



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

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

MATTER OF G-E-C-

DATE: OCT. 20, 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* section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 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 Petitioner did not establish that he was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, was battered or subjected to extreme cruelty by his U.S. citizen spouse, and entered into the marriage in good faith. Additionally, the Director found 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 did not demonstrate eligibility for the *bona fide* marriage exemption at section 245(e) of the Act.

#### 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].

....

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child, and must have taken place during the self-petitioner’s marriage to the abuser.

....

(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.

....

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

....

(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 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. . . .

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## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner last entered the United States on July 15, 2007 as a B-2 nonimmigrant visitor. He was placed into removal proceedings on January 10, 2011, and those removal proceedings are ongoing. The Petitioner married G-A-<sup>1</sup> a U.S. citizen, on [REDACTED] 2012 in [REDACTED] New York. G-A- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf on March 23, 2012, with a request for a *bona fide* marriage exemption. The Petitioner later separated from G-A-, and U.S. Citizenship and Immigration Services (USCIS) subsequently denied the Form I-130 because the Petitioner and G-A- did not appear for the interview.

The Petitioner filed the Form I-360 on February 25, 2013. The Director issued a request for evidence (RFE) of, among other things, the battery or extreme cruelty the Petitioner suffered and his eligibility for the *bona fide* marriage exemption under section 245(e) of the Act. The Petitioner responded to the RFE with a personal statement, photographs, and copies of previously submitted evidence. The Director found the evidence insufficient and denied the Form I-360, finding that the Petitioner did not demonstrate that he was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, was battered or subjected to extreme cruelty by his U.S. citizen spouse, and entered into the marriage in good faith. The Director also concluded that approval of the petition was barred under section 204(g) of the Act. The Petitioner filed a motion to reconsider, which the Director granted. However, the Director found that the Petitioner had not demonstrated that he was subjected to battery or extreme cruelty and that he married G-A- in good faith. The Director later issued a second denial, again finding that the Petitioner was not eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act and did not establish that he was battered or subjected to extreme cruelty by G-A- and that he entered into the marriage in good faith.

We review these proceedings *de novo*. The evidence submitted below and on appeal does not overcome the grounds for the Director's denial.

## III. BATTERY OR EXTREME CRUELTY

The preponderance of the evidence does not establish that the Petitioner was subjected to battery or extreme cruelty by G-A- during their marriage. In his appeal brief, the Petitioner contends that he was the victim of a pattern of psychological and verbal abuse, for which he sought counseling, and that the Director erred and abused her discretion in finding that he was not subjected to extreme cruelty.

In his February 12, 2013, affidavit, the Petitioner stated that G-A- argued with him, insulted him, called him names, cursed at him, screamed at him, and disrespected him. He indicated that G-A- wanted to control him and told him that he had to do anything she asked. According to the Petitioner, he endured "constant verbal abuse," which caused him to feel depressed and "filled with lots of self-doubt," and that he feared for his safety due to G-A-'s addiction to drugs and alcohol. The Petitioner alleged that G-A- sent him a threatening text message after the couple separated. He also reported that G-A-

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

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withdrew the money in the couple's joint bank account, leaving the Petitioner responsible for repaying an overdrawn amount.

In his October 16, 2013, declaration, the Petitioner asserted that G-A- wrote checks to herself from the couple's joint bank account, resulting in insufficient funds. He claimed that he then closed the account and that G-A- became furious, screaming that the Petitioner must "work more to cover her needs." The Petitioner also attested that G-A- became controlling, disrespectful, and aggressive. According to the Petitioner, G-A- told him that he "owe[d] her [his] life because of her American citizenship, and that [he] would only become a legal resident because of her."

Aside from his statements regarding the overdrawn joint bank account, one threatening text message, and a single comment by G-A- regarding the Petitioner's immigration status, the Petitioner's descriptions are vague and generalized. The Petitioner did not provide, in either of his declarations, a detailed description of any specific incidents of violence or a pattern of violence amounting to battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(vi). Although the Petitioner correctly states on appeal that psychological abuse can constitute extreme cruelty, the record in this case does not provide sufficient evidence of specific instances of such psychological abuse.

Similarly, although the Petitioner submitted supporting declarations from six friends, all made generalized statements and did not provide detailed, probative descriptions of specific violent incidents amounting to battery or extreme cruelty. [REDACTED] stated that G-A- was aggressive and "offensive," causing the Petitioner to become depressed, and that G-A- overdrew the couple's joint bank account. [REDACTED] as well as [REDACTED], [REDACTED], and [REDACTED], stated that G-A- was addicted to drugs and alcohol. [REDACTED] and [REDACTED] also both claimed that the Petitioner told them that G-A- "was mentally and verbally abusive." [REDACTED] and [REDACTED] both indicated that G-A- was "aggressive" and that the marriage was not going well. [REDACTED] claimed that after marrying G-A-, the Petitioner lost weight, seemed unhappy, and told [REDACTED] that he was afraid of G-A- because she threatened to "castrate him" if he ever left her. The Petitioner's friends' declarations do not provide sufficient detail regarding specific incidents of violence or a pattern of violence which constitute battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi).

