



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

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

MATTER OF M-K-

DATE: SEPT. 15, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM 1-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks classification as an immigrant abused spouse. *See* Immigration and Nationality Act (INA, or 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 Petitioner did not establish that he entered into marriage with his United States citizen spouse in good faith and was exempt from the bar to approval of his petition under section 204(g) of the Act because he married while in removal proceedings. The Director also denied the petition because the Petitioner did not establish that he had a qualifying relationship with a U.S. citizen, was eligible for immediate relative classification based on that relationship, resided with a U.S. citizen, and was subject to the requisite battery or extreme cruelty.

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

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 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 record in this case indicates that the Petitioner was in removal proceedings at the time of his 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 his 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 in pertinent part:

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.

8 U.S.C. § 1255(e) (emphasis added).

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are explicated 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(c) of the Act, section 204(g) of the Act, and section 204(a)(2) 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.

(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. . . .

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

(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

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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.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mali who entered the United States on August 10, 2007, as a B-1 nonimmigrant visitor. The Petitioner was placed in removal proceedings on [REDACTED] 2011. The Petitioner remains in removal proceedings and his next hearing is on [REDACTED] 2015, at the [REDACTED] Immigration Court. The Petitioner married S-C-¹, a U.S. citizen, on [REDACTED] 2012, in [REDACTED] Pennsylvania. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant on May 12, 2014. The Director subsequently issued a request for evidence (RFE) of, among other things, the Petitioner's eligibility for immigrant classification based on his marriage to S-C-, joint residence with S-C-, entry into their marriage in good faith, and the requisite battery and/or extreme cruelty. The Director also stated in the RFE that the Petitioner was subject to section 204(g) of the Act and notified the Petitioner of his right to request a *bona fide* marriage exemption. The Petitioner timely responded with additional evidence and a request for a *bona fide* marriage exemption, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition and the Petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record as supplemented on appeal, the Petitioner has not overcome the Director's grounds for denial. The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

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III. ANALYSIS

A. Joint Residence

The Director correctly determined that the Petitioner did not establish that he resided with S-C-. In his Form I-360, the Petitioner stated that he resided with S-C- from February 2011 to September 2012, and last resided with her at an apartment on [REDACTED]. The relevant evidence in the record contains: the Petitioner's affidavits dated March 29, 2014 and November 18, 2014; affidavits from the Petitioner's friends, [REDACTED] and [REDACTED]; a letter from [REDACTED] the assistant property manager for [REDACTED] copies of apartment rental applications for the [REDACTED] apartment for the Petitioner and S-C-; a lease decision and associated credit report for S-C-; various letters and bills from Verizon, Comcast, T Mobile, and Direct TV; and documents from Wells Fargo Bank.

The letter from the assistant property manager, [REDACTED] states that the Petitioner and S-C- signed a lease for the [REDACTED] apartment on May 6, 2012, and resided there until September 16, 2012. The Petitioner's rental application appears incomplete and contains different information from S-C-'s application. In his rental application, the Petitioner did not list his address at the time or the date that he would move into the new rental location. In contrast, this information was included on S-C-'s application. In addition, the amount required to move into the new apartment was listed at \$900.00 for the Petitioner and \$600.00 for S-C-. The lease decision and credit report only pertain to S-C- and indicate a different address for S-C- than the address she listed on the rental application. The letter from Verizon and the Comcast bill are addressed solely to the Petitioner. The letter from T Mobile is addressed solely to S-C-. The bills from Verizon only contain the Petitioner's name but do not include an address and are dated after the Petitioner and S-C- separated. The bill from Direct TV only includes the Petitioner's name, is dated after their separation, and indicates that it is for service at an address different than the claimed joint residence. The documents from Wells Fargo Bank are dated one year or more after the Petitioner separated from S-C-. As such, the documentary evidence does not demonstrate that the Petitioner jointly resided with S-C-.

Despite these deficiencies, traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). In his March 29, 2014 affidavit submitted with the Form I-360, the Petitioner stated that he began to live with S-C- after they married on April 7, 2012, but did not specify where they resided at the time or the date that they stopped residing together. In response to the RFE, the Petitioner submitted an affidavit dated November 18, 2014 but did not further describe his apartment with S-C-, their shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with S-C- after their marriage.

The Petitioner's friends, [REDACTED] and [REDACTED] both stated in their affidavits that they attended the Petitioner and S-C-'s wedding. [REDACTED] and [REDACTED] also stated that

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they visited the Petitioner and S-C- at their home but neither described any specific residential visits, observations, or otherwise provided probative details regarding the couple's living arrangements. More importantly, the affidavits from [REDACTED] and [REDACTED] are nearly identical in format, wording and tone, which call into question the veracity of each affiant's statements. In response to the RFE, the Petitioner submitted an affidavit from his friend, [REDACTED] [REDACTED] stated that, sometime in 2013, he arrived at the home on [REDACTED] and saw the Petitioner's belongings stacked on the street as a result of a domestic dispute. Other than to describe what happened when the police department responded to the incident, [REDACTED] did not further describe their residential routines or provide any other substantive information sufficient to demonstrate that the Petitioner resided with S-C- during their marriage. In addition, the Petitioner indicated on the Form I-360 that he has been separated from his wife since September 2012 and did not reside with S-C- in 2013, the year of the domestic dispute [REDACTED] claimed he witnessed.

