



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

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

MATTER OF R-S-

DATE: APR. 8, 2016

MOTION ON 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). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner had not established: that he is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i), based on a qualifying spousal relationship with a U.S. citizen; entered into the marriage with his spouse in good faith; met the requirement for the *bona fide* marriage exemption under section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); and was battered or subjected to extreme cruelty by his spouse. We dismissed a subsequent appeal.

The matter is before us now on a motion to reconsider. On motion, the Petitioner submits a brief, in which he claims that our decision was based on an incorrect application of law and the evidence in the record of proceedings at the time of the initial decision contained sufficient evidence to establish his eligibility for the benefit sought.

Upon review, we will deny the motion.

I. APPLICABLE LAW

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 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).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant and, in our decision on appeal, we concluded that the preponderance of the relevant evidence did not demonstrate that the Petitioner married his U.S. citizen spouse, R-K-,¹ in good faith, was eligible for the *bona fide* marriage exemption described in section 245(e)(3) of the Act, and was battered or subjected to extreme cruelty by her. Our previous decision is incorporated herein by reference.

III. ANALYSIS

A. Entry Into Marriage in Good Faith

On motion, the Petitioner contends that we disregarded the following documentary evidence in our decision on appeal: a request for *bona fide* marriage exemption signed by R-K- on February 2, 2012, in relation to a Form I-130, Petition for Alien Relative, she filed on the Petitioner's behalf; Tax Return Transcripts from the Internal Revenue Service; the Form I-130, which R-K- filed on the Petitioner's behalf; documentation of supervision of the Petitioner by U.S. Immigration and Customs Enforcement (ICE); bank statements addressed to the Petitioner and R-K-; an approval notice of [REDACTED] eligibility, addressed to R-K- and listing her children and the Petitioner as recipients; his application for an Indian passport, on which he lists R-K- as his spouse and emergency contact; and statements by [REDACTED]

In our decision on appeal, we discussed each document the Petitioner refers to on motion. In particular, we examined R-K-'s request for a *bona fide* marriage exemption and noted that it is very general and does not contain details regarding the couple's claimed marital relationship. We also noted that the Form I-130 has not been adjudicated and explained that the parties, statutory provisions, and benefits procured through a Form I-130 and a Form I-360 differ in terms of which party is the petitioner and who bears the burden of proof in the adjudication of each petition. *See* sections 201(b)(2)(A)(i) and 204(a)(1)(A)(iii)(I) of the Act.

With respect to the Tax Return Transcripts, bank statements, notice of [REDACTED] eligibility, and passport application, we found that this evidence demonstrates that the Petitioner and R-K- were listed as spouses on certain documents, and that they shared a mailing address, but that the documents do not establish the Petitioner's intentions when marrying or demonstrate that the Petitioner and R-K- resided together in a *bona fide* marital relationship. Similarly, in terms of the ICE supervision documents, we found that they were issued by ICE, and not U.S. Citizenship and Immigration Services, and they do not establish that ICE visited the home he claimed he shared with R-K- or that he was home at the time of such visits. We also found that the statements by [REDACTED] do not provide any detail regarding his courtship with R-K-, how often he met with her prior to their marriage, his decision to marry, the announcement of that decision to his

¹ Name withheld to protect the individual's identity.

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friends, or the wedding ceremony or reception and, because their statements are nearly identical, we gave them little evidentiary weight.

The Petitioner's contention on motion that we disregarded the evidence noted above is not persuasive. The Petitioner disagrees with our conclusions regarding whether the evidence was sufficient to establish the Petitioner's good-faith marital intentions but he does not advance any arguments that were not also made on appeal as to why our conclusions were in error. Accordingly, we reaffirm our prior finding that the preponderance of the relevant evidence does not establish that the Petitioner entered into marriage with R-K- in good faith.

B. Section 204(g) of the Act and Eligibility for Immediate Relative Classification

As discussed in our prior decision, because the Petitioner married R-K- while he was in removal proceedings, the approval of his Form I-360 is barred unless he demonstrates his eligibility for the *bona fide* marriage exemption at 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 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard"). Demonstrating eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act requires a petitioner to 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; *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 that he entered into the marriage to R-K- in good faith 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.

