



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

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

MATTER OF MATTER OF V-M-A-

DATE: SEPT. 15, 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 remanded to the Director for further proceedings consistent with this decision.

**I. APPLICABLE LAW**

Section 204(a)(1)(A)(iii)(I) of the Act provides 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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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 are explained further at 8 C.F.R. § 204.2(c)(1), which states, 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:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(b)(6)

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) ... of the Act based on that relationship [to the U.S. spouse].

The evidentiary standard and 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:

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Jamaica, entered the United States as a B-2 nonimmigrant visitor on July 7, 1991. She married R-M,<sup>1</sup> a U.S. citizen, on [REDACTED] 2011. The Petitioner filed the instant petition on March 13, 2014. The Director denied the petition finding the record insufficient to establish that the Petitioner had a qualifying relationship as the spouse of a U.S. citizen and was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act. The Petitioner filed a timely appeal.

We review these proceedings on a *de novo* basis. A full review of the record, including the relevant evidence submitted on appeal, establishes the Petitioner has overcome the Director's grounds for denial. We will remand the appeal to the Director for entry of a new decision.

## II. QUALIFYING RELATIONSHIP AND ELIGIBILITY FOR IMMIGRANT CLASSIFICATION

In determining that the Petitioner did not establish a qualifying spousal relationship with R-M-, the director found that the Petitioner had previously been married to R-R-<sup>2</sup> and did not provide evidence of the termination of this marriage prior to her marriage to R-M-. On appeal, the Petitioner asserts that U.S. Citizenship and Immigration Services (USCIS) erred in its denial of her petition because she was never married to R-R- and was a victim of immigration fraud based on "an unscrupulous pastor consultant," who prepared immigration forms on her behalf.

In the affidavit submitted in support of her appeal, the Petitioner recalls going with her sister and brother to an unidentified church around the mid-1990s to attend a seminar, where an unidentified

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

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

(b)(6)

pastor told them “there were changes in immigration laws that helped [them] out.” She also recalls “all [they] have to do is give ‘offerings’ towards the Church and the paperwork would be done without fees. [She] put in a \$100 offering at the time on the same day [sic].” She indicates that the pastor introduced them to an unidentified woman “in charge of handling the paperwork,” whom the Petitioner gave her passport and “possibly [her] birth certificate.” The Petitioner relays that the unidentified woman came to her home a couple of weeks later to sign the signature page of some forms, and she “honestly did not read everything, but [she] definitely had no idea that it was a fraudulent application claiming that [she] was married.” She recalls that she subsequently “learned through the grapevine that the woman was a fraud.”

The Petitioner indicates that during an interview with USCIS in January 2012, upon learning that her application filed in the 1990s was based on a fictitious marriage, she tried to explain that she never married anyone before R-M-, and she “had absolutely no knowledge that the application filed was based on a fake marriage case ... nor did [she] see any fake marriage certificates.” The Petitioner relays that after her interview, she filed a FOIA request, through which she received a copy of a “fake marriage certificate.” She also states that she went to the courthouse in [REDACTED], New York, and a search of the records concerning a marriage between her and P-R- “showed that no record existed of said marriage.”

The record contains a copy of Certificate of Marriage Registration, demonstrating the Petitioner’s marriage to R-M-, a U.S. citizen, on [REDACTED] 2011 in [REDACTED] New York. Although the record also contains a copy of Certificate of Marriage, indicating that the Petitioner and R-R- were married on [REDACTED] 1994 in [REDACTED] New York, the Petitioner provides a reasonable and credible explanation how she was able to obtain this document through a FOIA request. Moreover, the Petitioner has submitted a No Record Certification – Marriage, issued by the Registrar of Vital Statistics for [REDACTED] certifying that a diligent search of marriage records for the Petitioner and R-R- from January 1, 1994 to January 1, 1995 resulted in “no record.” The Petitioner has, therefore, established that no marriage existed between her and R-R-. Accordingly, the Petitioner has overcome the Director’s grounds for denial and established by a preponderance of the evidence that she has a qualifying spousal relationship with R-M- and is eligible for preference immigrant classification based upon that relationship as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.<sup>3</sup>

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<sup>3</sup> In concluding that the Petitioner was not married to R-R-, we make no determination regarding the Petitioner’s culpability or lacktherefo in her prior immigration filings related to R-R-. Despite her assertions that she had no knowledge of the content of the submissions, she signed immigration documents, including a Form I-485, Application to Register Permanent Residence or Adjust Status, under the penalty of perjury. On that basis alone, the Petitioner may be held responsible for fraud or material misrepresentations contained within the record of proceeding. If the Petitioner’s actions constitute deliberate avoidance, she would not be absolved of responsibility for the content of the submitted materials. See *Hanna v. Gonzales*, 128 Fed. Appx. 478, 480 (6<sup>th</sup> Cir. 2005)(an applicant who signed his application for adjustment of status but who disavowed knowledge of the actual contents of the application because a friend filled out the application on his behalf was still charged with knowledge of the application’s contents). The law generally does not recognize deliberate avoidance as a defense to misrepresentation. Cf. *United States v. Puente*, 982 F.2d 156, 159 (5<sup>th</sup> Cir. 1993)(defendant who deliberately avoids reading the form he is signing cannot avoid criminal sanctions for any false statements contained therein). However, the instant immigrant visa petition is not the appropriate forum for finding

### III. ADDITIONAL GROUNDS OF DENIAL BEYOND THE DIRECTOR'S DETERMINATION

Although the Petitioner has overcome the Director's stated grounds for denial, the record remains insufficient to establish the Petitioner's eligibility. Specifically, while the Petitioner has submitted some documentation such as joint taxes and a jointly held bank account that also list R-M- and the Petitioner at the same address, the personal statements submitted by the Petitioner, her friends, and family, do not contain probative and detailed statements regarding the Petitioner's claims of a good-faith marriage to R-M- and her residence with him. Moreover, the Petitioner does not provide an affidavit addressing her good moral character, which is primary evidence required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). Accordingly, we will remand the matter to the Director for further consideration of these issues. The Director may request any additional evidence deemed warranted and should allow the Petitioner to submit additional evidence within a reasonable period of time.

### IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish her 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, 375 (AAO 2010). The appeal will be remanded to the Director for further proceedings consistent with the foregoing opinion.

**ORDER:** The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of V-M-A-*, ID#12982 (AAO Sept. 15, 2015)

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inadmissibility. Instead, she may be found inadmissible at a later date if she applies for admission into the United States or applies for adjustment of status to permanent resident status.