



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

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

MATTER OF A-L-B-

DATE: SEPT. 25, 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. *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. In a decision dated July 18, 2014, we summarily dismissed the Petitioner's appeal. The matter is now before us on motion. The motion will be denied.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on the following findings: 1) the evidence did not demonstrate that the Petitioner entered into marriage with his U.S. citizen spouse in good faith; 2) the evidence did not demonstrate that the Petitioner was battered or subjected to extreme cruelty by his U.S. citizen spouse; 3) approval of the petition was barred by section 204(g) of the Act because the Petitioner married his U.S. citizen spouse while in removal proceedings and did not demonstrate eligibility for the *bona fide* marriage exemption at section 245(e) of the Act; and 4) approval of the Petition was barred by section 204(c) of the Act because the Petitioner entered into a prior marriage for the purpose of evading the immigration laws.

We summarily dismissed the Petitioner's appeal based on a finding that, although he indicated on his Form I-290B, Notice of Appeal or Motion, that he would submit a brief or additional evidence in support of his appeal within 30 days, he did not do so. Our prior decision is incorporated here by reference. On motion, the Petitioner asserts that he submitted a brief in support of his appeal. He provides evidence that he filed a brief on May 7, 2014, prior to our decision summarily dismissing his appeal. The record reflects that the Petitioner filed his brief with the Vermont Service Center rather than following the instructions on the Form I-290B that he file his brief directly with our office. The record indicates that the Director forwarded the Petitioner's brief to us sometime after July 21, 2014, after we summarily dismissed the Petitioner's appeal. Based on the evidence that the Petitioner filed a brief with U.S. Citizenship and Immigration Services (USCIS) in support of his appeal prior to the date of our summary dismissal, the Petitioner meets the requirements of a motion to reconsider. However, the evidence he presents on motion is insufficient to overcome the grounds for the Director's denial, and the motion will be denied and the appeal will remain dismissed.

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].

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(1)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

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:

(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.

....

(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 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.

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

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[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. . . .

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The record reflects that the Petitioner married T-H-¹, a U.S. citizen, on [REDACTED] 2002 in [REDACTED] California. On May 6, 2003, T-H- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf, and the Petitioner filed a Form I-485, Application to Adjust Status or Register Permanent Residence, on the same date. Both forms were approved on March 22, 2004. The Petitioner filed a Form I-751, Petition to Remove Conditions on Residence, on February 17, 2006, and filed a second Form I-751 on October 1, 2010. He attended an interview with USCIS regarding his first Form I-751 on October 4, 2010. During the interview, the Petitioner informed the USCIS officer that he and T-H- were divorced, and he submitted a divorce certificate indicating that the divorce occurred on [REDACTED] 2010 in [REDACTED] Nevada. The Petitioner told the officer that he was seeking a good faith marriage waiver. The officer questioned the Petitioner about two children he had with another woman, S-M-², in Massachusetts, on [REDACTED] and [REDACTED] while married to T-H- and allegedly living with her in California. The Petitioner did not offer an explanation. On the day after his interview, the Petitioner mailed a request to USCIS that his second Form I-751 be withdrawn. Pursuant to the Petitioner's request, his second Form I-751 was withdrawn on February 1, 2011. His first Form I-751, which he did not withdraw, was denied in a decision dated March 9, 2011, based on a finding that his marriage to T-H- was not *bona fide*.

As a result of the denial of the Form I-751, the Petitioner's conditional permanent resident status was terminated and he was placed into removal proceedings on March 9, 2011. On [REDACTED] 2012, while

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

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still in removal proceedings, the Petitioner married L-B-³, a U.S. citizen. The Petitioner filed a Form I-360 on February 22, 2013, alleging that L-B- had abused him. With the Form I-360, he submitted a second certificate of divorce from T-H-, indicating that they were divorced on [REDACTED] 2011 in Massachusetts. The Director issued a notice of intent to deny (NOID) on September 25, 2013, giving the Petitioner an opportunity to submit evidence that he did not enter into the marriage with T-H- solely to obtain an immigration benefit, married L-B- in good faith, and was battered or subjected to extreme cruelty by L-B-. The Petitioner replied with a personal statement and additional evidence, which the Director found insufficient. Therefore, the Director denied the Form I-360, finding that approval of the petition was barred under sections 204(c) and 204(g) of the Act and that the Petitioner had not demonstrated that he was battered or subjected to extreme cruelty.

