



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

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

MATTER OF M-M-C-

DATE: OCT. 8, 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 petition because the record did not establish that the Petitioner entered into marriage with her husband in good faith.

On appeal, the Petitioner submits a brief and new and previously submitted evidence.

I. APPLICABLE LAW AND REGULATIONS

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 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 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:

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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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of the Dominican Republic, entered the United States at an unknown place and time, and in an unknown manner. The Petitioner married W-R-¹ a U.S. citizen, on [REDACTED] 2009 in [REDACTED] New York. The Petitioner filed the instant Form I-360 on October 10, 2012. The Director subsequently issued two requests for evidence (RFE), in part, of the Petitioner's good-faith entry into the marriage. The Petitioner responded to the RFEs with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition, finding that the Petitioner did not marry W-R- in good faith. The Petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record, including the Petitioner's claims and the evidence submitted on appeal, fail to establish the Petitioner's eligibility. The appeal will be dismissed for the following reasons.

III. GOOD FAITH ENTRY INTO THE MARRIAGE

The documentary evidence before the Director included a lease agreement, utility bills, a partial bank statement, and other correspondence. The lease agreement was for a month-to-month lease for a property on [REDACTED] New York [REDACTED], signed by the Petitioner and W-R-, but it is not dated. The Petitioner submitted a letter from [REDACTED] indicating that she and W-R- opened a joint account on September 3, 2010, and she submitted a one page of a bank statement for the same account showing transactions from September 3 – 16, 2010. The Petitioner, however, did not provide further documentation reflecting that she and her spouse used the bank account after that date. The Petitioner also submitted copies of [REDACTED] utility bills addressed to W-R- and notices of a fine and

¹ Name withheld to protect the individual's privacy.

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levy from the [REDACTED] issued to W-R-. None of these documents reflect that the Petitioner and W-R- shared finances.

Traditional forms of joint documentation are not required to demonstrate a self-Petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In her letter submitted in response to the Director's first RFE, the Petitioner stated that she married her spouse on [REDACTED], 2009, that for a year everything was fine, and about a month into their second year of marriage, W-R- began to get violent, which the Petitioner thought was caused by his drug use. The Petitioner did not describe how she met her husband, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse. The Petitioner also submitted letters from her friends, [REDACTED]

[REDACTED] Each of these witnesses stated that they knew that the Petitioner and W-R- were married. None of them described any particular visit or social occasion with the couple. Nor did any of these witnesses describe his or her interactions with the couple or establish personal knowledge of the marital relationship. The Director correctly determined that the preponderance of the evidence submitted below did not establish the Petitioner's good-faith entry into the marriage.

On appeal, the Petitioner submits the following relevant evidence: an affidavit from [REDACTED] a licensed clinical social worker; cable bills; her 2014 U.S. Individual Income Tax Return; a letter from [REDACTED]; and a lease agreement. The additional documentary evidence, however, does not establish the Petitioner's good-faith entry into the marriage. The cable bills are in the Petitioner's name only and the 2014 tax return indicates the Petitioner's filing status as single. The letter from [REDACTED] simply states that the Petitioner closed her checking and savings accounts in February 2013 and provides no information on the couple's joint account. The lease agreement, dated January 1, 2015, is in the Petitioner's name only. Finally, the affidavit from [REDACTED] indicates that the Petitioner received counseling for domestic violence but does not discuss her good-faith marital intentions.

The record before the Director also contained a Notice of Approval of a Form I-130, Petition for Alien Relative, filed by W-R- on behalf of the Petitioner and correspondence addressed to the Petitioner and to the Petitioner's daughter from the National Visa Center. The Petitioner incorrectly argues that the approval of the Forms I-130 filed by W-R- on her behalf and her then-minor daughter establishes the Petitioner's good-faith marriage to W-R-. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. See *INS 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 by a preponderance of the evidence that the marriage was *bona fide* and not entered into to evade immigration laws."). Although similar, the parties, statutory provisions, and benefits procured through sections 201(b)(2)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The Petitioner's husband was the petitioning party in both Forms I-130, and he bore the burden of proof in the adjudication of the petitions, in which he was required to establish his citizenship and the validity of their marriage and his relationship with the Petitioner's daughter. See Section

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201(b)(2)(A)(i) of the Act. In contrast, in this case, the Petitioner bears the burden of proof to establish not only the validity of the marriage, but also her own good-faith entry into the union. *See* Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act further explain the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. *See* 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii).

When viewed in the totality, the preponderance of the relevant evidence in this case does not demonstrate that the Petitioner entered into marriage with W-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. CONCLUSION

On appeal, the Petitioner has not demonstrated that she entered into marriage with her spouse in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden to establish her eligibility. 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, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-M-C-*, ID# 13903 (AAO Oct. 8, 2015)