



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

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

MATTER OF C-A-C-

DATE: FEB. 9, 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 citizen of the United States. *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. We dismissed a subsequent appeal and denied a motion to reopen and a motion to reconsider. The matter is now before us on second motions to reopen and reconsider. The motions will be denied.

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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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), which states, in pertinent part:

(iv) *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 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.

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 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 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).

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II. RELEVANT FACTS AND PROCEDURAL HISTORY

Our previous decisions of December 1, 2014 and June 25, 2015 are incorporated here by reference.¹ The issue again before us is whether the approval of this Form I-360 is barred by section 204(c) of the Act, the so-called “marriage fraud” provision. On motion, the Petitioner submits a brief that is substantially similar to the brief he previously submitted with his first motions to reopen and reconsider. The Petitioner also submits supplemental evidence in the form of statements from family and friends, as well as a new statement from him. The Petitioner has not met the requirements of a motion to reconsider because the Petitioner has not cited on motion binding precedent decisions or other legal authority establishing that our prior decision incorrectly applied law or agency policy or was incorrect based on the relevant evidence in the record at the time of the decision. 8 C.F.R. § 103.5(a)(3). Consequently, the motion to reconsider will be denied. See 8 C.F.R. § 103.5(a)(4). The motion to reopen will also be denied for the reasons stated below.

III. ANALYSIS

Our prior decision on motion considered *de novo* all the relevant evidence in the record of proceedings and set forth our independent determination that substantial and probative evidence demonstrated that the Petitioner entered into a prior marriage with D-O- for the sole purpose of obtaining immigration benefits, and thus section 204(c) of the Act prohibited approval of the Form I-360. In our prior decision on motion, we found that the Petitioner had not provided a reasonable explanation for D-O-’s ten-year delay in recanting her 1994 sworn statement to a legacy Immigration and Naturalization (INS) officer, withdrawing the Form I-130 she filed on the Petitioner’s behalf, and declaring that she had never resided with the Petitioner as man and wife and had married the Petitioner to help him remain in the United States. We also found that the Petitioner had not provided an adequate explanation from D-O- as to why she required a specific request to recant her sworn statement, why she felt pressured by the consequences of being found to have entered into a marriage solely for immigration purposes if her marriage to the Petitioner was in fact *bona fide*, and why she alleged in her statement dated February 13, 2014, that INS agents threatened her.

In our prior decision on motion, we also found that the Petitioner’s supplemental statement did not described in any probative detail his courtship with D-O-, their wedding ceremony, joint residence, any shared experiences with D-O-, or address the derogatory information raised in the INS investigation of his marriage to D-O-. Similarly, we found that the supplemental statement of the Petitioner’s daughter and friends and acquaintances did not establish the Petitioner’s marital intentions because they did not set forth any substantive information regarding interactions or shared experiences with the Petitioner and D-O- to establish the Petitioner’s marital intentions or the *bona fide* nature of their marital relationship. We also noted that D-O- asserted in her statements that, when she moved in with the Petitioner after they married, she rented her prior apartment to her

¹ The Petitioner’s administrative record also contains an AAO decision, dated June 22, 2010, dismissing the appeal of the Director’s denial of the Petitioner’s first Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed on December 2, 2008 [REDACTED]

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friend, [REDACTED] which was inconsistent with the Petitioner's statement of April 4, 2006, in which he indicated that D-O- rented her apartment to a friend named [REDACTED]

The additional evidence provided to support this motion, consisting of another statement by the Petitioner and two supporting statements, is insufficient to overcome the ground for denial of the Form I-360.² On motion, the Petitioner submits a personal statement, dated July 22, 2015, in which he provides the following information concerning how he met and began dating D-O-: "I was introduced to [D-O-] . . . while living . . . with my sister . . . [a]t first sight, we realized we had an immediate connection. I knew I wanted to get to know her further. We immediately began dating in order to get to know each other . . . [and] [w]e realized shortly after we began dating that we wanted to be together." This statement, while intended to establish the Petitioner's marital intentions, is inconsistent with the Petitioner's prior personal statement, dated January 14, 2015, which was submitted with the first motions to reopen and reconsider, and in which the Petitioner stated that, with respect to how he and D-O- met, he stated that they "we know each other by telephone because my sister . . . introduced her by telephone and when I come to New Jersey we are spend a lot of time together sharing with our family . . . [and] [a]t the moment that I saw her I wanted to marry her and start a family with her."

