



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

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

MATTER OF G-A-O-

DATE: OCT. 23, 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.

**I. APPLICABLE LAW**

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, 8 U.S.C. § 1154(a)(1)(J) 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 record in this case indicates that the Petitioner was in removal proceedings at the time of her marriage. In such a situation, section 204(g) of the Act 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 by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien's right to remain in the United States], until the

alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the Petitioner resided outside of the United States for two years after her marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the Petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, which states:

*Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –*

- (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 eligibility requirements under section 204(a)(1)(A)(iii) of the Act are explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) of the Act . . . .

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

....

(b)(6)

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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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent parts:

(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.

....

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

....

(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 Kenya, entered the United States on May 17, 2008, as a business visitor. She subsequently obtained a change of status to nonimmigrant student. On June 22, 2011, the Petitioner was placed into removal proceedings.<sup>1</sup> The Petitioner married C-R-<sup>2</sup> a U.S. citizen, on [REDACTED] 2011 in [REDACTED] New York. The Petitioner filed the instant Form I-360 on May 22, 2014. The Director denied the petition, finding that the Petitioner did not have a qualifying relationship with a United States

<sup>1</sup> The petitioner remains in removal proceedings before the New York Immigration Court and her next hearing is scheduled for [REDACTED] 2016.

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

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citizen and eligibility for immediate relative classification based on such relationship, did not reside with her spouse, or marry her spouse in good faith. The Director further determined that the Petitioner married C-R- after being placed into removal proceedings, and did not qualify for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act.

We review these proceedings *de novo*. Upon a full review of the record, we will withdraw one of the director's grounds for denial, and affirm the denial on the remaining grounds. The appeal will be dismissed for the following reasons.

### III. ANALYSIS

#### A. Joint Residence

The evidence of joint residence before the Director included the Form I-360, a lease agreement and an affidavit from the Petitioner's church pastor. On the Form I-360, the petitioner stated that she lived with C-R- from July 2011 until February 2013, and that their last joint address was on [REDACTED] in [REDACTED] New York [REDACTED]. The lease agreement for the [REDACTED] address was between [REDACTED], Landlord, and Mr. and Mrs. [Petitioner's name], Tenant, for a one-year lease term beginning on December 1, 2012. C-R- is not named as a tenant and he did not sign the lease agreement. [REDACTED] pastor at the [REDACTED] Church, stated that he used to drive the Petitioner from the house on [REDACTED] to the church, and that he met C-R- at the residence. The Director correctly determined that the pastor's affidavit was general and did not provide sufficient probative details to support the Petitioner's claim that she resided with C-R-.

On appeal, the Petitioner asserts that the same evidence deemed sufficient to establish the abuse should also have been considered to establish that the Petitioner resided with C-R-. The Petitioner misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other. The Petitioner in this case does not identify the evidence in the record that shows she resided with C-R-. The Petitioner's personal declaration does not describe their home or shared residential routines in any detail, apart from the abuse. Moreover, the record contains numerous addresses for the Petitioner during the period of her claimed residence with C-R-, and the record does not show that the Petitioner and C-R- jointly resided at any of them. A letter the Petitioner submitted from the Sheriff's Office in [REDACTED] New York certifies that the Petitioner lived in [REDACTED] from two years prior to the date of the letter in September 2014, or since September 2012, at an address on [REDACTED] [REDACTED] New York, and at a second address on [REDACTED] in [REDACTED] New York. The Sheriff's Office letter is inconsistent with the lease agreement for the [REDACTED] address beginning December 1, 2012, and with two Forms AR-11, Alien's Change of Address Card, the Petitioner submitted to USCIS indicating on December 6, 2012 that her new address was on [REDACTED] in [REDACTED], Pennsylvania, and on January 28, 2013, that her new residence was the [REDACTED] address in [REDACTED] and her prior address was [REDACTED] in [REDACTED].

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Pennsylvania. The record does not contain any evidence that C-R- lived at any of the addresses where the Petitioner resided in New York or Pennsylvania. Accordingly, the record does not establish that the petitioner resided with her husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### B. Good-Faith Entry Into The Marriage

The Director also determined that the relevant evidence did not establish that the Petitioner married C-R- in good faith. In her declaration in support of the Form I-360, the Petitioner recounted that she met C-R- in December 2010 when she was a nursing student in ██████████ Pennsylvania and visited her cousin in ██████████ New York. The Petitioner stated that when she returned to Pennsylvania, C-R- came to visit her several times and they spoke on the telephone almost every day. She explained that in May 2011 she returned to ██████████ to visit C-R- and to explore employment opportunities. The Petitioner stated that she married C-R- in July 2011 because they were in love and nothing else mattered. In the remainder of her declaration, the Petitioner focused on the abuse in the marriage. The petitioner did not probatively describe their wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

In his affidavit, ██████████ stated that he knew the Petitioner married C-R- in good faith because the Petitioner was honest with him about the problems she had in their marriage. The pastor, however, did not describe any particular visit or social occasion with the couple, and did not discuss his interactions with the couple in any detail to establish his knowledge of the Petitioner's good-faith entry into the relationship.

The Petitioner also submitted a psychological evaluation from ██████████, New York State Licensed Psychologist, who performed a clinical interview and psychological testing of the Petitioner. ██████████ stated that the Petitioner told him that C-R- was "charming, had a good sense of humor," and that she married C-R- because she loved him. ██████████ reviewed instances of abuse, diagnosed the Petitioner with Adjustment Disorder with Mixed Anxiety and Depressed Mood, and recommended a course of treatment. The psychological evaluation is of only minimal probative value in establishing the Petitioner's good-faith entry into the marriage because it focuses primarily on the abuse, and provides no further details of the Petitioner's good-faith marital intentions.

On appeal, the Petitioner asserts that she does not have access to documentation that other couples might have because she was a victim of domestic violence. 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." 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the petitioner does not provide detailed, probative information regarding her intentions in marrying C-R-. When viewed in the aggregate, the evidence does not establish the Petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### C. Section 204(g) of the Act Further Bars Approval

Because the Petitioner married her spouse while she was in removal proceedings and did not remain outside of the United States for two years after their marriage, she must establish the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) 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 exception 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 (5<sup>th</sup> 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, the Petitioner must establish his or her 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; *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, the Petitioner must establish his or her 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. *See Arthur*, 20 I&N Dec. at 478.

As the Petitioner failed to establish her good faith entry into her marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she also has not demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

### D. Qualifying Relationship and Eligibility for Immediate Relative Classification

The Director erroneously denied the petition, in part, because the petitioner did not establish that she had a qualifying relationship with a U.S. citizen spouse and corresponding eligibility for immediate relative classification. The record establishes that the Petitioner married a U.S. citizen and remained married to him at the time of filing the Form I-360. The Petitioner therefore had a qualifying relationship and we withdraw the portion of the Director’s decision to the contrary.

Because the Petitioner is not exempt from section 204(g) of the Act, however, she has not demonstrated her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act, and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv). As such, we affirm the Director’s finding that the Petitioner is not eligible for immediate relative classification.

## IV. CONCLUSION

On appeal, the record establishes that the Petitioner had a qualifying relationship with a U.S. citizen. The Petitioner has not demonstrated, however, that she resided with her spouse or married him in good faith. Further, the Petitioner has not established that she is exempt from the bar to approval of her petition under section 204(g) of the Act. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration 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, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of G-A-O*, ID# 14073 (AAO Oct. 23, 2015)