



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

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

MATTER OF S-O-A-

DATE: APR. 14, 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 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 dismissed a subsequent appeal.

The matter is now before us on a motion to reopen. On motion, the Petitioner submits a brief and additional evidence. The Petitioner claims that the additional evidence establishes that the Petitioner's prior marriage was entered into in good faith and was *bona fide*.

Upon review, we will deny the motion to reopen.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

As we noted in our prior decision, the Petitioner married a U.S. citizen, J-C-¹ who subsequently filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf. The Form I-130 was approved, and the Petitioner received conditional permanent resident status through an approved Form I-485, Application to Register Permanent Residence or Adjust Status. The Petitioner and J-C-

¹ Name withheld to protect the individual's identity.

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filed a joint Form I-751, Petition to Remove Conditions on Residence, and during an interview relating to the Form I-751, J-C- stated that she did not know the individuals who wrote affidavits in support of the Form I-751, she and the Petitioner did not reside together, and the Petitioner had paid her \$3,000 initially and \$260 per month for five years to marry him so he could obtain immigration benefits. J-C- withdrew the Form I-130 at the interview. U.S. Citizenship and Immigration Services (USCIS) then denied the Form I-751 for fraud and the Petitioner was placed in removal proceedings on [REDACTED] 2008.²

J-C- filed a second Form I-130 on the Petitioner's behalf, and during an interview relating to this Form I-130, J-C- stated that she did not reside with the Petitioner but with [REDACTED] who is the father of her child. [REDACTED] was also interviewed, and he confirmed that he and J-C- had resided together for over four years and that he was the father of J-C-'s child. USCIS ultimately denied the second Form I-130, determining that the marriage between the Petitioner and J-C- was fraudulent. J-C- appealed the denial of the Form I-130 to the Board of Immigration Appeals (Board). The Board dismissed the appeal, finding that the preponderance of the evidence did not establish that the marriage between the Petitioner and J-C- was *bona fide*. The Petitioner divorced J-C- on [REDACTED] 2013.

The Petitioner married M-B-³ a U.S citizen, on [REDACTED] 2013 in [REDACTED] Maryland and filed this Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on alleged abuse by M-B- during the couple's marriage. The Director denied the Form I-360 after the issuance of a Notice of Intent to Deny (NOID), determining that section 204(c) of the Act barred its approval because the Petitioner entered into marriage with J-C- for purposes of evading the immigration laws. In our appeal decision, we concurred with the Director, noting that the Petitioner did not provide evidence to establish his good-faith marriage to J-C-. The Petitioner then filed this motion to reopen with additional evidence, stating that the additional evidence was not available to him when he appealed because he had not yet obtained the additional evidence from his former attorney.

The additional evidence submitted by the Petitioner with this motion includes the following documents: tax transcripts issued by the Internal Revenue Service (IRS) for tax years 2003 through 2012; bank account statements from [REDACTED] various bills for medical services, cell phones, and utilities; vehicle insurance records; correspondence addressed to J-C- and/or the Petitioner; personal declarations by J-C- and the Petitioner, each dated July 19, 2010, that were submitted in conjunction with the second Form I-130; letters from relatives and friends of J-C- and/or the Petitioner; a lease signed by the Petitioner and [REDACTED] a vehicle title; copies of undated and uncaptioned photographs; letters and records relating to J-C-'s mental health; and an order issued by an immigration judge terminating removal proceedings against the Petitioner without prejudice. The Petitioner previously submitted the tax transcripts on appeal.

Our previous decision is incorporated herein by reference.

² An immigration judge terminated the Petitioner's removal proceedings in [REDACTED] 2010.

³ Name withheld to protect the individual's identity.

III. ANALYSIS

Approval of the Form I-360 is barred by section 204(c) of the Act because the record of proceedings contains substantial and probative evidence that the Petitioner married J-C- 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 Petitioner. *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.

In a personal declaration, dated July 19, 2010, the Petitioner recounts his understanding of what transpired when he and J-C- were interviewed by USCIS in relation to the Form I-751. He also insists that he did not pay J-C- to marry him, J-C- suffers from manic depression and has difficulty in stressful situations, and he lives with J-C- and her children and grandchild. Other than explaining why J-C- was untruthful during the Form I-751 interview, the Petitioner does not provide a detailed account of his relationship with J-C-, including their first meeting, courtship, dating relationship, decision to marry, marriage ceremony or celebration, or their life together as spouses.