In addition, in his statement submitted with this motion, the Petitioner provides the following description regarding the conversation that transpired when an INS officer visited the apartment where D-O- was living after she left their marital apartment for a period of time when she and the Petitioner had an argument: "He asked her if I had made payment in exchanged for the marriage and the answer was NO." The Petitioner offers no explanation for how he is aware of what was spoken between D-O- and the INS officer when he was not present during their conversation and, in her own statements, dated February 10, 2014, February 13, 2014, and January 22, 2015, D-O- does not mention that she was asked by the officer whether the Petitioner had paid her to marry him or what her answer was. In all of her statements, D-O- indicates that the INS officer pressured her to sign a statement that her marriage to the Petitioner was not in good faith but, unlike the Petitioner in his statement submitted with this motion, she does not recount specific details of her conversation with the officer. The record contains no explanation for this inconsistency and, accordingly, the statement submitted by the Petitioner on motion is insufficient to overcome the ground for denial of the Form I-360.

In addition, in the same statement, the Petitioner indicated that D-O- moved to Florida in 2006 and that he "followed her there and lived with her for some time." The Petitioner also states that, "[w]e lived together in Florida in order to try and resolve our issues . . . [but] [t]he stress of the situation was too much to deal with and approximately one year later, we decided to end our relationship and I moved back to New Jersey." In his personal statement dated January 14, 2015, the Petitioner also states that, "[a]fter our first separation we decided to try again and I moved to Florida." That the Petitioner and D-O- lived together in Florida starting in 2006 and lasting for approximately one year

² On motion, the Petitioner again submits statements by D-O-, dated February 10, 2014, February 13, 2014, and January 22, 2015.

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is also supported by the statements submitted on motion by D-O-, [REDACTED] but is contradicted by the information provided by the Petitioner on the Form I-360, which indicates that he lived with the alleged abusive spouse, C-D-³, from January 1997 until August 2008. Accordingly, based on this significant inconsistency, the value of the Petitioner's statement is diminished.

The Petitioner submits two additional supporting statements with this motion. One statement is signed by [REDACTED] who state that the Petitioner and D-O- met when, "[d]uring a family gathering [D-O-] stopped by and I introduced them . . ." and they had "an instant connection and great chemistry." Their statement does not indicate, unlike the Petitioner's January 14, 2015, statement, that [REDACTED] introduced him to D-O- over the telephone before he arrived in the United States. Their statement also describes the interaction between D-O- and the INS officer, as the following: "He had a conversation with [D-O-] which escalated to the Officer accusing her of having married [the Petitioner] for immigration purposes. She did her best to explain why she was at that apartment and not the apartment they shared but the officer did not understand." [REDACTED] do not provide any explanation as to how they know what transpired between D-O- and the INS officer and their statement differs significantly from the statements by D-O-, in which she does not indicate that she tried to explain to the INS officer why she was at that apartment. In addition, [REDACTED] indicate that the Petitioner lived with D-O- in Florida for approximately one year starting in 2006, which differs significantly from the information provided by the Petitioner on the Form I-360. Accordingly, their statement submitted on motion is insufficient to establish that the Petitioner did not enter into the marriage with D-O- for the purpose of evading immigration laws.

