July 1, 2005, and the record contains renewal leases for two-year terms beginning July 2006, July 2008, July 2010, July 2012, and July 2014. The most recent lease is set to expire on June 30, 2016. This evidence shows that the Petitioner has resided with J-C- since 2005, and continues to reside with him.

The documentation of the Petitioner's long-term residence with J-C-, their commingled finances, and their shared activities as reflected in the numerous photographs she submitted, demonstrates by a preponderance of the evidence that the Petitioner married J-C- in good faith. Therefore, the Petitioner meets the requirement at section 204(a)(1)(A)(iii)(I)(aa) of the Act, and she is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act.

However, the Petitioner's own declaration was vague with regard to the circumstances of her relationship and her intent in marrying J-C-. The Petitioner did not provide probative detail regarding her first meeting with J-C-, their courtship, including specific dates they went on, or their decision to marry. Additionally, she did not mention the wedding ceremony or reception at all. Furthermore, she mentioned shared experiences after marriage only briefly, stating that she worked for J-C- and that they attended parties and went sailing together, but did not discuss specific events or supply probative detail regarding their mutual interests or marital routines. Instead, her declaration focused mainly on the abuse she experienced.

Similarly, the supporting letters the Petitioner submitted from [REDACTED] were also vague. [REDACTED] indicates that she was present at their wedding and has socialized with the Petitioner and J-C-. [REDACTED] indicates that she knew the Petitioner in Georgia, was present at their wedding and works part-time for J-C-. The Director addressed these concerns in the denial, but the Petitioner does not provide additional detail or otherwise address these issues on appeal. Without a detailed, probative description of the course of the Petitioner's relationship with J-C-, including their courtship, wedding, and married life, the Petitioner cannot meet the stringent standard of establishing by clear and convincing evidence that her marriage to J-C- is *bona fide*. Therefore, she does not qualify for the *bona fide* marriage exemption at section 245(e) of the Act.

#### IV. CONCLUSION

The Petitioner has not demonstrated by clear and convincing evidence that she married J-C- in good faith, so approval of her petition is barred by section 204(g) of the Act.

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369. Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of L-S-A-*, ID# 14903 (AAO Nov. 24, 2015)