III. SECTION 204(C) OF THE ACT RELATING TO PETITIONER'S MARRIAGE TO T-H-

Approval of the Petitioner's Form I-360 is barred by section 204(c) of the Act because the record contains substantial and probative evidence that the Petitioner married T-H- for the purpose of evading the immigration laws. A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). USCIS may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Where there is reason to doubt the validity of a marital relationship, a petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Id.* at 387.

The Petitioner's declarations regarding his relationship with T-H- are insufficiently detailed to demonstrate that he married her in good faith rather than for the purpose of evading the immigration laws. In response to the NOID, the Petitioner submitted a statement in which he asserted that he and T-H- met at a friend's house when T-H- introduced herself. According to the Petitioner, he and T-H- visited each other's homes regularly and then decided to get married after dating for four months. The Petitioner claimed that he and T-H- got married because they loved each other and that they intended to start a family together. He also stated that he and T-H- went out to dinner with T-H-'s children, went to parties with friends, and enjoyed time together. However, he indicated that he and T-H- experienced stress in their marriage due to financial difficulties and their inability to have a child together. The Petitioner stated that he eventually took a job in [REDACTED] but continued to

³ Name withheld to protect the individual's identity.

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keep in touch with T-H- and sometimes visited her. He further claimed that, after he married T-H-, he learned that he had fathered a child with another woman, and T-H- eventually discovered this information and was angry. Additionally, the Petitioner stated that he had a second child with the same woman after she visited California in 2004. The Petitioner claimed that he regretted not telling T-H- about his children, and that the relationship deteriorated after T-H- learned about the children. The Petitioner offered no other details about his dating relationship with T-H-, their marriage ceremony or celebration, or shared experiences other than conflicts.

In his brief on appeal, the Petitioner again states that he and T-H- got married because they were in love. He indicates that he was lonely and that T-H- showed him affection. He says he had a good relationship with T-H-'s two children and that he and T-H- hoped to have children of their own, but were not able to. According to the Petitioner, he and T-H- dated for approximately six months before deciding to get married. He alleges that he, T-H-, and T-H-'s son, [REDACTED], resided together as a family at [REDACTED] California. He claims that T-H- "was [his] comforter as [the Petitioner] was her protector" and that they planned to travel to Africa together. The Petitioner also declares that although he made mistakes, he still loves T-H-. Both of the Petitioner's declarations regarding his marriage to T-H- are vague. The Petitioner does not provide a detailed account of his relationship with T-H-, including their first meeting, courtship, dating relationship, decision to marry, marriage ceremony or celebration, life together as spouses, or the date of their separation.

Similarly, the supporting statements the Petitioner submitted with his Form I-751 were vague and did not provide sufficient detail about the Petitioner's marriage to T-H-. [REDACTED] and [REDACTED] both stated, in brief affidavits, that the Petitioner and T-H- were married, resided together, and appeared to be happily married. [REDACTED] stated that he was initially surprised at the Petitioner's relationship with T-H- due to their age difference, but then realized that the couple had a close relationship and loved each other. [REDACTED] claimed that "[e]very thing worked out well until around mid[-]2007," when, according to [REDACTED] the Petitioner told him that the relationship "had somehow deteriorated." [REDACTED] recounted that the Petitioner moved to [REDACTED] near the end of 2007 for work, and that the Petitioner and T-H- divorced in [REDACTED] 2010. None of the Petitioner's friends described how the Petitioner met T-H-, their decision to get married and announcement of that decision, their wedding ceremony, whether they held a wedding reception or other celebration, or their relationship as spouses.

