



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

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

MATTER OF K-K-

DATE: FEB. 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 United States citizen. *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. The matter is now before us on appeal. The appeal will be sustained.

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

(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.

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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. FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Belarus, last entered the United States on June 9, 2010, as a J-1 exchange visitor. The Petitioner married R-H-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2011, in Pennsylvania. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 6, 2014. The Director subsequently issued a request for evidence (RFE) establishing, among other things, the Petitioner's good faith entry into his marriage with R-H-. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition and the Petitioner timely appealed. The Petitioner submits a brief on appeal.

## III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has overcome the Director's ground for denial. The appeal will be sustained for the following reasons.

### A. Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal demonstrates the Petitioner's good faith entry into his marriage with R-H-. In his statements, the Petitioner recounted substantive information about his and R-H-'s relationship, including details regarding their courtship and shared experiences. He

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<sup>1</sup> Name withheld to protect the individual's identity.

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indicated that he fell in love with R-H- almost immediately after their initial meeting in [REDACTED] New Jersey in July 2010 and that they started talking over the phone afterwards. The Petitioner stated that during that time, he visited R-H- at her home in [REDACTED] several times and vice versa, and that soon after his employment in New Jersey ended in September 2010, he moved in with R-H- and her daughter. He stated that his relationship with R-H- was his first serious romantic and intimate relationship and provided substantive information about the resulting difficulties they faced early on in their relationship. The Petitioner noted that they did briefly separate following a major argument in January 2011, but they worked things out and moved into a new apartment together in [REDACTED]. He recalled that during their courtship, they took short trips together, including a long weekend together to [REDACTED] and another trip to [REDACTED] New Jersey. The Petitioner indicated that after several conversations, they were finally married in a small chapel in [REDACTED] in [REDACTED] 2011. The Petitioner stated that they moved to [REDACTED] Florida that month, as they had been thinking about before their marriage, but moved back to [REDACTED] about a year later.

The record also includes declarations from R-H-'s grandmother, [REDACTED] who provided substantive and credible information regarding the Petitioner's relationship with R-H-. [REDACTED] recalled that the Petitioner attended their family functions, helped her sons move her into her apartment, and that he and R-H- used to visit her. The Petitioner also submitted a letter from [REDACTED] a friend of the couple's, who indicated that she had attended social gatherings and other events at the Petitioner's and R-H-'s home, described their wedding, and recalled that the Petitioner helped take care of R-H-'s daughter, taking her to school, fixing her breakfast, and helping her with homework. The record also includes copies of letters from [REDACTED] and [REDACTED] attesting to their belief that the Petitioner's marriage to R-H- was a genuine and loving one.<sup>2</sup>

The Petitioner also submitted below documentary evidence in support of his good faith marital intentions, including several photographs of himself with R-H- on different occasions and with different people. In addition, he proffered joint bank statements from during the couple's marriage; a joint lease agreement for their apartment in Florida executed by both of them; a Florida liability insurance card for R-H- and the Petitioner's credit card statement addressed to their shared Florida residence; the Petitioner's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, showing the couple's [REDACTED] address; email messages between the Petitioner's mother and R-H-; and annual passes for both the Petitioner and R-H- to [REDACTED].

On appeal, the Petitioner asserts that, contrary to the Director's decision, the Petitioner's statements below were detailed, provided sufficient probative information about his and R-H-'s courtship and good faith marital intentions, and specifically addressed concerns raised in the RFE about why the couple filed separate taxes and did not comingle their finances. The Petitioner further maintains that the Director erred in discounting all the documentary evidence in the record and summarily dismissing the supporting letters he proffered as vague, including the letters from R-H-'s

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<sup>2</sup> The letters were originally submitted by R-H- in support of a Form I-130, Petition for Alien Relative, she filed on behalf of the Petitioner, which was subsequently denied.

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grandmother, [REDACTED]. He notes in particular that the decision below did not consider [REDACTED] [REDACTED] familial relationship to R-H- and disregarded the substantive details she provided in her 2015 letter regarding the Petitioner's relationship with R-H- and her family. The Petitioner also asserts that the Director considered each piece of evidence alone instead of considering the evidence as a whole.

Upon *de novo* review of the record, considering the totality of the circumstances, the Petitioner has demonstrated by a preponderance of the evidence that he entered into marriage with R-H- in good faith. The Petitioner has submitted his own personal statements and the statements of friends and R-H-'s grandmother, which provided probative details demonstrating his good faith marital intentions. In addition, the Petitioner has submitted documentary evidence showing that he and R-H- shared joint accounts, had a common address and joint residence, and took photographs on multiple occasions as a couple. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner married R-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The Director's decision to the contrary is withdrawn.

#### IV. CONCLUSION

On appeal, the Petitioner has overcome the Director's ground for denial, having established that he entered into the marriage with his former spouse in good faith. Accordingly, the Petitioner has established his eligibility for immigrant classification under 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 been met.

**ORDER:** The appeal is sustained.

Cite as *Matter of K-K-*, ID# 15432 (AAO Feb. 9, 2016)