



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

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

MATTER OF M-S-

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 findings that the evidence did not establish that the Petitioner married his U.S. citizen spouse in good faith.

**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:

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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 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.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner last entered the United States on January 21, 2006 as an F-1 nonimmigrant student. He married T-G-<sup>1</sup> a U.S. citizen, on [REDACTED], 2008 in [REDACTED], New York. T-G- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf on January 13, 2009. The Form I-130 was approved. The Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on March 25, 2009, which was denied because the Petitioner did not appear for a scheduled interview.

The Petitioner filed the Form I-360 on July 18, 2014. The Director issued two requests for evidence (RFE) of, among other things, the Petitioner's good-faith entry into marriage. The Petitioner replied to the RFE with a brief and additional evidence, which the Director found insufficient to establish that the Petitioner entered into the marriage in good faith. Therefore, the Director denied the petition. The Petitioner filed a timely appeal.

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

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### III. GOOD-FAITH MARRIAGE

The preponderance of the evidence does not establish that the Petitioner married T-G- in good faith. In his brief on appeal, the Petitioner alleges that he described his relationship with T-G- in detail in his personal declaration. He also contends that the supporting statements he submitted from friends and family members provided probative detail, with information about the circumstances of his relationship with T-G-, specific activities and events, and mutual interests. He states that, even if his marriage to T-G- was not viable, it was in good faith. Additionally, the Petitioner indicates that he was unable to submit additional supporting evidence because many of his important documents and belongings were destroyed in Superstorm Sandy.

In his personal declaration, submitted with the Form I-360, the Petitioner stated that he met T-G- in a clothing store in [REDACTED] in early May 2007. According to the Petitioner, he was trying on a shirt when T-G- told him that it looked nice on him. The Petitioner claimed that he purchased the shirt, then approached T-G- to tell her that he purchased it because she liked it. The Petitioner reported that T-G- laughed, they began talking, and he walked her to the subway station, where he gave her his telephone number and said he would like to see her again. He indicated that he was surprised and happy when T-G- sent him a text message about ten days later, and that they began texting and calling each other frequently after that. The Petitioner stated that, approximately one month later, he took T-G- on their first date, during which they watched a movie at a theater in [REDACTED] and then had dinner at a seafood restaurant. He recalled that T-G- kissed him on the cheek at the end of the night and told him she would like to get together again. He stated that their second date was dinner at a barbecue restaurant and that, during the meal, they discussed their relationship and agreed to take it slow.

According to the Petitioner, he and T-G- sent text messages to each other “continuously” after the second date and visited each other when they could, and that he fell in love with her. The Petitioner recounted that he confessed his love to T-G- in late December 2007 and learned she felt the same way. He stated that they were best friends who enjoyed each other’s company and went to dinners, dates, and parties together. He alleged that he proposed to T-G- “towards the end of 2008” while they were doing holiday shopping, after T-G- mentioned marriage and children during a conversation, and that she accepted. The Petitioner stated that he and T-G- decided to marry in [REDACTED] 2008 and that they both felt they had found the love of their life. He claimed that, after they were married, they “did a lot of activities as husband and wife,” including watching movies and going to the gym. He also stated that T-G- supported him while he attended school to become a hairstylist, and that she encouraged him to become a personal trainer. He explained in detail how T-G- then became suspicious of his relationships with his personal training clients and became verbally and physically abusive.

Although the Petitioner provided a detailed description of his first meeting with T-G-, their first two dates, and his feelings about T-G- during the beginning of their relationship, his declaration lacks detail regarding other important aspects of their relationship. The Petitioner did not describe his proposal to T-G- in any detail. He stated that he proposed while he and T-G- were doing holiday

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shopping, but his description did not clearly indicate the date on which the proposal occurred, where it occurred, whether he gave T-G- a ring, or what he said to her. Also, the Petitioner did not discuss the wedding. He did not describe the wedding plans or mention what type of ceremony took place, where the ceremony occurred, who attended, or whether they held a reception or other type of celebration afterward. He also provided little detail regarding his relationship with T-G- after they married, aside from the alleged abuse. Although he stated that T-G- became abusive in late 2010, he did not describe in detail their shared experiences or marital routines between their wedding in [REDACTED] 2008 and the time their marital problems began in late 2010.

Affidavits from the Petitioner's brother and five friends, submitted in response to the RFE, do not provide credible, detailed, probative support for the Petitioner's claim. All six of the affidavits are very similar to one another. All contain similar phrasing, vocabulary, and grammatical errors, and are similar in substance and structure. Several of the affidavits contain identical or nearly identical statements. Although each affidavit contains certain details that differ from the others, the significant similarities between the six affidavits suggest that all were written by the same person and, as a result, they are of little utility to support the Petitioner's claim.

