



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

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

MATTER OF E-O-O-

DATE: APR. 22, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* 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 did not establish that: (1) he was eligible for immigrant classification based on a qualifying relationship with a U.S. citizen; (2) he entered into marriage with his wife in good faith; and (3) that he complied with the provisions of section 204(g) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence. The Petitioner claims that the Director's decision is capricious and lacks findings based on fact or law and should therefore be reversed.

Upon *de novo* review, we will dismiss the appeal.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides 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 further states, in pertinent part:

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

is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The record in this case indicates that the petitioner was in removal proceedings at the time of his marriage. In such a situation, 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 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 his marriage. Accordingly, section 204(g) of the Act bars approval of the Form I-360 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.

(Emphasis added).

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The eligibility requirements are explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

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

. . . .

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

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

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

. . . .

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

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Nigeria, last entered the United States on February 8, 2007, as a B-2 nonimmigrant visitor. The Petitioner married his second spouse, D-D-¹ a U.S. citizen, on [REDACTED] 2008, in Rhode Island. The record indicates that United States Citizenship and Immigration Services (USCIS) denied the Form I-130, Petition for Alien Relative, that D-D- filed on behalf of the Petitioner. The Petitioner and D-D- were divorced on [REDACTED] 2010. Pursuant to a Notice to Appear, issued on March 16, 2010, the Petitioner was placed into removal proceedings, which

¹ Name withheld to protect the individual's identity.

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remain pending. On October 5, 2010, the Petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on his relationship with D-D-, which was denied on July 18, 2011.

On [REDACTED] 2011, the Petitioner married his third spouse, C-O-² also a U.S. citizen. On March 1, 2011, C-O- filed a Form I-130 on behalf of the Petitioner, which was approved on November 2, 2011. On January 26, 2015, the Petitioner filed the instant Form I-360 based on his marriage to C-O-. The Director subsequently issued a notice of intent to deny (NOID), notifying the Petitioner that he had not established, among other things, that he entered into his marriage with C-O- in good faith and that he was exempt from the bar at section 204(g) of the Act. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner timely appealed.

III. ANALYSIS

Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the grounds for denial of the Form I-360. The appeal will be dismissed for the following reasons.

A. Entry into Marriage in Good Faith

The Director properly determined that the relevant evidence in the record did not establish that the Petitioner had entered into marriage with his spouse, C-O-, in good faith. In his initial statement, the Petitioner briefly recounted his and C-O-'s wedding celebration, but otherwise offered only a general account of their life together. The statement did not set forth any probative details about the couple's initial meeting, courtship, engagement, or experiences, apart from the abuse. In response to the Director's NOID, the Petitioner submitted a second statement in which he recalled first meeting C-O- after dialing her telephone number by accident. The Petitioner stated that they talked for a while and in January 2010, they met in person. He offered no information about their first in-person meeting or how their relationship progressed from their initial telephone conversation. The Petitioner indicated generally that the couple's courtship started around March 2010 when he met C-O-'s mother and siblings and that he later spoke to her father over the telephone. He recalled that he and C-O- attended church together often, took her children every Sunday to a buffet, and took weekend trips together to New Jersey, Connecticut, and [REDACTED] often, but he did not provide any probative details about any these or other shared occasions or trips with C-O-. The Petitioner indicated that they decided to start a family together and agreed to marry. He gave a more detailed account of their wedding celebration. He then described their married life as "fun filled," recounting out of state trips he and C-O- took to visit family and friends, a cooking competition where he and C-O- graded each other's dishes, working out together, and going on walks and getting ice cream with C-O-'s children. However, here too, the Petitioner's general account lacked probative details about any of these claimed shared experiences. Moreover, his updated statement still did not set forth substantive information about the couple's initial meeting, their courtship, engagement, or experiences, to

² Name withheld to protect the individual's identity.

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demonstrate the Petitioner's good faith marital intentions, apart from the couple's wedding and the claimed abuse.

The relevant supporting statements in the record from the Petitioner's mother-in-law, brother-in-law, and two friends, also do not establish the Petitioner's good faith marital intentions. The Petitioner submitted four statements from his mother-in-law. In a 2011 statement, she asserted that she witnessed the Petitioner and C-O-'s wedding and that there was love and kindness between them. In her subsequent statements, she stated that the Petitioner was like a son and that his company was enjoyed at family gatherings; that he was a blessing to her grandchildren who called him [REDACTED] and are joyful when they see him; that he was a strong instrument in C-O-'s life; and that the Petitioner had struggled to help and care for C-O-, who was suffering from mental illness. However, her statements provided no substantive information about any specific interactions, visits, and shared experiences she had with the Petitioner and C-O- that led her to draw these conclusions. A brief letter from the Petitioner's brother-in-law makes no reference to the Petitioner's good faith marital intentions. The Petitioner's friends, [REDACTED] and [REDACTED], provided nearly identical, brief statements, indicating that the Petitioner's marriage to C-O- was entered into in good faith, that they attended the couple's wedding, and visited them at their home. [REDACTED] indicated that their families took vacations together, and [REDACTED] stated that he was the Petitioner's best man at his wedding. Neither discussed in probative detail any specific interaction or occasion they shared with the Petitioner and his spouse to demonstrate the Petitioner's marital intentions.

