



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

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

MATTER OF L-A-O-

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 his 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 his U.S. citizen spouse while in removal proceedings, and that he had not demonstrated eligibility for the *bona fide* marriage exemption under section 245(e) of the Act. On appeal, the Petitioner submits a brief and additional evidence.

**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 filing of a petition under section 204(a) . . . with respect to the alien spouse or alien

(b)(6)

*Matter of L-A-O-*

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 is a citizen of Ghana who last entered the United States on December 20, 2005 as a B-2 nonimmigrant visitor. He married A-T-<sup>1</sup> a U.S. citizen, on [REDACTED] 2007. A-T- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf on July 30, 2007. The Form I-130 was denied because A-T- did not establish that her marriage to the Petitioner was *bona fide*. The Petitioner was placed into removal proceedings on March 10, 2009. He and A-T- were divorced on [REDACTED] 2009.

The Petitioner married M-M-<sup>2</sup> a U.S. citizen, on [REDACTED] 2009. M-M- filed a Form I-130 on the Petitioner's behalf on April 4, 2010. The Form I-130 was denied on May 7, 2012, because M-M- did not establish that her marriage to the Petitioner was *bona fide*. M-M- filed a second Form I-130 on the Petitioner's behalf on July 2, 2012. That Form I-130 was denied on April 3, 2014, because M-M- did not appear for a required interview.

The Petitioner filed the Form I-360 on March 24, 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 a brief and additional evidence, which the Director found insufficient to establish that the Petitioner married M-M- in good faith. The Director also concluded that the Petitioner had not demonstrated by clear and convincing evidence that his marriage to M-M- was *bona fide*. Therefore, the Director denied the petition.

We review these proceedings *de novo*. The evidence submitted below and on appeal does not overcome the Director's decision to deny the petition. Therefore, we will dismiss the appeal.

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

---

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

<sup>2</sup> Name withheld to protect the individual's identity.

(b)(6)

*Matter of L-A-O-*

The Petitioner has not established by a preponderance of the evidence that he married M-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, or by clear and convincing evidence as required to establish eligibility for the *bona fide* marriage exemption at section 245(e) of the Act.

In his brief on appeal, the Petitioner asserts that he submitted sufficient documentation to establish by clear and convincing evidence that his marriage to M-M- was *bona fide*. He summarizes the evidence he previously submitted and contends that it meets the burden of proof.

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 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, 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 his 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.

In his personal declaration submitted with the Form I-360, the Petitioner stated, in pertinent part, that he met M-M- in December 2008 at a party hosted by M-M-’s friend. He claimed that he and M-M- “exchanged telephone numbers and . . . started talking.” He also alleged that M-M- supported him during his divorce from A-T-, and that their relationship grew stronger. According to the Petitioner, “[a]fter a couple of conversations and a period of studying each other for a while,” he and M-M- began to have feelings for each other. He asserted that M-M- had all the qualities he was looking for in a person, and that the two had a lot in common and enjoyed spending time together. The Petitioner recounted that he, M-M-, and M-M-’s two sons moved in together in August 2009. He indicated that he proposed to M-M- in October 2009, she accepted his proposal, and their family members were happy for them.

The Petitioner stated that he and M-M- married on [REDACTED] 2009, in [REDACTED] Pennsylvania, “with family and friends around [them] giving their support.” He further stated that he and M-M- loved each other and wanted to have a daughter together, and that he believed the marriage would last forever. The Petitioner claimed that he and M-M- lived with her sons “as one big happy family” after getting married, and that they shared activities such as eating at restaurants, visiting [REDACTED] and the [REDACTED], Maryland, going out to clubs on weekends, and exercising together at a gym. He indicated that he supported the family financially because M-M- lost her job soon after they wed, and that he continues to provide health insurance benefits for M-M- through his employment.

