



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

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

MATTER OF Y-Z-

DATE: SEPT. 30, 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 and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. The motion will be denied.

The Director determined that the record did not establish that the Petitioner was eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act as she did not show that she resided with her U.S. citizen spouse and entered into the marriage with him in good faith. The Director additionally determined that section 204(g) of the Act barred approval of the petition, as the Petitioner married her U.S. citizen spouse while she was in removal proceedings. On appeal, we affirmed the decision of the Director.

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

I. APPLICABLE LAW AND REGULATIONS

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act.

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The record in this case indicates that the Petitioner was in removal proceedings at the time of her marriage. In such a situation, section 204(g) of the Act prescribes:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien’s right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

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

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

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien’s status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien’s right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien’s admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The eligibility requirements for immigrant classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act are explained at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

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

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

. . . .

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

. . . .

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

. . . .

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

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## II. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of China, entered the United States on November 2, 2003 as a business visitor. On September 3, 2009, the Petitioner was placed into removal proceedings.<sup>1</sup> The Petitioner married her third husband, K-D-<sup>2</sup> a U.S. citizen, on [REDACTED] in [REDACTED] Pennsylvania. The Petitioner filed the instant Form I-360 on March 28, 2011. The Director denied the petition, finding that the Petitioner did not marry her third husband in good faith or reside with him during their marriage, and that she is ineligible for immigrant classification because she is subject to the bar on approval of petitions at section 204(g) of the Act based on marriages entered into while in removal proceedings. We affirmed the Director's decision on appeal.

The Petitioner has timely filed a motion to reopen and a motion to reconsider. A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, the Petitioner requests that we reopen and reconsider our decision that she did not share a joint residence with K-D- and enter the marriage in good faith. She submits a new personal affidavit, a new affidavit from her friend, [REDACTED] and copies of new and previously submitted bank statements. We review these proceedings *de novo*.

## III. JOINT RESIDENCE

In our August 18, 2014 decision, we determined that the preponderance of the evidence did not demonstrate that the Petitioner resided with K-D-. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, we reviewed the Petitioner's Form I-360, her personal affidavits, statements from her former landlord, sister-in-law and friends, and her documentary evidence, and concluded that the Petitioner did not establish eligibility under this ground because of inconsistencies in the evidence and the lack of probative, detailed statements.

We stated in our August 18, 2014 decision that the Petitioner's affidavits did not describe her shared residence and residential routines with K-D- in sufficient probative detail to establish their joint residence. On motion, the Petitioner submits a new affidavit in which she states that she moved into an apartment with K-D- on [REDACTED] in [REDACTED] Pennsylvania on September 14, 2009. She describes the physical layout of the apartment and the furniture in the apartment. She also describes K-D-'s sleeping and work habits and their daily residential routines. Although the Petitioner's affidavit contains probative details about her joint residence with K-D-, other evidence submitted on motion creates new inconsistencies in the record.

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<sup>1</sup> The Petitioner remains in removal proceedings before the New York Immigration Court and her next hearing is scheduled for [REDACTED] 2015.

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

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The Petitioner submits a new affidavit from her friend, [REDACTED] who states that she visited the Petitioner and K-D- at their home in Pennsylvania during the last ten days of March 2010. In her affidavit on motion, [REDACTED] states that she met K-D- for the first time in March 2010. She indicates that she had a favorable first impression of K-D-, describing him as an “easy-going, warm-hearted man” and describes his affection for the Petitioner. She states that she was happy for her friend during the March 2010 visit, and regrets that the couple had problems later on. [REDACTED] description of her visit to the couple’s residence is inconsistent with her handwritten letter, dated April 4, 2011, submitted in response to the Director’s first RFE. In that letter, [REDACTED] described her visit to the couple’s residence in March 2010 and stated:

My impression on [*sic*] him was that he looked a little bit abnormal from his eyes. He liked making face[s] while talking. When he was at home, he liked staring at [REDACTED] from the corner of his eyes and extended out his tongue moving fast. I didn’t know how to say to [REDACTED] I just felt I didn’t like her husband treating her in that way, a kind of obscene, dirty looking.

As there is no explanation for the discrepancies between [REDACTED] two statements, they are of minimal probative value in establishing the Petitioner’s joint residence with K-D-.

In our August 18, 2014 decision, we discussed inconsistencies in the Petitioner’s various statements of joint residence with K-D-. In the Petitioner’s initial affidavit she recounted that on the morning of December 27, 2010, as she was leaving to visit her friend in Louisiana, K-D- informed her that when she returned from her trip they would have a new home. In her affidavit on appeal, however, the Petitioner stated that she first learned about the move to a new residence on [REDACTED] when she returned home on January 29, 2011. On motion, the Petitioner states that her former attorney made errors in drafting her initial affidavit and he “simply assumed things or stated something vague.” The Petitioner’s initial affidavit, however, contains a detailed description of her conversation with K-D- about the move and it is notarized with a certification that it was read and translated from English into Chinese for the Petitioner.