The additional documentary evidence the Petitioner submitted with his Form I-751 and NOID response is also insufficient to show that his marriage to T-H- was genuine. The evidence includes a month-to-month lease for the [REDACTED] address, beginning November 1, 2002, and a one-year lease for the same address beginning June 1, 2005. The Petitioner also submitted two covers of a magazine addressed to the Petitioner and T-H- at the [REDACTED] each bearing different issue dates but both marked "Oct 02 06" on the address label. With his Form I-751, he provided several bank statements, addressed to the Petitioner and T-H- at the [REDACTED] address, all of which showed minimal activity, including no ATM withdrawals and transfers and no purchase transactions. In response to the NOID, the Petitioner submitted two undated letters from the same

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bank, one of which was addressed to the Petitioner only and the other of which was addressed to both the Petitioner and T-H-, and confirmation of a scheduled payment which did not list the name of the account holder. Additionally, the Petitioner submitted several cable bills, addressed to him and T-H- at the [REDACTED] address, covering various periods between 2004 and 2007. The bill dated November 4, 2005 and the past due notice of December 7, 2005 bear a different account number than the other bills from the same cable provider.

The Petitioner also submitted several telephone bills from 2004. In the NOID, the Director noted that two of the telephone bills bore the same date, but showed different amounts due. In response, the Petitioner stated that he did not know how that happened, and provided a duplicate copy of one of the bills, plus a bill for a different month. Several of the telephone bills the petitioner submitted contain conflicting information. With his Form I-751, the Petitioner provided three bills for the period January 9 through February 8, 2004. One of those bills listed the total amount due as \$47.48 while the other listed the amount due as \$18.46. Additionally, the first bill listed the monthly service dates as “Nov 7 thru Dec 6” and stated the previous bill was \$41.87, while the second bill listed the monthly service dates as “Feb 8 thru Mar 7,” listed the previous bill as \$18.46, and stated that the payment was due by March 3, prior to the end of the listed monthly service period. Furthermore, the first bill was addressed to the Petitioner and T-H-, while the second was addressed to the Petitioner only. In response to the NOID, the Petitioner submitted a bill for October 8 through November 7, 2003. Like the second bill for January 9 through February 8, 2004, this bill lists the monthly service dates as “Nov 7 thru Dec 6.” Additionally, some of the bills list two phone numbers, while others list only one. Finally, in several of the bills, the itemized charges do not equal the total amount due. The record does not contain a sufficient explanation for these discrepancies, and several of the bills do not appear to be genuine.

The Petitioner also submitted, in response to the NOID, itineraries for three airline flights booked in his name between [REDACTED] and [REDACTED] which he claimed showed that he visited T-H- to maintain the marriage after he took a job in [REDACTED]. These itineraries demonstrate that the Petitioner visited [REDACTED] for only brief periods: in the first trip, he arrived in [REDACTED] in the evening of February 11, 2006 and departed for [REDACTED] on February 13, 2006; in the second trip, he arrived in [REDACTED] late at night on March 25, 2007 and departed for [REDACTED] less than 24 hours later; in the third trip, he arrived in [REDACTED] in the afternoon of August 26, 2007 and departed for [REDACTED] the following night. The itineraries do not establish the reasons for the Petitioner’s trips to [REDACTED] nor do they indicate they allowed him to spend significant time with T-H-. Furthermore, although the Petitioner himself did not specify the date of his separation from T-H- or his move to [REDACTED] [REDACTED] stated in his declaration that the marriage began to deteriorate in mid-2007 and that the Petitioner moved to [REDACTED] in late 2007. The Petitioner has not explained why he was living in [REDACTED] as early as February 11, 2006, as reflected in his flight itinerary.

Additional documentation includes proof of life insurance for the Petitioner, listing T-H- as the beneficiary, and tax returns for 2003 through 2005, listing the Petitioner and T-H- as “Married filing jointly.” On appeal, the Petitioner asserts that the evidence he submitted establishes that he and

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T-H- had a life together. However, although the documents show that the Petitioner and T-H- received some jointly addressed mail at the [REDACTED] address, as discussed above, many contain inconsistent information or do not appear genuine, and none are sufficient to establish the Petitioner's intentions in marriage or to overcome the lack of detail and inconsistencies in the other evidence of record.

On appeal, the Petitioner also re-submits copies of previously filed photographs, labeling some of them with names and places. The photographs are undated and many of the photographs only include the Petitioner and T-H- and, in the photographs in which non-family members appear, do not refer to the other persons in the photographs by name. Although the photographs indicate that the Petitioner and T-H- spent time together on certain occasions, they do not provide sufficient detail about their marital relationship or the Petitioner's intentions in marrying.

