



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

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

MATTER OF S-N-M-

DATE: SEPT. 16, 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 Acting Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the Petitioner did not establish eligibility for immigrant classification under section 201(b)(2)(A)(i) of the Act based on a qualifying spousal relationship with a U.S. citizen and married her U.S. citizen spouse in good faith. Additionally, the Director concluded that the petition's approval 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:

(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].

.....

(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.

.....

(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.

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 is a citizen of Kenya who last entered the United States on October 11, 2006, as a B-1 nonimmigrant visitor. She was placed into removal proceedings on February 2, 2010. She married A-W-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2010 in [REDACTED] Washington. On February 7, 2011, an Immigration Judge denied the Petitioner's application for asylum and granted her application for withholding of removal. The Petitioner filed a Form I-360 on August 15, 2011. The Director issued a request for evidence (RFE) of, among other things, the Petitioner's good-faith marriage. The Petitioner responded with a statement and additional information. The Director denied the petition, finding the evidence insufficient to establish that the Petitioner married A-W- in good faith. The Petitioner then filed a motion to reopen and reconsider. The Director granted the motion but affirmed the denial of the petition based on a finding that the Petitioner had not established by clear and convincing evidence that her marriage to A-W- was *bona fide*.

We review these proceedings *de novo*. The Petitioner has established by clear and convincing evidence that her marriage was *bona fide*. Therefore, we will sustain the appeal.

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

The Petitioner has demonstrated by clear and convincing evidence that she married A-W- in good faith. Therefore, she meets the *bona fide* marriage exemption under section 245(e) of the Act, and approval of the Form I-360 is not barred by section 204(g) of the Act.

In her 2011 declaration, submitted with the Form I-360, the Petitioner stated that she met A-W- in February 2010 while riding the bus, and that the two spoke and exchanged telephone numbers. She indicated that they then began calling each other on the telephone and invited each other out for dinner or coffee. She stated that she liked being with A-W- and that he treated her well and said the right things. According to the Petitioner, the relationship "turned serious," they decided to marry, and A-W- bought her a ring. She stated that friends attended their wedding and that they held a reception at a friend's house, where they had food and cake. The Petitioner claimed that, after the wedding, A-W- moved into her apartment because his apartment was too small. She further stated that, a few months later, she and A-W- moved to a larger apartment and A-W-'s sister gave them some furniture. The Petitioner asserted that she and A-W- were happy until February 2011, when A-W- began abusing drugs and alcohol and became violent and abusive toward the Petitioner. She stated that, after an abusive incident on [REDACTED] 2011, she obtained a two-year No-Contact Order against A-W-, and had not seen him since that date.

The Petitioner also submitted, as supporting evidence filed with the Form I-360, greeting cards she and A-W- exchanged on birthdays and anniversaries; greeting cards from friends; photographs of the Petitioner and A-W- together before marriage, at their wedding ceremony, and at their wedding reception with friends; a lease for their shared apartment; tax returns from 2010 listing the Petitioner

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

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and A-W- as “married filing jointly”; and documentation of the abuse of the Petitioner by A-W-. Additionally, the Petitioner submitted a supporting letter from her employer, [REDACTED] who stated that the Petitioner told her she was engaged. [REDACTED] further stated that she sometimes gave the Petitioner meals to take home to A-W-, and that A-W- called [REDACTED] to thank her. In response to the RFE, the Petitioner submitted a letter from a friend, [REDACTED]<sup>2</sup> who claimed that she and the Petitioner shared an apartment at the time the Petitioner met A-W-. According to [REDACTED], she accompanied the Petitioner on visits to A-W- at his apartment, and was also present when A-W- visited the Petitioner. [REDACTED] also stated that she and her roommate were the maids of honor at the Petitioner’s wedding to A-W-, and that she visited the Petitioner and A-W- after they were married.

With her motion to reopen and reconsider, the Petitioner submitted additional supporting statements. In an email, A-W-’s brother, [REDACTED] stated that he and his sister gave the Petitioner and A-W- furniture as a wedding gift. [REDACTED] claimed that A-W- was “happy to be married to [the Petitioner]” and that the couple “seemed very happy together.” [REDACTED] also noted that the Petitioner called him when A-W- began using drugs and alcohol and when he became abusive. The Petitioner’s former supervisor, [REDACTED] asserted that the Petitioner introduced her to A-W- in early 2010 and later invited [REDACTED] to her wedding. [REDACTED] stated that she was unable to attend the wedding, but later visited the Petitioner and A-W- at their home, where she ate dinner with them, saw their wedding photos, and had a piece of wedding cake the couple had saved for her. [REDACTED] also claimed that she, the Petitioner, and A-W- spent time together at church, birthday celebrations, and evenings out.

