



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

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

MATTER OF K-O-N-

DATE: AUG. 9, 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) section 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 Petitioner is a citizen of the Kenya, who last entered the United States as a nonimmigrant student (F-1). The Petitioner married his first spouse M-V-,¹ a U.S. citizen, and they were later divorced. The Petitioner subsequently married his second spouse R-K-,² a U.S. citizen, and filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director, Vermont Service Center, denied the petition, concluding that the Petitioner is subject to section 204(c) of the act, 8 U.S.C. § 1154(c), which bars the approval of his petition because he entered into his prior marriage for the purpose of evading the immigration laws. The Director also determined that Petitioner had not established that he entered into his current marriage in good faith, and that his former spouse subjected him to battery or extreme cruelty during their marriage.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief, asserting that he has established his eligibility for the benefit sought.

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

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii) 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

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv), which states, in pertinent part: “*Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.”

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

(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.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). 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).

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.

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). U.S. Citizenship and Immigration Services (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.

II. ANALYSIS

The record contains substantial and probative evidence to support the Director's finding that the Petitioner entered into his marriage for the purpose of evading immigration laws, and section 204(c) bars approval of this petition. We also find no error in the Director's determination that the Petitioner's did not enter into his marriage to R-K- in good faith and that he was subjected to battery and extreme cruelty during his marriage.

A. 204(c) of the Act Relating to the Petitioner's Marriage to M-V-

The record reflects that the Petitioner's former spouse, M-V-, filed a Form I-130, Petition for Alien Relative (family petition) on his behalf. The Petitioner and M-V- subsequently appeared for an interview related to the petition. During the interview M-V- provided a sworn statement to United States Citizenship and Immigration Services (USCIS), admitting that the Petitioner paid her \$2,500 to marry him and that she was to get paid more money once the Petitioner received his green card. M-V- also admitted that the Petitioner paid a friend \$5,000 dollars to arrange their marriage, that her marriage to the Petitioner was not consummated, and that they never resided together.

In a personal statement submitted below, the Petitioner asserted that he did not marry M-V- to obtain immigration benefits, but instead married her because he was attracted to her beauty. He stated that if his intent was solely to obtain a green card, he would not have married M-V- because she was unemployed and unable to sponsor him for immigration benefits. Additionally, he argued that he would have applied for a green card immediately after the marriage and would not have waited for three years. The Petitioner asserted that he and M-V- had a genuine marriage, but it began to

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deteriorate after he obtained his work authorization and M-V- began to make financial demands of him. In his response, the Petitioner also recounted his understanding of what transpired during M-V-'s interview with USCIS. He explained that M-V- made false statements to USCIS about their marriage because she was anxious, intimidated by the immigration officer, and feared that he would leave her once he obtained his green card. The Petitioner denied paying a friend \$5,000 to arrange his marriage, stating that he was a student at the time and could not afford such a large sum of money. The Petitioner indicated that the evidence in the record supports the authenticity of his marriage to M-V- and he did not further provide a detailed account of his relationship with M-V- including their first meeting, courtship, dating relationship, decision to marry, marriage ceremony or celebration, or their life together as spouses.

To further address his good faith marriage to M-V-, the Petitioner also submitted an affidavit from M-V- who indicated that the statements ascribed to her from the USCIS interview were misconstrued. She stated that when she said she was paid to marry the Petitioner, she meant that she expected monetary help from her husband, as is customary in a marriage, and that she had no recollection of making specific claims that she was paid \$2,500. She further stated, "any mention of payments to a common friend" did not reflect her understating at the time of the interview. She stated that she shared a residence with the Petitioner and that they were in a conjugal relationship. M-V- concluded her affidavit by stating that any statements made by her "under the stress of the immigration proceedings" did not reflect the true status of her marriage to the Petitioner. M-V- did not provide any further details about her relationship with the Petitioner or further explanation for the inconsistencies between her two statements.