Furthermore, the record contains other unexplained inconsistencies relating to the Petitioner's marriage with T-H-. The marriage certificate for the Petitioner and T-H- indicates that T-H-'s previous marriage ended by the death of her spouse on [REDACTED] 2002, less than five months prior to her marriage to the Petitioner on [REDACTED] 2002. This conflicts with the Petitioner's statement on appeal that he and T-H- "courted for close to 6 months" before deciding to get married.

In his Form I-485, which he filed on May 6, 2003, and both Forms I-751, the Petitioner did not indicate that he had any biological children. Also, when asked in interviews regarding his Form I-485 and Form I-751 whether he had any biological children, the Petitioner stated that he did not. However, the Petitioner has two biological children, born in Massachusetts on [REDACTED] and [REDACTED]. The birth certificates for the Petitioner's children indicate that the Petitioner is the father and S-M-, whose address was in Massachusetts, is the mother of both children. The Director indicated that, when asked about this inconsistency during his Form I-751 interview, the Petitioner had no explanation. The Petitioner did not resolve this issue on appeal. He states in his appeal brief that his children resulted from a lack of judgment on his part, which he believes ruined his marriage to T-H-. He also states that S-M- suggested that the Petitioner may not be the biological father of the children, but that she refused to consent to a paternity test, so the Petitioner decided to show the children "the love they deserve." Additionally, he indicates that, when asked whether he had biological children, he answered "No" because he believed the question referred only to biological children with T-H-.

The Petitioner did not explain why he had two children with S-M- in Massachusetts during the time he was allegedly living with T-H- in California. He did not sufficiently explain the circumstances of his time in Massachusetts, including the reasons for his time there, where he stayed, the dates of his time there, and whether he was living there permanently or only visiting, and whether he was in a relationship with S-M-. Additionally, although he stated that he believed he was only required to provide information about biological children with T-H-, Form I-751 states at Part 5, "List All Your Children," and Form I-485 states at Part 3.B, "List . . . all your sons and daughters." Additionally, the Petitioner's Form I-485 shows that he did provide information to the interviewer about his step-children (T-H-'s biological children), but told the interviewer that he had no other children. This is inconsistent

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with his claim on appeal that he believed the question referred only to biological children he had with T-H-. Similarly, the Petitioner's first Form I-751 indicates that, when the interviewer asked whether he had children anywhere in the world, the Petitioner responded that he had none. Contrary to the Petitioner's statements, the record indicates that the Petitioner intentionally omitted information about his biological children who were born in Massachusetts during the time he claimed to be living with T-H- in California.

The Petitioner also submitted two different certificates for his divorce from T-H-. The first certificate, submitted at his Form I-751 interview, indicated that he and T-H- divorced in Nevada on [REDACTED] 2010. The second certificate, submitted with the Form I-360, indicated that the Petitioner and T-H- divorced in Massachusetts on [REDACTED] 2011. On appeal, the Petitioner claims that he had trouble contacting T-H- for her signature on divorce papers but a friend eventually found her in [REDACTED] Nevada. He declares that he was later surprised to learn that T-H- had stated, in an interview with USCIS, that she was unaware of the divorce. According to the Petitioner, he then initiated another divorce in Massachusetts, during which T-H- was cooperative. However, the Nevada divorce certificate bears T-H-'s signature. The Petitioner has not explained why T-H- could have been surprised by the divorce if she signed the certificate, or, if she did not sign the certificate, who forged her signature on it. Therefore, the record does not demonstrate that the Petitioner has provided genuine documentation of his divorce from T-H-, and the timeline of his relationship with her remains unclear.

The Director also noted in the NOID and subsequent denial that, during a January 13, 2011 interview with USCIS officials, T-H- stated that she was unaware of her divorce from the Petitioner, that she and the Petitioner never resided together, never consummated their marriage, had not interacted since 2007, and the Petitioner paid T-H- \$3,000 to marry him so that he could obtain lawful permanent resident status. The Petitioner addresses these statements in his brief on appeal, declaring that he never offered \$3,000 to T-H- because "the love [they] had for each other wasn't for sale." He also claims that the marriage was consummated because he and T-H- wanted to have a baby. Further, the Petitioner alleges that he attempted to obtain a statement from his step-son to confirm that the marriage was in good faith, but was unable to do so. The Petitioner's contentions on appeal were vague, provide no additional detail or evidence regarding the circumstances of his marital relationship or his intentions in marrying T-H-, and are insufficient to overcome the insufficiencies and inconsistencies elsewhere in the record.

