



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

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

MATTER OF N-F-T-

DATE: OCT. 22, 2015

MOTION OF ADMINISTRATIVE APPEALS OFFICE 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. 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. We rejected the Petitioner's subsequent appeal because an attorney filed the appeal but did not include a new, properly signed Form G-28, Notice of Appearance as Attorney or Representative. The matter is now before us on the Petitioner's request that we *sua sponte* reopen our previous decision. We will reopen the matter *sua sponte*, and the appeal will be sustained.

The Director denied the petition based on a finding that approval of the petition was barred under section 204(g) of the Act because the Petitioner married her U.S. citizen spouse while in removal proceedings and had not demonstrated eligibility for the *bona fide* marriage exemption at section 245(e) of the Act. The Petitioner timely appealed.

**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:

(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.

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(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 exception 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

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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 June 14, 2004. She was placed into removal proceedings on November 16, 2004. An Immigration Judge ordered the Petitioner removed on March 20, 2007, and the Board of Immigration Appeals dismissed her appeal on August 29, 2008. The record indicates that the Petitioner's appeal before the U.S. Court of Appeals for the Seventh Circuit was pending as of May 13, 2009. The result of that appeal is not clear from the record. The Petitioner married W-S-<sup>1</sup> a U.S. citizen, on [REDACTED], 2009 in [REDACTED] Tennessee. She and W-S- divorced on [REDACTED] 2010.

The Petitioner filed the Form I-360 on November 18, 2011. The Director issued a notice of intent to deny (NOID), noting that the Petitioner married W-S- while in removal proceedings and was therefore subject to the bar at section 204(g) of the Act. The Director provided the Petitioner an opportunity to demonstrate eligibility for the exemption at section 245(e) of the Act by showing by clear and convincing evidence that her marriage to W-S- was *bona fide*. The Petitioner responded to the NOID with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility for the *bona fide* marriage exemption under section 245(e) of the Act. The Director denied the petition based on a finding that approval was barred under section 204(g) of the Act. The Petitioner filed a motion to reconsider, alleging that the Director did not consider the evidence she submitted in response to the NOID. The Director granted the motion to reconsider but found that the Petitioner had not submitted sufficient evidence to establish her good-faith marriage to W-S-. We rejected the Petitioner's timely appeal because counsel for the Petitioner signed the Form I-290B, Notice of Appeal or Motion, but did not submit a new, properly signed Form G-28 and did not reply to our requests for a properly-submitted Form G-28. Counsel for the Petitioner now submits a new, properly signed Form G-28 and provides evidence that counsel did not receive our previous requests for a Form G-28. Therefore, we will reopen the proceedings *sua sponte*. Our *de novo* review demonstrates by clear and convincing evidence that the Petitioner married W-S- in good faith. Therefore, we will sustain the appeal.

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

The Petitioner has established by a preponderance of the evidence that she married W-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, and by clear and convincing evidence as required to establish eligibility for the *bona fide* marriage exemption at section 245(e) of the Act.

Counsel for the Petitioner states, in the letter filed on motion, that although counsel believes that the law does not require the Petitioner to demonstrate her good-faith marriage by clear and convincing evidence, the Petitioner's brief on appeal established that the Petitioner meets that burden. In her brief

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

on appeal, the Petitioner alleged that the Director erred in applying the regulation at 8 C.F.R. § 204.2(a) and the clear and convincing evidence standard to her case. The Petitioner argued that, as a self-petitioner under the Violence Against Women Act (VAWA), she is subject only to the regulation at 8 C.F.R. § 204.2(c), which requires that U.S. Citizenship and Immigration Services (USCIS) consider “any credible evidence.” She further argued that her petition is not subject to the Marriage Fraud Act and that she must establish by a preponderance of the evidence, not by clear and convincing evidence, that her marriage was in good faith. Additionally, the Petitioner alleged in her appeal brief that the Director did not acknowledge all of the evidence the Petitioner submitted, required “traditional primary and secondary evidence,” and did not provide an explanation for the finding that the Petitioner’s evidence contained insufficient detail of her good-faith marriage. She further alleged that the Director erred by considering each piece of evidence individually rather than in the aggregate. The Petitioner asserted that she provided sufficient credible primary and secondary evidence to establish by a preponderance of the evidence that she married W-S- in good faith. Additionally, she contended that she demonstrated by clear and convincing evidence that she intended to establish a life with W-S- at the time she married him, and that her marriage to him was therefore *bona fide*.