On motion, the Petitioner asserts, without further explanation, that clear and convincing evidence establishes his entry into his marriage with R-K- was in good faith. However, as we have already determined that the Petitioner has not established that he entered into the marriage to R-K- in good faith by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he therefore 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 the Form I-360 and renders the Petitioner ineligible for immediate relative classification. *See* 8 C.F.R. § 204.2(c)(1)(iv).

C. Battery or Extreme Cruelty

The Petitioner argues on motion that we disregarded certain evidence he submitted in support of the Form I-360, with respect to whether he was battered or subjected to extreme cruelty by R-K-. In particular, he claims that we disregarded the following documents: receipts from a visit by the Petitioner to [REDACTED] statements by [REDACTED] and a

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psychological evaluation by [REDACTED]. However, we discussed each document in our decision on appeal in terms of whether they provided sufficient evidence for his claim that he was battered or subjected to extreme cruelty by R-K- and, on motion, the Petitioner does not offer any arguments that were not raised on appeal with respect to these documents.

With respect to the receipts from [REDACTED] we acknowledged in our prior decision that the Petitioner asserted in his brief on appeal that he did not tell [REDACTED] that R-K- hit him on the forehead with a beer bottle because the Petitioner still loved her. We found that the receipts from [REDACTED] did not establish that he was battered or subjected to extreme cruelty by R-K- because the Petitioner did not provide a detailed description of the incident and the receipts are not clearly marked as having been issued by [REDACTED] and they do not reflect the reason for the Petitioner's visit or connect the symptoms noted on the receipts to abuse of the Petitioner by R-K-. In our decision on appeal, we explained that, because the statements by [REDACTED] discuss the claimed abuse of the Petitioner in general terms and are almost identical, they are not sufficient to support the Petitioner's claim of battery or extreme cruelty by R-K-. *Cf. Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *see also Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Similarly, we found that the psychological evaluation by [REDACTED] described the claimed abuse by R-K- in vague terms and was also insufficient to establish that the Petitioner was subjected to battery or extreme cruelty.

In his brief on motion, the Petitioner cites *Hernandez v. Ashcroft*, and argues that the U.S. Court of Appeals for the Ninth Circuit held that extreme cruelty could be found as part of any overall pattern of violence. 345 F.3d 824, 838 (9th Cir. 2003). However, the facts constituting extreme cruelty in *Hernandez* are not analogous to the alleged acts by R-K- here. The plaintiff in *Hernandez* was subjected to years of her abusive spouse's cycle of violence including brutal beatings, a stabbing, locking the plaintiff in the home after attacks without medical care, constant verbal abuse, periods of contrition, and emotional manipulation to convince the plaintiff to return to him after she had sought refuge with a relative in the United States. *Hernandez*, 345 F.3d at 829-32, 840-41. In *Hernandez*, the court determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Hernandez*, 345 F.3d at 840.

In this case, we afforded little weight to the Petitioner's statements that R-K- had subjected him to battery or extreme cruelty because the Petitioner's descriptions of the claimed abusive acts were vague and did not contain the necessary details for us to conclude that they were similarly part of any overall pattern of violence, or constituted acts or threatened acts of violence, including forceful detention, psychological or sexual abuse or exploitation, rape, or molestation. *See* 8 C.F.R. § 204.2(c)(1)(vi).

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Accordingly, the preponderance of the evidence in the record of proceedings does not demonstrate that R-K- subjected the Petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

On motion, the Petitioner still has not overcome the grounds for denial. The Petitioner has not established that he entered into the marriage with his spouse in good faith, met the requirements for the *bona fide* marriage exemption under section 245(e)(3) of the Act, and was battered or subjected to extreme cruelty by his spouse. The Petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion to reconsider is denied.

Cite as *Matter of R-S-*, ID# 16511 (AAO Apr. 8, 2016)