In light of all relevant evidence in the record, approval of the Petitioner's Form I-360 is barred by section 204(c) of the Act because substantial and probative evidence demonstrates that the Petitioner married T-H- for the purpose of evading the immigration laws. Furthermore, even if his petition were not barred by section 204(c) of the Act, the Petitioner also has not met other eligibility requirements for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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IV. GOOD FAITH AND SECTION 204(G) OF THE ACT RELATING TO PETITIONER'S MARRIAGE TO L-B-

At the time the Petitioner married L-B-, he was in removal proceedings and had not resided outside of the United States for the requisite two-year period; thus, he remains subject to the bar at section 204(g) of the Act. 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A). He must therefore establish eligibility for the *bona fide* marriage exemption at section 245(e) of the Act to demonstrate eligibility for immediate relative classification.

The Petitioner has not established by a preponderance of the evidence that he married L-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, or by clear and convincing evidence as required to establish eligibility for the *bona fide* marriage exemption at section 245(e) of the Act from the bar at section 204(g) 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 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 his 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); *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, a 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. *Arthur*, 20 I&N Dec. at 478.

On his Form I-360, the Petitioner did not list the date or place of his marriage with L-B-, nor did he indicate where and when they resided together. The Petitioner also incorrectly indicated that he had only been married once. In a February 2013 declaration submitted with his Form I-360, he claimed that he and L-B- met at a party because their daughters were playing together. He stated that he and L-B- exchanged telephone numbers and frequently called each other. According to the Petitioner, he and his children once met L-B- and her children at the mall playground. He stated that he and L-B- began dating on a Friday, when he invited L-B- to his home for coffee, told her about the problems he had with the mother of his children, and learned about L-B-'s problems with the father of her children. The Petitioner alleged that L-B- began spending more time at his home, sometimes spending the night, and that they enjoyed their time together. The Petitioner further claimed that, in November 2011, L-B- suggested that they get married “because [they] loved each other, [they] are adults and . . . there was nothing stopping [them].” He stated that he told L-B- that they “had to make everything formal,” that he wanted to meet L-B-'s mother, and that he would tell his own mother in Uganda. The Petitioner indicated that he was happy and excited and that his family was anxious to meet L-B-. He stated that he and L-B- got married on [REDACTED] 2012 and started living together, but “things started going wrong” after the marriage. In an October 2013 declaration

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submitted in response to the NOID, the Petitioner made nearly identical statements, adding that, after marriage, he and L-B- went out together to dances, parties, cultural events, and [REDACTED] and that they “loved each other and could not let go of each other.” The Petitioner did not provide in either declaration the date of his first meeting with L-B- or describe their dating relationship in any detail. He did not clarify whether he ever met L-B-’s mother or introduced her to any of his family members, nor did he describe the wedding plans or ceremony or state whether he and L-B- held any type of reception or party to celebrate their marriage. He did not describe any marital routines or shared experiences as a married couple other than the alleged abuse.

On appeal, the Petitioner states that he and L-B- married out of love and “had a beautiful ceremony.” He claims that they went to [REDACTED] an African restaurant, and a Caribbean restaurant. According to the Petitioner, their “courtship and early times of [their] marriage were wonderful” However, as with his previous declarations, the Petitioner does not provide detailed descriptions of his first meeting with L-B-, their dating relationship, their wedding plans or celebrations, or their life together as spouses, except as it relates to the alleged abuse.

Supporting letters from the Petitioner’s friends, which were submitted in response to the NOID, also lack detail regarding the circumstances of the Petitioner’s dating relationship and marriage to L-B-, and do not support his claims. [REDACTED] indicated in his letter that he first met L-B- in April 2012 at the residence the Petitioner shared with L-B-. [REDACTED] stated that he believed the Petitioner and L-B- were happy, but that he later learned that L-B- became abusive and he suggested marriage counseling. Although [REDACTED] stated that he had known the Petitioner for over ten years, he did not indicate whether he had any knowledge of the Petitioner’s first meeting with L-B-, their dating relationship, or their wedding. Another friend, [REDACTED] claimed that L-B- introduced him to the Petitioner in December 2011, and that the couple seemed happy and affectionate. [REDACTED] asserted that, after the Petitioner and L-B- married, he went to their home to watch sports games and also accompanied them to the grocery store. He stated that he later saw the Petitioner in November 2012 and learned from the Petitioner that L-B- had become abusive. [REDACTED] provided no detail regarding the Petitioner’s dating relationship, decision to marry, wedding celebration, or life with L-B- other than to say that they were happy and in love until, as reported by the Petitioner to [REDACTED] L-B-’s behavior changed.