The other statement the Petitioner submits on motion is from [REDACTED] who claims that she uses the nickname of [REDACTED]. In her statement, [REDACTED] explains that the Petitioner's previously unsupported claim that D-O- rented her apartment to a friend named [REDACTED] meant that D-O- rented the apartment to [REDACTED]. However, [REDACTED] statement submitted on motion differs from her earlier statement, dated February 22, 2014, in which she indicated that she was living "in their house . . . for many weeks" and that she was "in their house when Immigration came to their house to investigate them" but in which she did not indicate whether she was present during the exchange between the INS officer and D-O-. In her statement submitted on motion, [REDACTED] indicates that she sublet D-O-'s apartment when D-O- and the Petitioner married and moved into a different apartment. [REDACTED] also states that, "on one occasion," when D-O- and the Petitioner had a fight, D-O- stayed with [REDACTED] at the apartment she sublet from D-O- but then [REDACTED] indicates that "[d]uring one of these visits, [D-O-] got a surprise visit from an Immigration officer." [REDACTED] recounts in her statement submitted on motion that "[D-O-] tried repeatedly to clarify why she was at this apartment and not at theirs but the officer did not understand and accused her of having married for the purpose evading immigration laws. He told her that they would prove that they did not marry in good faith and if prove [sic], she would be sent to jail and her children would be taken away." As with the statements provided by the Petitioner and

³ Name withheld to protect individual's identity.

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_____ and _____ on motion, _____ does not provide any explanation as to how she knows what transpired between D-O- and the INS officer. In addition, as did _____ in their statement, _____ states that the Petitioner lived with D-O- in Florida for approximately one year starting in 2006, which differs significantly from the information provided by the Petitioner on the Form I-360. Accordingly, _____ statement submitted on motion is insufficient to overcome the ground for denial of the Form I-360.

With respect to the statements submitted in support of this motion by the Petitioner, _____ they all appear to be drafted by the same person, who may not actually be the person who signed each statement. Much of the language in each statement is virtually identical, in particular, concerning what transpired when an INS officer spoke with D-O- and when the Petitioner and D-O- lived together in Florida. The use of identical language and phrasing across the various statements suggest that the language in the statements is not the authors' own. *See 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); *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). Because the statements appear to have been drafted by someone other than the purported authors, the statements possess little credibility or probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

The Petitioner again claims on motion, as he did on appeal and in his first motions, that we and the Director should not have relied on D-O-'s 1994 sworn statement, the INS investigative report, and the statements of the Petitioner's neighbors obtained during the INS investigation, because they were never provided to the Petitioner. As we noted in our decision on the first motions, the regulation at 8 C.F.R. §103.2(b)(16)(i) requires USCIS to advise the Petitioner of "derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware" before issuing an adverse decision on the basis of that information but that, in this situation, it is apparent that the Petitioner was aware of the derogatory information contained in the record of proceedings, including the investigative report, and was provided ample opportunities to offer evidence in rebuttal. The Petitioner again does not point to any authority requiring USCIS to advise him of derogatory information of which he was and is aware.

Finally, the Petitioner asserts on motion that, in our decisions on appeal and on the first motions to reopen and reconsider, we held D-O- to "impossibly/impermissibly stringent behavioral norms," a "impossibly high "classist" view of marriage", and that "[t]his class/education/traditional marriage bias is an unconstitutionally impermissible violation of the [Petitioner's] right to procedural due process." We do not have authority to consider constitutional claims, and the Petitioner's allegations have no merit. Our independent and *de novo* review of the record of proceedings establishes that there is substantial and probative evidence, documented in the record of proceedings, demonstrating that the Petitioner entered into his prior marriage with D-O- for the sole purpose of evading U.S. immigration laws. *See Matter of Tawfik*, 20 I&N Dec. 166, 167 (BIA 1990) (citing *Matter of Kahy*,

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19 I&N Dec. 803 (BIA 1988). Consequently, section 204(c) of the Act applies to bar approval of the Form I-360.

IV. CONCLUSION

On motion, the Petitioner has not overcome the substantial and probative evidence in the record demonstrating that his prior marriage to D-O- was entered into for the purpose of evading the immigration laws. Approval of the Form I-360 is, therefore, statutorily barred pursuant to section 204(c) of the Act.

In these 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.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of C-A-C-*, ID# 15527 (AAO Feb. 9, 2016)