The Petitioner states on motion that other inconsistencies we raised on appeal are minor. For example, she submitted a letter from the landlord for the [REDACTED] premises which indicated that the Petitioner and K-D- had lived on the premises for a year prior to the date of the letter, or since May 2009. The Petitioner asserts on motion that she does not think there is a conflict between her claim that she actually moved into the residence in September 2009 and her former landlord’s letter because K-D- resided at the [REDACTED] apartment before she moved in. However, she does not submit a new letter from the [REDACTED] landlord correcting the date that she moved into the apartment. Although the Petitioner submits additional bank statements addressed to her and K-D- at [REDACTED] and [REDACTED] the inconsistencies in the evidence we discussed on appeal remain unresolved on motion, and discrepancies in the new statement from [REDACTED] further undermine the Petitioner’s claim of joint residence with K-D-. The record therefore does not establish that the Petitioner resided jointly with K-D-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### IV. GOOD-FAITH ENTRY INTO THE MARRIAGE

In our August 18, 2014 decision, we determined that the Petitioner failed to demonstrate her entry into her marriage in good faith. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, we reviewed statements of the Petitioner, her friends, pastor, sister-in-law and counselor, an affidavit the Petitioner submitted from K-D-, and the couple's joint documentary evidence, and concluded that the record did not contain sufficient credible and probative information to establish the Petitioner's good-faith entry into the marriage.

In her affidavit submitted on motion, the Petitioner explains that K-D- pursued her for a year. She states that that they bought gifts for one another, and shared a mutual affection. She describes her admiration for his intelligence, sense of humor, and ability to repair things. She states that after they started dating, they texted each other every day, and she developed serious feelings for him. She indicates that K-D- is not a bad person, and were it not for the abuse, she might still be married to him. She claims that she did not know that she was in deportation proceedings when she married him, and as such was not motivated to marry K-D- to remain in the United States.

We discussed numerous inconsistencies on appeal that the Petitioner does not resolve on motion. The Petitioner's affidavit on appeal described a visit to K-D-'s parents during Christmas of 2010, which conflicted with her initial affidavit. In her initial affidavit, the petitioner stated that she and K-D- returned home from visiting his parents on Christmas Eve because she had plans to attend church service. On appeal, she stated that she and K-D- stayed with K-D-'s parents until Christmas Day and she did not want to leave, but K-D- insisted that they return home. On motion, the Petitioner states that they left on Christmas Day because K-D- was angry with her, not because she had a church service to attend, and that her previous attorney may have mixed up the facts. However, the Petitioner's initial affidavit contains a detailed description of her return home on Christmas Eve, and, as discussed, it is notarized with a certification that it was read and translated from English into Chinese for the Petitioner.

The Petitioner also stated on appeal that the first time she visited K-D-'s parents was Thanksgiving 2009. The letter from [REDACTED] a domestic violence counselor with the [REDACTED], a domestic violence services agency in [REDACTED] however, stated that the Petitioner told her K-D- proposed to her at his parents' home in June 2009. On motion, the Petitioner submits a statement from [REDACTED] who indicates that she that no longer remembers every detail that the Petitioner told her, and that it is common for victims of abusive behavior to confuse details as a defense mechanism. The petitioner does not, however, in her affidavit on motion discuss her engagement to K-D- other than to state that K-D- proposed to her many times.

There were other inconsistencies in the Petitioner's descriptions of her shared experiences with K-D-. The Petitioner's friend, [REDACTED] stated in her affidavit on appeal that in December 2010 when the Petitioner visited her in Louisiana, K-D- came to pick the Petitioner up and immediately took the Petitioner back to Pennsylvania. In contrast, the Petitioner stated in her initial affidavit that in December 2010 she traveled to Louisiana to visit [REDACTED] remained in Louisiana for more than one month, and that K-D- did not object to the trip. On motion, the Petitioner states in her affidavit that when she left K-D- to escape his abuse on December 27, 2010, she went to live in

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her friend's apartment, and does not mention a trip to Louisiana, or explain the discrepancies between the two statements.

On motion, the Petitioner asserts that we did not give sufficient weight to the documentary evidence of record, including the couple's 2009 IRS joint tax return transcript, life and automobile insurance policies, joint bank statements, and photographs. The Petitioner submits copies of bank statements from October 2009 until July 2011 for a joint [REDACTED] account. As we indicated on appeal, the financial records show some shared financial responsibility, but when considered with the other evidence of record, do not establish by a preponderance of the evidence that the Petitioner married K-D- in good faith. Consequently, the record does not demonstrate the Petitioner's good-faith entry into marriage with K-D-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### V. SECTION 204(g) OF THE ACT FURTHER BARS APPROVAL

Because the Petitioner married her third spouse while she was in removal proceedings and did not remain outside of the United States for two years after their marriage, she must establish the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992); *see also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5<sup>th</sup> Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard."). To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act the Petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the Petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act; 8 C.F.R. § 245.1(c)(8)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

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

#### VI. ELIGIBILITY FOR IMMEDIATE RELATIVE CLASSIFICATION

Because the Petitioner is not exempt from section 204(g) of the Act, she has also not demonstrated her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

#### VII. CONCLUSION

On motion, the Petitioner has not demonstrated that she entered into marriage with her third spouse in good faith and resided with him. She has also not established that she is eligible for immediate relative classification and is exempt from the bar to approval of her petition under section 204(g) of

the Act. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden to establish her eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The motion is denied.

Cite as *Matter of Y-Z-*, ID# 13716 (AAO Sept. 30, 2015)