[REDACTED] stated that the Petitioner invited her over for lunch on February 18, 2012 in order to meet L-B-. According to [REDACTED] she then met the Petitioner and L-B- at Ugandan social events and at a Caribbean carnival. She claimed that the couple appeared to be happy and in love, and she was glad when they decided to get married. [REDACTED] further stated that she was later disappointed when she learned that the Petitioner and L-B- were having problems in their marriage. [REDACTED] statements regarding the Petitioner’s dating relationship with L-B- were vague and she did not mention their wedding ceremony or reception. Furthermore, [REDACTED] claimed that her first meeting with L-B- occurred on February 18, 2012, which she claimed was early in the relationship, before the couple married. However, the Petitioner married L-B- on [REDACTED] 2012. Therefore, [REDACTED] declaration does not support the Petitioner’s claims.

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As additional supporting evidence of his good-faith marriage with L-B-, the Petitioner submitted labeled photographs, which show that the Petitioner and L-B- spent time together but do not establish their intentions in marriage. The Petitioner also submitted a copy of a greeting card from the Justice of the Peace who conducted their marriage ceremony, but the card does not provide detail about the ceremony or the Petitioner's intent in marrying L-B-. As additional evidence, the Petitioner submitted a renewal notice and a lease for their apartment at [REDACTED] several notices to quit the apartment for late payment of rent; copies of magazine covers; electric bills and electric service termination notices, addressed to the Petitioner only; several cable bills, addressed to L-B- only; and criminal summons, parking tickets, and a class action lawsuit notice, all addressed to L-B- only. Although these documents indicate that the Petitioner and L-B- shared the same address, this does not establish that the couple married in good faith. Furthermore, several of the documents are addressed to one person only, and therefore do not indicate shared personal affairs or financial responsibility. The Petitioner claims on appeal that he and L-B- divided responsibilities for the bills and groceries, but the record does not show that they managed the household finances jointly as a married couple. As discussed, the record does not contain any probative detail about the Petitioner's first meeting with L-B-, their dating relationship, their wedding, or any shared experiences other than the alleged abuse. Documentation indicating that the Petitioner and L-B- shared an address does not, on its own, overcome the lack of detail in the record.

The evidence of record also contains inconsistencies with regard to the Petitioner's residence with L-B-. Although the Petitioner stated in his February 2012 declaration that he and L-B- started living together after they got married, their marriage certificate indicates that they both lived at [REDACTED] at the time of their marriage. The lease renewal the Petitioner submitted also states that their original move-in date was July 28, 2011, prior to their engagement. This indicates that the Petitioner began sharing an address with the Petitioner earlier than stated, and that their shared address was not related to their relationship as a married couple.

The Petitioner has not demonstrated by clear and convincing evidence that his marriage to L-B- was *bona fide*. The evidence of record lacks detail regarding the Petitioner's relationship with L-B- and does not establish that he entered into the marriage in good faith. Additionally, the record contains inconsistencies with regard to the circumstances of the Petitioner's shared address with L-B-. Therefore, the Petitioner has not established that he qualifies for an exemption under section 245(e) of the Act, and his petition is barred by section 204(g) of the Act.

V. BATTERY OR EXTREME CRUELTY

The relevant evidence does not establish by a preponderance of the evidence that the Petitioner was subjected to battery or extreme cruelty by L-B- during their marriage. In his February 2013 declaration, submitted with his Form I-360, the Petitioner stated that L-B- became angry when he asked her about her finances, responding by yelling and calling him racist and derogatory names. He also claimed that L-B- ignored him when he spoke to her, refused to answer his calls, and humiliated him through frequent, repeated insults and threats of deportation. The Petitioner alleged that L-B- once became

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angry at him for taking too long to answer her knocks at the front door, and that she pushed him out of the way, kicked him while he was in the bed, screamed at him, threatened to have him deported, and insulted him until he cried. Additionally, the Petitioner claimed that L-B- once became angry at him while at the mall and insulted him in public. He stated that, in another incident, L-B- screamed at him and pushed his head away with the remote control for changing the channel on the television. He also attested that L-B- isolated him from his friends, did not support him when his mother was dying, and subjected him to psychological abuse through threats, insults, and screaming. The Petitioner also alleged that L-B- frequently spent weeks away from home and then pressured him to have unprotected sex, causing him to fear that he would contract a sexually transmitted disease.