Although the Petitioner claims that he sought counseling to address the abuse he suffered during his marriage to G-A-, the record does not support his claim. The Petitioner submitted two initial appointment notices from [REDACTED] but he did not provide evidence that he attended either appointment. To the contrary, he submitted a bill from [REDACTED] for a "Failed Visit." The Petitioner also provided a bill from [REDACTED] but the bill does not state the reason for the charges.

Accordingly, the preponderance of the evidence does not demonstrate that the Petitioner was battered or subjected to extreme cruelty as required by section 204(a)(1)(A)(iii)(I) of the Act.

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

At the time the Petitioner married G-A-, he was in removal proceedings and had not resided outside of the United States for the requisite two-year period; thus, he remains subject to the bar at section 204(g) of the Act. 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A). He must therefore establish eligibility for the *bona fide* marriage exemption at section 245(e) of the Act to demonstrate eligibility for immediate relative classification.

The Petitioner has not established by a preponderance of the evidence that he married G-A- 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 from the bar at section 204(g) of the Act. 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)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

On appeal, the Petitioner argues that the evidence he submitted, when considered in the aggregate, is sufficient to demonstrate that he married G-A- in good faith and is eligible for the *bona fide* marriage exemption at section 245(e) of the Act. Specifically, the Petitioner contends that his personal declaration, especially when considered in light of the supporting statements and photographs he submitted, is sufficient to establish his good-faith marriage. He also declares that documentation of his joint bank account with G-A- demonstrates that his marriage was in good faith. The Petitioner alleges that the Director improperly rejected the Petitioner’s evidence and did not provide explanations for her conclusions.

The Petitioner’s own declarations do not provide sufficiently detailed information regarding the circumstances of his courtship and marriage with G-A-. In his affidavit of February 12, 2013, the Petitioner recounted that he met G-A- on Memorial Day weekend in May 2011 at a party at G-A-’s cousin’s house. The Petitioner explained that G-A-’s cousin was the Petitioner’s coworker. The Petitioner indicated that he thought G-A- was “nice” and they had a long conversation about their lives. He further stated that things went well at first and they enjoyed each other’s company, talked a lot, and spent time together. The Petitioner claimed that he saw “the true side” of G-A- when they moved in together in January 2012. The Petitioner did not describe how he began dating G-A-, nor did he discuss their dating relationship, including specific shared experiences while dating, or their decision to marry,

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their marriage ceremony or reception, or shared experiences after marriage, aside from the alleged abuse.

Similarly, in his October 16, 2013, declaration, the Petitioner stated that his relationship with G-A- “started in 2011 when [they] start[ed] going out on dates.” He indicated that they enjoyed their time together, but he did not discuss the time, place, or activity of any specific dates they had, or any other shared experiences during their courtship. With regard to the engagement, the Petitioner stated that “[a]fter a few months of dating, [he] asked [G-A-] to marry [him] . . . .” The Petitioner did not specify the date of his proposal, how and where he proposed, or how G-A- reacted. Although the Petitioner did provide some information regarding the wedding plans, stating that G-A- wanted a large wedding but that he could not afford it, the Petitioner did not discuss the wedding ceremony itself. The Petitioner did not state where the wedding ceremony occurred or who was in attendance. As for the reception, the Petitioner alleged that he and G-A- went out to lunch at a restaurant after the ceremony with the Petitioner’s friend and G-A-’s sister. The Petitioner did not provide the name of the restaurant or the names of the individuals who attended. Accordingly, the Petitioner’s declaration lacks sufficient detail to support a finding that he married G-A- in good faith.

The supporting declarations from the Petitioner’s friends and family members also lack probative detail regarding the circumstances of the Petitioner’s marriage to G-A-. ██████████ stated that the Petitioner appeared excited to be marrying G-A-. ██████████ also claimed that the Petitioner invited her to the wedding, but she could not attend. ██████████ recounted that, when the Petitioner and G-A- met, they invited ██████████ and some other friends out for dinner. She also stated that she was glad to be a witness at the wedding ceremony of the Petitioner and G-A-. However, she did not describe the ceremony. ██████████ claimed that the Petitioner “was very excited about getting married” and asked ██████████ for advice on “how to throw a great party for his wedding.” However, ██████████ did not indicate whether he attended the wedding or provide any description of the event.