The Petitioner’s contention that she need only establish her good faith marriage by a preponderance of the evidence, rather than by clear and convincing evidence, is in error. The Petitioner correctly notes that, pursuant to the regulation at 8 C.F.R. § 204.2(c)(2), a self-petitioner may submit any credible evidence relevant to her petition. Additionally, the Petitioner is correct that a petitioner under section 204(a)(1)(A)(iii)(I) of the Act must demonstrate eligibility by a preponderance of the evidence. 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 (AAO 2010). However, because the Petitioner married W-S- while in removal proceedings, approval of her petition is barred by section 204(g) of the Act unless she establishes, by clear and convincing evidence, that her marriage was *bona fide*. Section 245(e) of the Act. Nevertheless, the Petitioner has met her burden in this case.

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); *Chawathe*, 25 I&N Dec. 369. 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 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 detailed, probative evidence indicating that she married W-S- in good faith. Although the Petitioner did not date W-S- for a long period prior to marriage and did not remain

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married to him for long, the evidence indicates that she married him in accordance with her cultural and religious norms, with the intention of establishing a life with him, and that the relationship was cut short by W-S-'s drug and alcohol use and abusive behavior toward the Petitioner.

In the personal declaration she submitted with the Form I-360, the Petitioner claimed that a religious leader at her mosque introduced her to W-S- in early-2009. The Petitioner stated that she believed W-S- was a good person and that she sought the opinions of her friends, who all believed that W-S- was a religious person of good moral character. According to the Petitioner, she and W-S- talked, got to know each other, and liked each other, so they decided to get married relatively quickly due to cultural and religious expectations within their faith community. She further stated that W-S- traveled to [REDACTED] shortly after the wedding but that she and W-S- spoke every day by telephone and got to know each other better. However, she indicated that, the day after W-S- returned from [REDACTED] he disappeared with the Petitioner's vehicle for two days. The Petitioner stated that she then learned that W-S- previously had problems with drug and alcohol addiction, and she "wanted [W-S-] gone because this was not what [she] had signed up for." However, she recounted that when W-S- returned, he expressed great remorse and she decided to give him a second chance. The Petitioner recalled that W-S- had "exemplary behavior" for a period of time, during which the couple went on vacation to [REDACTED] and [REDACTED]. She stated that W-S- obtained a job approximately one week after they returned from vacation, and that things went well until W-S- received his paycheck and again disappeared for two days. The Petitioner claimed that she gave W-S- another chance when he returned because she was attached to him. She indicated that she and W-S- spent Ramadan together as a family, cooking and attending the mosque. The Petitioner stated that, approximately one week after the Eid, W-S- dropped the Petitioner off at work and then disappeared with her vehicle for two months. The Petitioner alleged that, after W-S- was missing for a month and a half, she wanted a divorce and spoke to a lawyer. She stated that, after the police found W-S-, he called her by telephone and threatened to kill her if she did not drop charges related to his misuse of her vehicle. The Petitioner declared that she later obtained a protection order against W-S-, but she "still had feelings for him" and wanted to help him, so she requested that the judge put W-S- in a rehabilitation facility. According to the Petitioner, she last saw W-S- at the hearing at which their divorce was finalized.

