



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

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

MATTER OF C-A-R-

DATE: JAN. 27, 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 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. We dismissed a subsequent appeal. The matter is now before us on 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.

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(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 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 statements of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

In a situation where a petitioner marries while in removal proceedings, section 204(g) of the Act applies and 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.

Unless a petitioner remained outside of the United States for two years after the marriage, a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed under section 204(a)(1)(A)(iii) of the Act cannot be approved pursuant to section 204(g) of the Act unless the petitioner establishes the *bona fides* of the marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. Section 245(e) of the Act, 8 U.S.C. § 1255(e)(3), states, in pertinent part:

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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

Our prior decision of May 12, 2015 is incorporated herein by reference, so we shall repeat only certain facts as necessary here. The Director denied the petition, finding that the Petitioner had not established that he entered into the marriage with his U.S. citizen spouse in good faith. The Director also determined that the Petitioner had not met the requirement for the *bona fide* marriage exemption bar to approval under section 204(g) of the Act because the Petitioner married while he was in removal proceedings. We dismissed a subsequent appeal, concluding that the Petitioner had not entered into his marriage with M-V- in good faith, and was ineligible for the *bona fide* marriage exemption described in section 245(e)(3) of the Act, as required under section 204(g) of the Act. We also determined, beyond the Director's decision, that the Petitioner did not share a qualifying spousal relationship with M-V- and corresponding eligibility for immediate relative classification because he did not establish that he was divorced prior to marrying M-V-.

The matter is now before us on motions to reopen and reconsider in which the Petitioner reasserts his eligibility and contends that the record contains sufficient evidence to demonstrate that he has met his burden of proof to establish the *bona fides* of his relationship to M-V-. In addition, he reiterates that he entered into the qualifying relationship in good faith. In support of his motions, the Petitioner submits proof of divorce from his first wife, and copies of photographs of the Petitioner with his wife and her children.

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We review these proceedings *de novo*. A full review of the record fails to establish the Petitioner's eligibility. The motions to reopen and to reconsider will be denied for the following reasons.

III. ANALYSIS

A. Good Faith Entry Into Marriage

On motion, the Petitioner contends that his Form I-360 "was denied not because of inconsistencies, but because of lack of descriptive and specific details of the shared residence, routines and subjective opinions." The Petitioner further asserts that he entered into his marriage in good faith as supported by his statement, statements from friends and relatives, evidence of a joint bank account, family photographs, and a psychological evaluation.

As previously noted, the Petitioner's statement in the record provided only a general account of his relationship with M-V- and he did not set forth in any probative detail the circumstances of their meeting, courtship, wedding, or shared residences and experiences to establish his good-faith marital intentions. *See* 8 C.F.R. § 204.2(c)(vii). In his personal statement, the Petitioner recounted that he met M-V- at "[REDACTED]" in [REDACTED] in July 2010. They exchanged phone numbers and went out every Friday or Saturday for a couple of months. He proposed on December 24, 2010 and they wed on [REDACTED], 2011. The remainder of his statement focused on the abuse in the relationship. His statement did not provide detailed information regarding the couple's courtship, shared residence and experiences.

Similarly, the statements from Petitioner's friends and family members did not provide probative information regarding the Petitioner's intentions at the time that he entered into the marriage with M-V-. The statement from Petitioner's cousin, [REDACTED] attested that he was present at the Petitioner's wedding. He recalled that he often visited the Petitioner and M-V- at their residence. During these visits, he observed that the Petitioner's wife verbally and physically abused him. The remainder of his statement did not discuss the Petitioner's good-faith intentions in entering the marriage. The statements from friends, [REDACTED] and [REDACTED] attested to frequent visits; yet, neither individual described any particular visit or social occasion with the couple in detail, or otherwise provided detailed information establishing his personal knowledge of the relationship, apart from the abuse. In her affidavit, the Petitioner's mother [REDACTED] attested that the Petitioner wed M-V- on [REDACTED] 2011. She recalled that friends and family members attended the wedding and "it was a happy day," and that her son told her that he planned to adopt M-V-'s two sons. The remainder of [REDACTED] statement recounted problems in the couple's relationship; it did not further address her interactions with the Petitioner and M-V- during the couple's marriage, or her knowledge of the Petitioner's good-faith marital intentions.

The Petitioner also references his previously submitted documentary evidence, including copies of family photographs and a divorce certificate that demonstrates he was free to wed, to support his claim of good-faith entry into the marriage. The Petitioner also references the psychological evaluation from Dr. [REDACTED] to demonstrate how devastated he was by the breakdown of his marriage. In his assessment the counselor, Dr. [REDACTED], diagnosed the Petitioner with "post-traumatic stress

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disorder and atypical depression.” Although the input of Dr. [REDACTED] is respected and valuable, the report largely focused on abuse in the relationship and did not describe in probative detail the Petitioner’s intent in entering into the marriage. It is therefore of little probative value in establishing that the Petitioner entered into his marriage in good faith.

The Petitioner also asserts that his marriage was so short that there not enough time to accumulate any documentary evidence. Traditional forms of documentation are not required to demonstrate a petitioner’s entry into a marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a petitioner may submit “testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). As discussed in our prior decision, the Petitioner’s statement in the record does not demonstrate his entry into his marriage in good faith. The statements of the Petitioner’s relatives and friends similarly lacked substantive information regarding their knowledge of the relationship and the Petitioner’s marital intentions. Dr. [REDACTED] evaluation focused primarily on the abuse and recounted only what the Petitioner relayed about his relationship with M-V-. We further found that the remaining documentary evidence in the record was insufficient to establish the Petitioner’s good-faith marital intentions, particularly in the absence of a probative account from the Petitioner of his relationship with M-V-. Accordingly, we reaffirm our prior finding that the preponderance of the relevant evidence does not establish that the Petitioner entered into marriage with M-V- in good faith.

B. Section 204(g) of the Act and Eligibility for Immigrant Classification

As discussed in our prior decision, 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 exception 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; *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 to M-V- by clear and convincing evidence. Section 245(e)(3) of the Act; 8 C.F.R. § 245.1(c)(8)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

On motion, the Petitioner asserts, without further elaboration, that clear and convincing evidence establishes his good faith entry into his marriage with M-V-. However, as we have already determined that the Petitioner has not established his good-faith entry into his marriage to M-V- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he therefore 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 and renders the Petitioner ineligible for immediate relative classification. *See* 8 C.F.R. § 204.2(c)(1)(iv).

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In our appellate decision, we determined, beyond the Director's decision, that the Petitioner was also ineligible for immediate relative classification because he did not submit evidence of the termination of his marriage to his first wife. On motion, the Petitioner provides a copy of a divorce certificate, showing that the Petitioner was divorced from his first wife on [REDACTED] 2009, two years prior to his marriage to M-V- on [REDACTED], 2011. Although the divorce degree demonstrates that the Petitioner was free to marry M-V-, he remains ineligible for immediate relative classification because he has not demonstrated that he is exempted from section 204(g) of the Act.

IV. CONCLUSION

On motion, the Petitioner has not demonstrated that he entered into his marriage with M-V- in good faith, that he is exempt from the requirements of section 204(g) of the Act, and that he is eligible for immediate relative classification. He is consequently ineligible 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. at 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-R-*, ID# 15189 (AAO Jan. 27, 2016)