(b)(6)

*Matter of L-A-O-*

The Petitioner's personal declaration lacks probative detail regarding his relationship with M-M-. The Petitioner did not provide the exact date he and M-M- met, describe their conversations during their first meeting, or provide specific information about how they began dating. He also did not describe their dating relationship in detail or mention any specific activities they shared during their courtship. Furthermore, the Petitioner did not discuss why he decided to propose to M-M-, his proposal or her acceptance, their wedding plans, ceremony, reception, or their actions following the wedding. Additionally, the Petitioner's descriptions of his shared experiences with M-M- following the wedding were vague, with no probative detail regarding specific events, activities, or shared interests other than exercising together at the gym.

In response to the RFE, the Petitioner provided a letter of support from a friend, [REDACTED]. [REDACTED] claimed that he was present at the December 2008 party where the Petitioner met M-M-. He also asserted that he "had the opportunity to watch the relationship between [the Petitioner] and [M-M-] grow," and that M-M- used to tell him that she was interested in the Petitioner and wanted to go out with him, but was afraid of getting hurt. [REDACTED] claimed that he attended the Petitioner's wedding to M-M-, and that he visited them after they wed. Like the Petitioner's declaration, [REDACTED] letter is vague. Although [REDACTED] claimed to have been present when the Petitioner first met M-M-, attended their wedding, and visited them at their shared home following the wedding, he did not provide probative details to support any of his statements. [REDACTED] did not describe what he witnessed at the party where the Petitioner met M-M-, what the Petitioner told him about his relationship with M-M-, or what his personal opinion was of the relationship. Similarly, [REDACTED] did not offer any description of the wedding he claimed to have attended, nor did he describe his visits to the Petitioner and M-M- after they were married. [REDACTED] statement lacks probative detail and is not sufficient to support the Petitioner's claim of good faith marriage.

As additional supporting evidence, the Petitioner previously submitted income tax return transcripts for 2009 through 2012, listing the Petitioner and M-M- as "Married Filing Joint"; a life insurance policy for the Petitioner, obtained on April 7, 2008, prior to the Petitioner's wedding to M-M-, and a letter indicating that M-M- was added as the beneficiary and that the policy terminated on January 20, 2012; address change confirmation letters from the U.S. Postal Service, indicating that the Petitioner and M-M- both changed their mailing addresses as of March 29, 2013; and two leases for the residences the Petitioner shared with M-M-. Although these documents provide support for the Petitioner's claim that he resided with M-M- and filed income taxes with her, they are not sufficient to establish his intentions in marrying M-M-. The Petitioner did not provide a detailed, probative description of his relationship in his own declaration, and, as noted above, the supporting letter from [REDACTED] is also vague. The residency and financial documentation the Petitioner provided cannot overcome the lack of detail elsewhere in the record.

On appeal, the Petitioner submits two letters from a health insurance company, dated April 26, 2013, and May 31, 2013, listing the Petitioner as the "Insured" and M-M- as the "Patient," regarding treatment obtained by M-M- on December 23, 2012. He also previously provided health insurance identification cards listing the names of the Petitioner and M-M-, and a letter confirming insurance

benefits to the Petitioner and M-M-. This documentation indicates that the Petitioner provided health insurance coverage for M-M-. However, the Petitioner stated in his declaration that he continued to provide health insurance to M-M- even after they separated, and still does so today. Therefore, the fact that the Petitioner provides health insurance coverage for M-M- is not dependent on the fact that they were married or in a relationship. This evidence is not sufficient to overcome the lack of detail elsewhere in the record to establish his intent in the marriage. Additionally, although the Petitioner submitted photographs showing him and M-M- together, the photographs are unlabeled and, therefore, carry little evidentiary weight. Furthermore, the photographs demonstrate only that the Petitioner and M-M- were together on certain occasions; they are not sufficient to establish the Petitioner's intentions in entering into the marriage.

The Petitioner has not established by a preponderance of the evidence that he married M-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. He also has not demonstrated by clear and convincing evidence that his marriage was *bona fide*, as required to establish eligibility for the exemption at section 245(e) of the Act. Therefore, approval of his petition is barred by section 204(g) of the Act.

#### IV. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence or by clear and convincing evidence that he married M-M- in good faith, so he has not met the requirements of section 204(a)(1)(A)(iii)(I)(aa) of the Act and his 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-A-O-*, ID# 14916 (AAO Nov. 24, 2015)