On appeal, the Petitioner asserts that he has submitted sufficient evidence to show joint residence with S-C-. He further asserts that his wedding photographs submitted below also demonstrate that he resided with S-C-. However, the wedding photographs solely depict the Petitioner and S-C- getting married and without probative testimony, are insufficient to establish the Petitioner's marital residence with S-C-. The Petitioner's affidavits and the affidavits from his friends do not provide any substantive information relating to the Petitioner's claimed joint residence with S-C- nor do they overcome the inconsistencies in the documentary evidence. Accordingly the Petitioner has not established by a preponderance of the evidence that he resided with his spouse after 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 correctly determined that the Petitioner did not establish that he married S-C- in good faith. The relevant evidence in the record contains the Petitioner's affidavits, bank documents, affidavits from friends, and several photographs of the Petitioner and S-C- taken at their wedding. In his first affidavit, the Petitioner described that he met S-C- when she walked passed his house and they struck up a conversation. He stated that S-C- gave him her telephone number, they started to date, and that he married her because he loved her. The Petitioner stated that when they first moved in together, things were good between them. He did not describe in further detail his decision to marry S-C-, their wedding ceremony, shared residence, and any experiences apart from the claimed abuse. The Petitioner's second affidavit provides virtually the same information regarding their courtship and only adds that he and S-C- liked to go out to different restaurants and for long walks in the park, but does not describe their courtship or married life in any greater detail.

The affidavits from the Petitioner's friends, as noted above, are virtually identical and also do not contain probative details regarding the Petitioner's intentions in marrying S-C-. [REDACTED] stated that he was at the Petitioner and S-C-'s wedding as a close personal friend of both the Petitioner and S-C-. He also stated that he has been to their house on several occasions for dinner and found them to be "loving and caring towards each other and have witnessed them, on several occasions, taking care of each other as spouses do." [REDACTED] stated that he attended the Petitioner and S-C-'s wedding as a close personal friend and has been to their house for dinner and

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special occasions. He also stated that he has found the Petitioner and S-C- “to be loving and caring towards each other and have witnessed them, on several occasions, taking care of each other as spouses do.” Neither [REDACTED] nor [REDACTED] provided any substantive information about the Petitioner’s marital intentions. In addition, the similarities between the two affidavits call into question the veracity of each affiant’s statements and lessen their evidentiary weight.

On appeal, the Petitioner argues that the Director’s determination that his affidavits lack probative details regarding his courtship with S-C- goes against the weight of the evidence. He does not, however, acknowledge the deficiencies of the relevant documents, his affidavits, and the affidavits of his friends. The bank documents are dated over a year after the Petitioner and S-C- separated and the wedding photographs, without probative testimony, do not demonstrate that the Petitioner married S-C- in good faith. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner entered into marriage with S-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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

Because the Petitioner married S-C- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his 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. *See 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, the Petitioner must establish his good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *see also 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 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. *See Matter of Arthur*, at 478. As the Petitioner failed to establish his good-faith entry into his marriage with S-C- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the applicable 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. Battery or Extreme Cruelty

We find no error in the Director’s determination that the Petitioner did not establish that S-C- subjected him to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the Petitioner’s affidavits, an affidavit from his

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friend [REDACTED] and two incomplete Complaint or Incident Reports from the [REDACTED] Police Department. The undated and unsigned Complaint or Incident Reports are mostly blank and do not contain a description of any complaints or incidents.

In his first affidavit, the Petitioner stated that when he first moved in together with S-C-, things were good but that this changed when he discovered that she had a drug problem. He stated that their money started disappearing and that S-C- had drastic mood swings. The Petitioner stated that when he started to hide their money, S-C- became violent and damaged his car. The Petitioner did not further describe this incident. He stated that he finally had to leave because the police kept coming to his home and he was afraid he would be arrested. In his second affidavit, the Petitioner repeated his earlier statements and recounted that he tried to get S-C- into a drug rehabilitation program. The Petitioner also mentioned that [REDACTED] witnessed S-C- screaming at them and that S-C- put the Petitioner's belongings out in the street. The Petitioner did not, however, provide any probative details about this incident or the one previously mentioned involving his car.

His statements do not demonstrate that S-C- ever battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). [REDACTED] described one incident when he went to the Petitioner's apartment to pick him up. [REDACTED] stated that S-C- came outside and started screaming at them as they were packing up the car with the Petitioner's belongings. [REDACTED] further stated that he thought that S-C- was going to break his car window so he called the police. He stated the police officers told him that they had been called to the Petitioner's residence several times because of complaints from neighbors about the fighting. He did not provide other substantive information about the Petitioner's interactions with S-C-, and his account does not demonstrate that S-C-'s behavior amounted to extreme cruelty as defined in the regulations.

On appeal, the Petitioner does not provide additional evidence regarding S-C-'s treatment of him and the affidavits and the Complaint or Incident Reports submitted below do not contain sufficient, probative information to establish the claimed abuse. Accordingly, the Petitioner has not established that S-C- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

E. Eligibility for Immediate Relative Classification

The record reflects that because the Petitioner is not exempt from section 204(g) of the Act, he has also not demonstrated his 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). To the extent that the Director determined that the Petitioner did not establish a qualifying relationship because he did not demonstrate that he is exempt from section 204(g) of the Act, that portion of the decision is withdrawn.

VIII. CONCLUSION

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The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. The Petitioner did not establish that he resided with S-C-, that he married S-C- in good faith, and that he was subjected to battery or extreme cruelty by her during their marriage. In addition, the Petitioner did not establish that he is exempt from the bar to approval of his petition under section 204(g) of the Act and that he is eligible for immediate relative classification based on his marriage to S-C-. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.

Cite as *Matter of M-K-*, ID#13732 (AAO Sept. 15, 2015)