In response to the NOID, the Petitioner submitted a written request for a *bona fide* marriage exemption under section 245(e) of the Act. In her request, she stated that she married W-S- in good faith and in accordance with her religious beliefs. She claimed that she and W-S- did not date for long prior to marriage because their religion "frowns upon long courtships," but that she and W-S- entered into both a civil marriage and a religious marriage in good faith. She alleged that she and W-S- attended the mosque together and that she has good memories of their time together when W-S- was not abusing drugs and alcohol. She stated that she had hopes about how the relationship would turn out, and that it is not her fault that it failed.

The Petitioner's response to the NOID also included several detailed supporting statements from friends and members of her community. [REDACTED] stated that he met W-S- at the Petitioner's home and saw W-S- washing the couple's clothing, cooking on the barbeque, working with the

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Petitioner, and giving the Petitioner rides to and from work. [REDACTED] indicated that she was the Petitioner's neighbor at the time the Petitioner married W-S-. [REDACTED] recalled that she saw the Petitioner and W-S- walking together in the neighborhood in the mornings before W-S- drove the Petitioner to work. [REDACTED] also indicated that W-S- borrowed tools from her to work on the Petitioner's house, and that he shared food he cooked on the outdoor grill. [REDACTED] claimed that the Petitioner and W-S- were fellow members of the [REDACTED]. [REDACTED] asserted that the Petitioner and W-S- attended the mosque together for prayer and events, brought food during Eid, and participated in charity work and other activities at the mosque. [REDACTED] similarly stated that he attended the [REDACTED] with the Petitioner and W-S-, and that the couple brought food to the mosque. [REDACTED] made similar claims, noting that the Petitioner and W-S- arrived together at the mosque dressed in traditional African clothing and brought traditional African food. [REDACTED] also indicated that she and her family visited the Petitioner and W-S- at their home. [REDACTED] on behalf of the Board of the [REDACTED], confirmed that the Petitioner and W-S- attended prayer service together.

[REDACTED] recounted that he introduced the Petitioner and W-S- because he felt they would be a good couple. [REDACTED] indicated that he initially did not tell the Petitioner about W-S-'s previous problems with drug and alcohol abuse because he believed those problems were resolved. However, [REDACTED] stated that when W-S- disappeared with the Petitioner's vehicle, he decided to tell the Petitioner about W-S-'s past. [REDACTED] declared that the Petitioner and W-S- visited him and his family in [REDACTED], where they shared meals and tea. [REDACTED] claimed that she worked with the Petitioner and then met W-S-. [REDACTED] stated that the Petitioner and W-S- went to [REDACTED] shop and that she saw them walking together in town. [REDACTED] recounted that the Petitioner's business was located next to [REDACTED] brother's store; and that he therefore saw W-S- drop the Petitioner off at work and pick her up.

On appeal, the Petitioner submitted additional detailed, credible supporting statements from friends. [REDACTED] claimed, in an updated statement, that he is the Petitioner's spiritual leader and that the Petitioner told him about W-S-. According to [REDACTED] "In the Islamic faith we frown upon dating and sexual relationships outside of marriage . . . I told her to bring him to me once they got married." [REDACTED] stated that he was relieved that the Petitioner married a Muslim man and considered W-S- to be his son-in-law. [REDACTED] indicated that he enjoyed speaking with W-S- when he and the Petitioner came to visit. He claimed that he invited the Petitioner and W-S- to attend an event at his mosque and invited them to his home for a meal and tea afterward. According to [REDACTED], he spoke to W-S- about his expectations of W-S- as the Petitioner's husband, but believes that W-S- did not listen to him. [REDACTED] and [REDACTED] submitted second statements which were very similar to their first statements.

[REDACTED] attested that he owned a store next door to the Petitioner's business in 2009, when the Petitioner was married to W-S-. [REDACTED] stated that the Petitioner asked his opinion of W-S- before she married him, and that he told her he had seen W-S- at the mosque and believed he was a good person, but did not know him. He further claimed that he got to know W-S- after the Petitioner and W-S- got married because W-S- brought the Petitioner to work and visited [REDACTED] at his shop.