The record below also includes letters from [REDACTED] a social worker with the [REDACTED] and from [REDACTED] a clinician at the organization [REDACTED], which are insufficient to establish the Petitioner's good faith marital intentions absent probative testimony from the Petitioner. [REDACTED] February 3, 2014, brief letter indicated that the Petitioner was participating in services with his wife, had attended some visits with his stepchildren, as well as some of his wife's counseling sessions, and had reported that he wanted to support his wife. [REDACTED] in her January 17, 2014, letter, stated that the Petitioner participated in the [REDACTED] program with his wife from May 1, 2013, to September 4, 2013, although he arrived late or did not attend on several occasions.

The record also contains inconsistencies in the Petitioner's documentary evidence, namely, the family information sheet for [REDACTED] program for C-O-, a lease agreement through that program, and a letter from the owner of the couple's apartment under the [REDACTED] program. Although the family information sheet for the [REDACTED] program lists the Petitioner as C-O-'s family member, the corresponding one year lease for the couple's claimed residence at [REDACTED] dated July 25, 2012, does not identify the Petitioner as a co-tenant with his spouse or list him among the four individuals authorized to reside in the apartment, although the Petitioner had already been married to C-O- for well over a year at the time the lease was executed. In addressing the lease agreement submitted in these proceedings, the Petitioner, in response to the Director's NOID, indicated that C-O- used to be on a subsidized lease and that they had tried to add him to the lease when they moved in together, but were told that it could not be done until the beginning of a new lease. However, the record indicates that the Petitioner and C-O- resided at a different residence located on [REDACTED] at the time of their 2011 marriage and did not execute the lease agreement for the apartment at

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██████████ until July 2012. Thus, his account does not explain why he was not added to the lease at that time. The Petitioner did not submit any subsequent lease after the expiration of the 2012 lease and did not indicate whether or not he had ever been actually added to the lease for the claimed marital residence. Instead, he proffered a letter from the purported owner of the apartment, ██████████ dated March 14, 2013, indicating that the Petitioner had been permitted to move into the apartment as spouse of the tenant, C-O-. However, the owner identified on the lease is another individual by the name of ██████████. The record contains no explanation for this discrepancy.

The documentary evidence submitted below includes the Petitioner's marriage certificate; photographs of the Petitioner and C-O- together and with other people at their wedding and on other occasions; copies of joint checking account statements from 2011 through 2013 and two checks signed by C-O- from the bank account; joint telephone bills;³ automobile insurance documents in both his and C-O-'s names; an August 2013 ██████████ bill addressed only to the Petitioner without a mailing address; Social Security Administration and Department of Human Services notices addressed solely to C-O-; and the couple's wedding invitation and greeting cards from others. While the marriage certificate and photographs establish a legal marriage and that a relationship existed between the Petitioner and C-O-, they do not demonstrate the nature of the relationship or establish the Petitioner's good faith intentions. The checking account statements and corresponding checks do not show any activity or usage by the Petitioner. They and the remaining documentary evidence referenced offer little insight into the Petitioner's marriage or his marital intentions.

On appeal, the Petitioner asserts that the Director's decision was capricious and lacked findings based on law and fact, particularly as USCIS had previously made a favorable determination on the *bona fides* of the Petitioner's marriage to C-O- under a heightened standard of section 245(e)(3) of the Act, when it approved the Form I-130 that C-O- filed on behalf of the Petitioner. However, the fact that a visa petition based on the marriage in question was previously approved does not automatically entitle the beneficiary to subsequent immigrant status. *See I.N.S v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (stating that in subsequent proceedings, an "approved petition might not *standing alone* prove . . . that the marriage was bona fide and not entered into to evade immigration laws"). Moreover, although the parties, statutory provisions and benefits procured under sections 204(a)(1)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are similar, they are not identical. C-O- was the petitioning spouse and bore the burden of proof in the adjudication of the Form I-130 she filed on behalf of the Petitioner, to establish her citizenship and the validity of the couple's marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(f), 204.2(a)(2). In contrast, in this case, the Petitioner bears the burden of proof to establish not only the validity of their marriage, but also that *he* entered into the marriage with C-O- in good faith. As discussed, the Petitioner has not met that burden here. The Petitioner's statements below and the statements of family and friends do not provide sufficient probative details to establish his good faith intentions in marrying his spouse, and the documentary evidence submitted is insufficient to overcome this and other noted deficiencies. When viewed in the totality, the preponderance of the relevant

³ The Director in error indicated that the checking account and the ██████████ telephone bills were only in the Petitioner's name.

evidence does not demonstrate that the Petitioner entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Section 204(g) of the Act Bars Approval of the Form I-360

As the record indicates that the Petitioner was in removal proceedings at the time he married C-O- and had not resided outside of the United States for the requisite two-year period following the marriage, 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.

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”). Demonstrating eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act requires the 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, 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, the 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. As the Petitioner here has not established his good faith entry into his marriage to C-O- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also 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 this Form I-360.

C. Eligibility for Immediate Relative Classification

In addition, the Director correctly determined that the Petitioner was ineligible for immediate relative classification based on his marriage, 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), because he has not complied with, nor is he exempt from, section 204(g) of the Act.

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.

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ORDER: The appeal is dismissed.

Cite as *Matter of E-O-O-*, ID# 16258 (AAO Apr. 22, 2016)