The Petitioner stated in his October 2013 declaration that L-B- subjected him to “psychological abuse, extreme cruelty, physical abuse like kicking [his] behind[,] pushing [his] head with her fingers[,] pulling [his] blanket while [he was] asleep, throwing things on the floor, yelling at [him] all the time, dehumanizing [him], criticizing everything [he did], isolation [from his] friends . . .” He claimed that he was afraid to call the police or go to a shelter, and that the abuse caused him to become depressed. On appeal, he reiterates that his relationship with L-B- caused him to have depression. He states that the marriage was “unbearable” and that L-B- wanted him to be “obedient and subservient.”

██████████ stated in her letter that the Petitioner told her that L-B- was mentally and physically abusive and had threatened him. According to ██████████ the Petitioner became withdrawn and appeared depressed. She stated that she encouraged him to seek marriage counseling and to call the police, but that the Petitioner was afraid to do so. ██████████ also claimed that she was once speaking with the Petitioner on the telephone when she heard L-B- yelling at the Petitioner. Similarly, ██████████ indicated in his letter that the Petitioner told him that L-B- was psychologically and physically abusive. ██████████ alleged that he suggested the couple attend marriage counseling, but L-B- refused. ██████████ similarly claimed that the Petitioner told him about abuse by L-B- and that ██████████ offered to speak with L-B-, but the Petitioner discouraged him from doing so. According to ██████████ he once found the Petitioner crying in his car in an effort to escape abuse and humiliation from L-B-.

The Petitioner’s psychologist, ██████████ stated in an October 2013 letter, submitted in response to the NOID, that the Petitioner had been treated for depression. ██████████ also stated in an additional letter, dated November 2013, that the Petitioner was “significantly depressed as a result of difficulties in his relationship with his wife.” ██████████ indicated that, according to the Petitioner’s reports, L-B- threatened the Petitioner and was physically violent toward him, and that the Petitioner was afraid of her. ██████████ stated that the Petitioner’s marital problems were viewed as a weakness within his culture and that his depression was affecting his ability to work and causing physical and mental symptoms. The Petitioner submitted additional documentation on appeal to demonstrate that he continued to attend counseling appointments with ██████████ and was prescribed anti-depressant medication.

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The Petitioner's descriptions of his relationship with L-B- do not indicate that she subjected him to battery or extreme cruelty as defined in the regulations. According to the statements of the Petitioner, his friends, and [REDACTED] L-B- insulted the Petitioner, called him names, yelled at him, ignored him, threatened him, pushed him out of the way, pushed his head away with a remote control, and kicked him one time. However, the Petitioner and his friends did not describe specific acts of violence or an overall pattern of violence amounting to battery or extreme cruelty. Additionally, although [REDACTED] stated that L-B- was physically violent toward the Petitioner, [REDACTED] did not provide any detail about such incidents. Although, according to [REDACTED] the Petitioner's marital difficulties caused him to suffer from depression, the evidence does not establish that L-B- subjected him to acts constituting battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(vi).

VI. CONCLUSION

The record contains substantial and probative evidence that the Petitioner married T-H- for the purpose of evading the immigration laws, so approval of the Form I-360 is barred by section 204(c) of the Act. Additionally, the Petitioner has not demonstrated by a preponderance of the evidence or by clear and convincing evidence that he married L-B- in good faith, so he has not met the requirements of section 204(a)(1)(A)(iii)(I)(aa) of the Act and his petition is barred by section 204(g) of the Act. Furthermore, the evidence does not establish that the Petitioner was battered or subjected to extreme cruelty by L-B- during his marriage to her. Therefore, the Petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 not met that burden. Accordingly, the motion is denied.

ORDER: The motion is denied.

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