In addition, the Petitioner does not provide a supplemental personal declaration addressing the decision by USCIS denying the second Form I-130. In that decision, USCIS noted significant discrepancies and inconsistencies in testimony and supporting documents for the Form I-130, and found that the evidence did not establish that the couple entered into a *bona fide* marriage and, in addition, that there was substantial and probative evidence that the Petitioner took part in a fraudulent or sham marriage with J-C- intended to circumvent the immigrant laws.

The personal declaration by J-C-, dated July 19, 2010, also lacks details sufficient to demonstrate that the Petitioner married her in good faith. J-C- recounts her version of what transpired during the Form I-751 interview, and she claims that she only conceded at the interview that the Petitioner paid her to marry him because she was "desperate to remove [herself] from that situation." She also states that she has manic depression, does not handle stressful situations well, and the Petitioner is like a father to her youngest child and grandchild and has a good relationship with her oldest child. J-C- does not provide a detailed account of her relationship with the Petitioner, including their first meeting, courtship, dating relationship, decision to marry, marriage ceremony or celebration, or their life together as spouses. The record of proceedings lacks an explanation from J-C- addressing why,

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when she was interviewed again regarding the second Form I-130 she filed on the Petitioner's behalf, J-C- stated that she did not reside with the Petitioner but instead resided with [REDACTED] and that [REDACTED] is the father of her child. Consequently, the Petitioner and J-C-'s declarations do not establish the *bona fides* of the couple's marriage.

Several of the letters from relatives and friends of J-C- and/or the Petitioner that were filed with the Form I-130 and submitted on motion provide some details regarding the Petitioner's marriage to J-C-. [REDACTED] notes that she is J-C-'s best friend, the Petitioner and J-C- are a loving couple, she and her husband accompanied the Petitioner and J-C- on several outings, and they sold a car to the Petitioner and J-C-. [REDACTED] J-C-'s mother, recounts that she met the Petitioner when he was dating her daughter and describes some of their activities as a married couple. J-C-'s oldest child, C-C-,⁴ explains that the Petitioner and J-C- are married and the Petitioner is more like a father to her than a step-father.

Several other letters, however, provide few details regarding the couple's marriage. [REDACTED] and [REDACTED] state that they know the Petitioner and J-C- as a couple but their letters provide no probative information regarding the Petitioner and J-C-'s marriage. [REDACTED] claims that he is the uncle of J-C-, the Petitioner is a good husband to his niece, and the Petitioner helps him with visits to the doctor, grocery store, and bank, and even co-signed a lease for an apartment on his behalf. The Petitioner provides a copy of the lease which he cosigned with [REDACTED]. The letter from [REDACTED] is dated prior to his interview with USCIS where he stated that he and J-C- resided together for over four years and that he was the father of J-C-'s child. Accordingly, the letters from relatives and friends of J-C- and/or the Petitioner are not sufficient to show that the Petitioner married J-C- to establish a *bona fide* marital relationship with her, rather than as a means to evade the immigration laws.

The tax transcripts were previously submitted on appeal and reflect that he and J-C- filed taxes under the status of "married filing joint." The [REDACTED] statements reflect a minimal balance and few purchase transactions and the [REDACTED] statements pertain to very limited periods of time. The correspondence from [REDACTED]

[REDACTED] is addressed to the Petitioner and J-C- and a vehicle title lists the Petitioner and J-C- as owners. Although this additional documentary evidence is relevant to establishing that the couple's marriage was *bona fide*, in light of the derogatory evidence in the record of proceedings and the lack of details provided by the Petitioner and J-C- in their statements, this documentary evidence is insufficient to show that his marriage to J-C- was genuine.

⁴ Name withheld to protect the individual's identity.

The records relating to J-C-'s mental health do not mention whether J-C- is married to the Petitioner or address her marital status and, accordingly, they do not provide sufficient information regarding the Petitioner's intentions in marrying J-C-. The Petitioner also submits undated and uncaptioned photographs, which do not provide sufficient detail regarding the Petitioner's intentions in marrying J-C-.

The Petitioner was provided the opportunity in response to the NOID, on appeal, and with this motion, to present evidence that he did not enter into marriage with J-C- for purposes of evading the immigration laws. The personal declarations and other additional evidence submitted with this motion do not establish that the marriage between the Petitioner and J-C- was *bona fide* and substantial and probative evidence in the record of proceedings demonstrates that the Petitioner married J-C- for the purpose of evading the immigration laws. Section 204(c) of the Act consequently bars the approval of the Form I-360, and we will not disturb our prior decision.

IV. CONCLUSION

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 reopen is denied.

Cite as *Matter of S-O-A-*, ID# 16568 (AAO Apr. 14, 2016)