On appeal, the Petitioner asserts that the Director erred by giving greater weight to M-V-'s sworn statement admitting that her marriage was fraudulent, rather than to her subsequent affidavit saying that it was not. We do not find that the Director erred in giving greater weight to the initial and more candid statement than to M-V-'s subsequent affidavit. In her subsequent affidavit, M-V- did not describe how her initial, voluntary sworn statement to USCIS was misconstrued. She did not sufficiently explain why she attested to its veracity by signing it, and then waited almost ten years before recanting. M-V- did not make a timely retraction of her initial statement, nor did she provide any objective evidence to explain or reconcile the inconsistencies of her previous sworn statement.

The documentary evidence, likewise, did not establish the Petitioner's intent when entering into the marriage. The joint [REDACTED] statements show minimal balances and it is unclear if both parties had access to the account and used it for marital expenses. The tax transcript reflected that the Petitioner and M-V- filed joint income tax in 2005. However, the single tax transcript was insufficient to establish that the Petitioner married his spouse in good faith. Similarly, while the lease agreement and telephone bills may be used to establish joint residence, without the Petitioner's probative testimony they are insufficient to establish the Petitioner's good faith entry into the marriage. The Petitioner also submitted several photographs depicting what appear to be the Petitioner's marriage ceremony, social gatherings and outings. The photographs showing the Petitioner and his spouse together, do not identify when and where they were taken. Without probative testimony, they are insufficient to establish the Petitioner's good faith marital intentions. The affidavits from the Petitioner's friends, [REDACTED]

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_____ and _____ attested that the Petitioner was truly and legally married to M-V- and that they observed the couple together. However, their statements provided insufficient details regarding the marriage to show that the Petitioner's marriage to his former spouse was entered in good faith.

The documentary evidence, in light of the derogatory evidence in the record and the lack of details provided by the Petitioner and M-V- regarding their marriage, does not establish that he entered into the marriage with M-V- in good faith. Accordingly, section 204(c) of the Act applies to bar approval of the Petitioner's self-petition.

B. Battery or Extreme Cruelty

We find no error in the Director's determination that the Petitioner's spouse, R-K- did not subject him to battery or extreme cruelty and the evidence submitted on appeal does not overcome this ground for denial. The Petitioner submitted the following relevant evidence: personal affidavit, statements from _____ and _____ and a psychological evaluation.

In his initial affidavit, the Petitioner recounted that seven months into their marriage, R-K- became abusive towards him. He recalled that she began abusing alcohol and that her behavior towards him changed. He recounted that she called him demeaning names, threatened him with deportation, and continuously embarrassed him in public and in front of his friends. He recalled that R-K- also began to treat him like a slave, forcing him to do all of the household chores and criticizing the way he performed these chores. The Petitioner also recalled that throughout the marriage R-K- withheld sex, was unfaithful to him, and occasionally forced him to engage in sexual acts that he found to be culturally unacceptable. He recounted one incident when R-K- came home and demanded that he prepare her supper. He recalled that when he walked away, R-K- struck him with a sauce pan in his left shoulder. He recounted putting some ice on his shoulder to prevent any swelling or injuries, but did not provide any further details about this incident or any other specific incident of abuse. In his subsequent statement, the Petitioner likewise did not provide sufficient probative detail regarding the claimed abuse.

In his statement, friend _____ indicated that he has known the Petitioner since 2002. He stated that he resided in the same apartment complex as the couple and they often socialized together. He stated that he witnessed R-K- abuse the Petitioner and recounted that R-K- called the Petitioner demeaning names in front of his friends. He also recalled being at the Petitioner's home when R-K- struck him with a sauce pan. He stated that he assisted the Petitioner in applying ice to the shoulder area to ensure that his shoulder did not swell. _____ recollection of this incident is nearly verbatim to the Petitioner's statement, which detracts from his credibility and personal knowledge of this incident. Similarly, friend _____ attested that he socialized with the Petitioner at various Kenyan functions and recounted witnessing R-K- demand that the Petitioner leave a fundraiser to go home with her. In his statement, _____ did not further describe what happened nor did he mention any other specific acts of abuse that he witnessed.