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██████████ indicated that she met the Petitioner at the ██████████ and then met W-S-, who also attended the mosque, after the Petitioner and W-S- were married. ██████████ claimed that she traveled to Memphis with the Petitioner and W-S- to attend a speech by a minister from Africa. According to ██████████, during the drive to Memphis, she spoke with the Petitioner and W-S- about a trip they had taken to the East Coast. She also stated that she saw the Petitioner and W-S- at the mosque on Fridays and that she observed how proud W-S- was that the Petitioner brought food to share. ██████████ also claimed that she visited the Petitioner and W-S- at their home on two occasions. According to ██████████, the Petitioner “acted like honeymooners” and “like husband and wife,” and she was happy that the Petitioner had found a good husband.

The Petitioner also submitted a letter from ██████████ at ██████████ who confirmed that the Petitioner and W-S- had a joint checking account at the bank from August through September 2009. ██████████ stated that she saw the Petitioner and W-S- together on the bank on several occasions and believed they were happily married. The evidence also includes an unsigned application form for a joint account at ██████████, dated August 10, 2009, listing the account owners as the Petitioner, W-S-, and another individual. Although this application is not signed, it is labeled “CUSTOMER COPY,” and appears to be a courtesy copy issued to the applicants for the account rather than the signed copy submitted to the bank. When viewed in light of the letter from ██████████, this bank application supports the Petitioner’s claim.

Additional evidence in the record also supports a finding that the Petitioner and W-S- shared a life together as spouses. The relevant evidence includes receipts for cosmetic products shipped to W-S- and the Petitioner; an application for utility service on ██████████ Tennessee, listing the Petitioner as the customer and W-S- as her spouse; a record of a request for shut-off of utility service at the ██████████ address, scheduled for June 15, 2010, just prior to their divorce, listing the Petitioner and W-S- as tenants; a utility bill, addressed to the Petitioner and W-S- at the ██████████ address, listing a meter reading date of June 2, 2010, shortly prior to the shut-off of service at the time of divorce; and photographs of the Petitioner and W-S- together and with other individuals on several different occasions.

Furthermore, documentation of the arrests and court proceedings against W-S- indicates that he was her spouse. This documentation includes a warrant for the arrest of W-S-, dated ██████████, 2009, for the unauthorized use of the Petitioner’s vehicle. The warrant noted that W-S- was the Petitioner’s spouse and that he disappeared with her vehicle two months prior, after dropping her off at work. A police report, dated ██████████, 2009, indicated that the Petitioner was married to W-S- and stated that W-S- took the Petitioner’s car on ██████████ 2009 and had not yet returned. Another police report, dated ██████████, 2009, identified W-S- as the Petitioner’s husband and indicated that the Petitioner complained that W-S- took her car and then made threatening telephone calls to her. A police report dated ██████████, 2009, also identified W-S- as the Petitioner’s husband and noted that W-S- was calling the Petitioner and threatening to kill her. The ██████████ 2009 police report noted that the Petitioner and W-S- had been separated for two months and that she was filing for divorce. An arrest report for W-S-, dated ██████████, 2009, indicated that W-S- was charged with aggravated assault and unauthorized use of a vehicle. Furthermore, an Order of

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Protection for the Petitioner against W-S-, dated [REDACTED] 2009, listed W-S- as the Petitioner's husband.

Accordingly, the Petitioner has established by a preponderance of the evidence that she married W-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, and by clear and convincing evidence as required to establish eligibility for the *bona fide* marriage exemption at section 245(e) of the Act. The Director's contrary determination is withdrawn.

#### IV. CONCLUSION

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 met that burden. Accordingly, the appeal is sustained.

**ORDER:** The appeal is sustained.

Cite as *Matter of N-F-T-*, ID# 13268 (AAO Oct. 22, 2015)