The Petitioner also submitted, in response to the RFE, copies of supporting declarations which were previously submitted with the Form I-130 G-A- filed on the Petitioner’s behalf. These declarations lack detail and do not provide sufficient probative, consistent information to corroborate the Petitioner’s claims of good faith marriage. ██████████ stated, in a letter dated March 11, 2012, that she believed that the Petitioner and G-A- were “a very lovely couple.” She alleged that she frequently visited with the couple for parties and holidays and took several trips with them to New Jersey and upstate New York. Although ██████████ claimed to have known G-A- for three years and to have spent significant time with the Petitioner and G-A-, ██████████ did not state whether she was aware of the couple’s first meeting, dating relationship, engagement, or wedding ceremony. Furthermore, ██████████ indicated that she held a birthday party in May 2011 and that the Petitioner attended and was “helpful and attentive,” but the Petitioner stated in his declarations that he met G-A- on Memorial Day weekend of 2011, which was the last weekend in May. The Petitioner did not mention attending a birthday party for G-A- during the same month he met G-A-, and the record does not provide an explanation of the timeline of these events.

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In another letter originally submitted with the Form I-130 and filed again in response to the RFE, [REDACTED] indicated that he and his wife visited the Petitioner and G-A- at their apartment for a meal one afternoon and also saw them at events with friends and family. [REDACTED] contended that the Petitioner and G-A- were a happily married couple. [REDACTED] claimed that he had known the Petitioner for over five years, but he did not state whether he was aware of the Petitioner's first meeting, courtship, or engagement to G-A-, nor did he state whether he attended the Petitioner's wedding to G-A-. In an additional letter, G-A-'s sister, [REDACTED] declared that she was the maid of honor at the Petitioner's wedding to G-A- and that she and her husband had dinner with the Petitioner and G-A- many times. [REDACTED] claimed that the Petitioner had been supportive of G-A-'s daughter, and that the Petitioner and [REDACTED] husband worked together to fix things at [REDACTED] home and at the home of the Petitioner and G-A-. [REDACTED] did not describe the first meeting or courtship of the Petitioner and G-A-, nor did she describe the wedding, despite her claim that she was the maid of honor. Also, [REDACTED] stated that the Petitioner and G-A- met in February 2011, but the Petitioner stated in his own declarations that he met G-A- in late May 2011.

As additional support of his claim of good-faith marriage, the Petitioner submitted, in response to the RFE, a 2012 income tax return. However, the tax return lists the Petitioner as "Single" and therefore does not support his claim of good-faith marriage. The Petitioner also supplied bank statements which indicate that the Petitioner had a personal checking account and also shared a checking account with G-A-. Although the bank statements indicate that the Petitioner and G-A- commingled their finances to some extent, they are not sufficient to overcome the lack of detail elsewhere in the record.

The Petitioner also provided photographs of him and G-A- together. Although the photographs demonstrate that the Petitioner and G-A- were together on certain occasions, they do not establish the Petitioner's intentions in marrying G-A-.

The Petitioner also alleges that the Director "failed to explain why they would believe [the Petitioner's] claims about the abuse suffered during his marriage, but not his testimony regarding his courtship, wedding ceremony and shared residence and experiences with his spouse . . . ." Although the Director did not state that the Petitioner's testimony was not credible, the Director found that the Petitioner did not establish that he was subjected to battery or extreme cruelty. There is no basis for the Petitioner's assertion that the Director credited his claims of abuse but not his remaining claims. Furthermore, even if the Director found that the Petitioner was battered or subjected to extreme cruelty, this would not require a finding that the Petitioner was also in a good-faith marriage with G-A-. Section 204(a)(1)(A)(iii)(I) of the Act and the corresponding regulation at 8 C.F.R. § 204.2(c)(1) list good-faith marriage and battery or extreme cruelty as separate eligibility requirements. Additionally, abuse can occur in types of relationships other than good-faith marriages. In this case, the Petitioner has not established by a preponderance of the evidence or by clear and convincing evidence that he married G-A- in good faith. Therefore, the Petitioner has not established that he qualifies for an exemption under section 245(e) of the Act, and his petition is barred by section 204(g) of the Act.

## V. CONCLUSION

The evidence does not establish that the Petitioner was battered or subjected to extreme cruelty by G-A- during his marriage to her. Therefore, the Petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Additionally, the Petitioner has not demonstrated by a preponderance of the evidence or by clear and convincing evidence that he married G-A- 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 G-E-C-*, ID# 14560 (AAO Oct. 20, 2015)