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The Petitioner also submitted a psychological evaluation prepared by [REDACTED] a licensed counselor and psychotherapist. [REDACTED] determined that the Petitioner suffered from depressive symptoms associated with domestic violence. She indicated that the Petitioner reported that his former spouse, R-K- was a heavy drinker and often humiliated him verbally and threatened him with deportation. [REDACTED] also stated that the Petitioner recounted that once after refusing to cook supper, R-K- struck him on the head using a frying pan, causing him swelling of the head. [REDACTED] statement in this regards is inconsistent with the Petitioner's and [REDACTED] accounts, which reflect that the Petitioner was struck in the shoulder, not in the head. This inconsistency diminishes the weight of [REDACTED] report. In addition, [REDACTED] report focused on the emotional effects on the Petitioner of R-K's infidelity and dishonesty. It did not provide sufficient, probative detail to qualify those actions as battery or extreme cruelty as defined in the act.

In his brief on appeal, the Petitioner asserts that he has suffered physical, verbal, and emotional abuse during his marriage to R-K-, and that his supporting evidence consisted of credible, independent observations of the abuse. He references his personal statements, supporting affidavits, and assessment and progress report from [REDACTED] to support his claim of abuse. A preponderance of the evidence, however, does not establish that the Petitioner was battered or subjected to extreme cruelty by R-K- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

C. Good-Faith Entry into the Marriage

The relevant evidence submitted below and on appeal does not demonstrate the Petitioner's entry into his marriage with R-K- in good faith. To establish his good faith entry into the marriage, the Petitioner submitted: personal affidavits; letters from friends, [REDACTED] and [REDACTED] a lease renewal notice; utility bills; copy of letter from [REDACTED] copies of [REDACTED] account statements; two letters from IRS, one requesting tax transcripts and the actual tax transcript; copy of a replacement [REDACTED] wedding and greeting cards; and photographs of the couple.

The [REDACTED] documents reflected that the Petitioner had applied for life insurance, with R-K- as the beneficiary thirteen days prior to filing his VAWA petition, and that the Petitioner made the introductory premium payments. The record does not reflect that any subsequent payments of the premium were made. Also, while [REDACTED] account summary showed that the Petitioner and R-K- shared a joint bank account and that the Petitioner deposited his payroll check into the account, the bank statements are insufficient to establish good faith entry into the marriage, as they do not reflect comingling of resources and shared financial responsibilities. The remaining evidence in the record, demonstrate that the couple shared a joint mailing address, but without probative testimony from the Petitioner, are insufficient to demonstrate the petitioner's marital intentions.

In his subsequent personal statement, the Petitioner focused on addressing the derogatory information that his former spouse provided during the USCIS interview. The Petitioner reiterated

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that he entered into his prior marriage in good faith as supported by the evidence in the record. The Petitioner did not provide probative details of his and R-K-'s courtship, engagement, wedding, or shared experiences to establish that he married R-K- in good faith.

Likewise, the statements of the Petitioner's friends lacked substantive information regarding their knowledge of the relationship and the Petitioner's marital intentions. In his statement [REDACTED] indicated that he was with the Petitioner when he met R-K- and that he often socialized with the couple. The remainder of his statement focused on the claimed abuse and he did not describe any particular visits, social occasions with the couple, or any interactions with the couple that would establish the Petitioner's intentions in entering into the marriage. In their brief statements, friends [REDACTED] and [REDACTED] affirmed that the marriage between the Petitioner and R-K- was genuine. They recalled attending the couple's wedding and socializing with them. The Petitioner's friends did not address their interactions with the Petitioner and R-K- during the couple's marriage, or their knowledge of the Petitioner's good-faith marital intentions.

On appeal, the Petitioner submits a brief in which he reiterates his good faith entry into the marriage. The Petitioner also references previously submitted evidence in the record. As discussed above, the evidence submitted below offers little insight into the Petitioner's good faith intentions in marrying R-K-. Further, the statements from the Petitioner's friends do not provide sufficient details to address the Petitioner's marital intentions. Neither the Petitioner's statements, nor the letters from his friends, provide probative accounts of the couple's courtship, wedding ceremony, shared residence, or shared experiences. Accordingly, the record does not establish by a preponderance of the evidence that the Petitioner entered into his marriage with R-K- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

III. 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. section 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of K-O-N-*, ID# 17437 (AAO Aug. 9, 2016)