A friend, [REDACTED] indicated that he helped the Petitioner and A-W- get an apartment in the complex where he lived. He stated that he enjoyed attending social events with the Petitioner and A-W-, and recalled noticing the Petitioner’s “popularity among [A-W-’s] close family members, especially the brothers and sisters.” Another friend, [REDACTED] alleged that he was the photographer at the Petitioner’s wedding to A-W- and that he also visited the couple twice at their apartment. [REDACTED] stated that he was good friends with the couple, but that he had not seen A-W- recently. The manager of the Petitioner’s apartment complex stated in a letter that the Petitioner and A-W- rented an apartment together beginning in November 2010, and that on May 20, 2011, A-W- “was moved out from his wife to somewhere els[e].”

On appeal, the Petitioner submits additional tax returns from 2011 through 2013, listing her and A-W- as “married filing jointly.” She also submits evidence that A-W- died in Alaska on [REDACTED], and that the Petitioner, as A-W-’s spouse, was responsible for managing arrangements after his death. The evidence includes a death certificate for A-W- and a Comprehensive Cremation Authorization form, signed by the Petitioner, in which the Petitioner is listed as A-W-’s wife and “authorizing agent” with regard to arrangements for the cremation. Additionally, the Petitioner submits an approval notice for Burial Assistance from the state of Alaska, addressed to A-W-’s estate at the Petitioner’s address. Furthermore, the Petitioner provides copies of emails between the

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<sup>2</sup> [REDACTED] also refers to herself in the letter as [REDACTED]

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Petitioner, A-W-'s brother, and other family members and friends of A-W- regarding the death of A-W- and the arrangements for a memorial event. She also submits several photographs which show the Petitioner with A-W-'s family at the memorial event. The Petitioner also provides a notification from the Social Security Administration which states that the Petitioner will receive monthly widow's benefits.

Finally, the Petitioner submits on appeal a psychological evaluation from [REDACTED] who discusses, in relevant part, the Petitioner's accounts of her marriage to A-W-. [REDACTED] indicates that, according to the Petitioner's reports, she met A-W- at a [REDACTED] store, exchanged telephone numbers with him, and used to ride the bus with him to [REDACTED]. [REDACTED] states that, according to the Petitioner, A-W- bought her a ring after they dated for six months, and they were married on [REDACTED] 2010. Furthermore, [REDACTED] reports that the Petitioner felt happy with A-W- in the beginning, and that the couple enjoyed activities together until A-W- became abusive. [REDACTED] also recounts that the Petitioner "remembered her first marriage [in Kenya] and missed that relationship. She believed with [A-W-] she could have that again."

The Petitioner has provided sufficient evidence of her good-faith marriage to A-W-, including consistent descriptions of her meeting and marriage with him; detailed supporting letters from friends who spent time with the Petitioner and A-W-; emails between A-W-'s brother and the Petitioner, as well as other family members and friends of A-W-, regarding the death of A-W- and the arrangements for a memorial event; a psychological evaluation discussing the circumstances of her marriage; and photographs demonstrating that the Petitioner and A-W- spent significant time together and celebrated their marriage with friends. The record also shows that the Petitioner resided with A-W- in a marital relationship until an abusive incident led to their separation and issuance of a No-Contact Order. Additionally, the Petitioner has submitted evidence that, as A-W-'s spouse, she was responsible for arranging his cremation, communicated with his family regarding his death, attended a memorial event for him, and received widow's benefits. The record establishes by clear and convincing evidence that the Petitioner's marriage to A-W- was *bona fide*, and she meets the requirements for an exemption under section 245(e) of the Act.

#### IV. ELIGIBILITY FOR IMMEDIATE RELATIVE CLASSIFICATION

Since the Petitioner established that she has a qualifying relationship with a U.S. citizen and that she is exempt from section 204(g) of the Act, she has demonstrated her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

#### V. CONCLUSION

The Petitioner has demonstrated that she is exempt from the bar at section 204(g) of the Act and is therefore eligible for immediate relative classification based on her marriage to a U.S. citizen. Accordingly, she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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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 (AAO 2010). Here, the Petitioner has met that burden.

**ORDER:** The appeal is sustained.

Cite as *Matter of S-N-M-*, ID#14239 (AAO Sept. 16, 2015)