For example, the phrase, "I have personal knowledge that they had a bona fide marriage and I am personally aware that the two resided and shared a life as husband and wife together," appeared in the affidavits of [REDACTED] and [REDACTED]. Similarly, the phrase, "I know for the fact [*sic*] that they resided together as a husband and wife," appeared in the affidavits of [REDACTED] and [REDACTED]. The affidavit of the Petitioner's brother, [REDACTED] stated, "I know for the fact [*sic*] that they had a bona fide marriage and I am personally aware that the two resided and shared a life as husband and wife together," and the affidavit of [REDACTED] included the statement, "I . . . know for the fact [*sic*] that his marriage to [T-G-] was a love marriage." The phrases, "I have no doubt in my mind that their marriage was a bonafide marriage based on a true admiration, respect and love for one another," and "I have personally witnessed them express their love for each other in public," both appeared in the affidavits of [REDACTED] and [REDACTED].

Similarly, the affidavits of [REDACTED] and [REDACTED] all contain the statement, "I have socialized with [the Petitioner] and his wife [T-G-] on many occasions," while [REDACTED] and [REDACTED] both added, ". . . and have known both of them personally for several years." Additionally, the affidavits of [REDACTED], and [REDACTED] all state, "I am personally aware that they resided together at . . . [REDACTED] . . . ." The statement, "I am personally aware of the relationship of [T-G-] and [the Petitioner]," or a slight variation of that phrase, was included in the affidavits of [REDACTED] and [REDACTED]. The phrase, "I have socialized with them for the last several years and felt that they were perfect match [*sic*] for each other," appeared in the affidavits of [REDACTED] and [REDACTED]. These phrases are only examples of the significant similarities, including many identical statements, in the six supporting affidavits. Due to these substantial similarities, we give the affidavits allegedly from the Petitioner's brother

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and friends little evidentiary weight. They do not support the Petitioner's claim that he married T-G- in good faith.

The additional supporting evidence the Petitioner submitted also does not support his claim of good-faith marriage. The Petitioner submitted three copies of a single bank statement, for the period February 5, 2009 through March 4, 2009, bearing the names of the Petitioner and T-G-. The bank statement reflects almost no activity, with only one debit card purchase and two fees for the month. The bank statement does not indicate when the account was opened or show that the Petitioner and T-G- actually used the account. The Petitioner also provided three copies of a single utility bill, dated May 14, 2009, bearing only his name and addressed to him at the address he shared with T-G-. The utility bill does not reflect that he and T-G- were jointly responsible for the utility bill or that they managed their finances together. Although such a showing is not specifically required, he has not otherwise explained the relevance of this bill to his claim of good-faith marriage. Finally, the Petitioner submitted five unlabeled photographs showing him and T-G- together and with friends. These photographs demonstrate that the Petitioner and T-G- were in the same place on certain occasions, but they do not establish the Petitioner's intentions in marrying T-G-.

Although the Petitioner claims that his remaining documentation was destroyed during Superstorm Sandy, he has not submitted sufficient support for that claim. He submitted a printout of an internet search regarding storm damage on [REDACTED] where he lived, but the search results do not clearly state that damage occurred in that location. The search results include only summaries of two news articles, and the summaries contain significant omissions and do not clearly state that damage occurred where the Petitioner resided. The Petitioner did not submit the full text of the summarized articles to support his claim. Additionally, the Petitioner did not describe the documentation he would have submitted if it were not destroyed, or explained why one bank statement and one utility bill from 2009 survived the storm. Furthermore, the Petitioner stated in the brief submitted with the Form I-360 that T-G- destroyed much of his joint documentation. The Petitioner has not explained why he previously claimed that T-G- destroyed his documents, but later asserted that his documents were destroyed during Superstorm Sandy.

The Petitioner also argues that we did not consider the approved Form I-130, Petition for Alien Relative, filed by T-G- on his behalf as evidence of his good-faith entry into the marriage pursuant to 8 C.F.R. § 245.1(c)(8)(v). However, that regulation prescribes that when a visa petition based on the same marriage is approved, it will generally be considered primary evidence of eligibility for the *bona fide* marriage exemption unless USCIS determines additional evidence is needed. 8 C.F.R. § 245.1(c)(8)(v). The fact that a visa petition based on the marriage in question was previously approved does not automatically entitle the beneficiary to subsequent immigrant status. *See I.N.S. v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove . . . that the marriage was bona fide and not entered into to evade immigration laws.").

Moreover, although similar, the parties, statutory provisions and benefits procured through sections 204(a)(1)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. In the

Form I-130 adjudication, the Petitioner's spouse was the petitioner and bore the burden of proof to establish her citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i); 8 C.F.R. §§ 204.1(f), 204.2(a)(2). In contrast, in this case, the Petitioner bears the burden of proof to establish not only the validity of the marriage, but also that he entered the marriage in good faith. The evidence does not demonstrate by a preponderance of the evidence that the Petitioner entered into marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### IV. CONCLUSION

The preponderance of the evidence does not establish that the Petitioner married his U.S. citizen spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Accordingly, the Petitioner is not eligible for immigrant classification under section 201(b)(2)(A)(i) 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-S-*, ID# 14907 (AAO Nov. 24, 2015)