



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

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

MATTER OF B-M-A-M-

DATE: JULY 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) 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 Director, Vermont Service Center, denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director concluded the Petitioner did not establish that he entered into marriage with his U.S. citizen spouse in good faith by clear and convincing evidence. Consequently, the Director determined the Petitioner also could not establish his corresponding eligibility for immigrant classification.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and additional evidence, as well as previously-submitted evidence, and claims that he entered into his marriage with his spouse in good faith.

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 individual, who is the spouse of a U.S. citizen, may self-petition for immigrant classification if the individual demonstrates he or she entered into the marriage with the U.S. citizen spouse in good faith and that during the marriage, the individual or a child of that individual was battered or subjected to extreme cruelty perpetrated by the U.S. citizen spouse. In addition, the individual 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.

The eligibility requirements for an abused spouse are explained 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.

....

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

....

(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 standard and guidelines for a VAWA petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

....

(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 record indicates that the Petitioner was in removal proceedings at the time of the marriage upon which the VAWA petition is based. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), states:

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 his VAWA petition unless the Petitioner can establish eligibility for the *bona fide* marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e). The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(iii) states, in pertinent part:

Marriage during proceedings – general prohibition against approval of visa petition. A visa petition filed on behalf of an alien by a United States citizen . . . shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . removal proceedings, or judicial proceedings relating thereto. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)[8] of this chapter, except that the burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

- (A) *Request for exemption* The request must be made in writing The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.
- (B) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was

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entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

- (1) Documentation showing joint ownership of property;
- (2) Lease showing joint tenancy of a common residence;
- (3) Documentation showing commingling of financial resources;
- (4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary;
- (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or
- (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

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).

II. ANALYSIS

The Petitioner was placed in removal proceedings on [REDACTED] 2011, and married S-C-,¹ a U.S. citizen, in [REDACTED] 2013. Because the Petitioner married S-C- while in removal proceedings, he must not only demonstrate that he married her in good faith by a preponderance of the evidence to meet the eligibility criterion at section 204(a)(1)(A)(iii)(I)(aa) of the Act, but also that he married S-C- in good faith under the heightened "clear and convincing" standard of proof required to meet the exception at section 245(e)(3) of the Act. *See Matter of Arthur*, 20 I&N Dec. 475 (BIA 1992); *see*

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also *Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

A. Section 204(g) of the Act Bars Approval of the VAWA Petition

The Petitioner does not establish by clear and convincing evidence that he entered into his marriage with S-C- in good faith. In his personal statement, the Petitioner recounts that he met S-C- when he was grieving the death of his first wife, who died in Yemen shortly after he arrived in the United States. The Petitioner states that S-C- “stood by [his] side and was always very kind to [him].” He generally reports that they spent a lot of time together after they met, became very close, and fell in love. He also indicates that, before they married, he cared for S-C- while she was suffering from back pain, and he supported S-C-, her daughter, and his mother-in-law during his marriage to S-C-. He does not, however, provide any details regarding the couple’s initial meeting, courtship, engagement, or shared experiences, apart from the abuse.

The relevant supporting statements in the record also do not establish the Petitioner’s good faith marital intentions. The Petitioner submits several statements in support of his claim that he entered into his marriage with S-C- in good faith. M-A-M- indicates that he is the Petitioner’s best friend, and reports that the Petitioner spoke with him about “funny things” happening when he went on dates with S-C- and how she helped him, and that he visited the couple’s home and they visited his home. P-A- relates that he observed the Petitioner talking about S-C- and he refers to S-C- as the Petitioner’s soul mate. O-A-M- indicates that he and the Petitioner and S-C- had dinner together several times and went places with their children. J-M- states that he also had dinner with the couple several times; S-R- reports that he was present at their marriage ceremony; and A-M- indicates that she is a close friend of S-C-, S-C- told her that the Petitioner treated her well during their courtship, and she celebrated the couple’s marriage. N-A-M-, M-H-, and M-M-M- generally indicate that the Petitioner and S-C- were in a relationship but do not provide any details regarding their relationship.

The other statements the Petitioner submits make no reference to the Petitioner’s good faith marital intentions and none of the persons who provide statements discuss in detail their observations of the Petitioner’s interactions with or feelings for S-C- during the couple’s courtship or marriage or describe specific interactions or occasions shared with the Petitioner and S-C- to demonstrate the Petitioner’s marital intentions.

The Petitioner submits a psychological evaluation from [REDACTED] M.D., who indicates that, based on information provided to him by the Petitioner, in the period after his first wife’s death, S-C- helped the Petitioner, the Petitioner fell in love with S-C-, and they married after S-C- recovered from her back pain. A second psychological evaluation, also by [REDACTED] relates solely to the claimed abuse and does not provide information relevant to the Petitioner’s intentions in entering into his marriage with S-C-. Although the input of [REDACTED] is respected and valuable, his evaluations largely focus on abuse in the relationship, and do not discuss with any specificity the Petitioner’s intent in entering into marriage with S-C-.

The Petitioner submits a lease for an apartment he shared with S-C-. The lease term is from September 1, 2013, until August 31, 2015. The Petitioner indicates on the VAWA petition that he and S-C- lived together from June 2013 until September 2014, and he does not separately explain where they lived after they married and before the term of the lease. Several utility bills were also submitted with only the Petitioner's name on them, including one utility bill for a period after he and S-C- ceased living together, one utility bill for a period prior to the term of their lease but for the same address listed on the lease, and another utility bill listing a different account number than the other two utility bills. Accordingly, these documents do not demonstrate joint use of finances during the marriage and do not establish the Petitioner's good-faith intent when entering into his marriage.

The remaining documentary evidence includes the couple's marriage certificate and photographs of the Petitioner and S-C- together and with other people at their wedding and on other occasions. While the marriage certificate establishes that a legal marriage existed between the Petitioner and S-C-, it does not demonstrate the nature of the relationship or establish the Petitioner's good faith intentions. Similarly, although the photographs show that the Petitioner and S-C- married and had a relationship, without detailed testimony from the Petitioner, they do not establish his good-faith intentions in entering the marriage. Accordingly, the marriage certificate, photographs, and the other documentary evidence referenced above offer little insight into the Petitioner's marital intentions.

On appeal, the Petitioner asserts that, because USCIS previously made a favorable determination on the *bona fides* of the Petitioner's marriage to S-C- under the heightened standard of section 245(e)(3) of the Act when it approved the Form I-130, Petition for Alien Relative (alien relative petition), that S-C- filed on behalf of the Petitioner, he established that he entered into his marriage with S-C- in good faith. However, the fact that an alien relative 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").

In this case, despite the approval of the alien relative petition filed by S-C-, the Director's initial review of the record of proceedings revealed that additional evidence was need to demonstrate the Petitioner's good-faith intent in entering into his marriage. The Director consequently issued a request for evidence (RFE) to which the Petitioner responded. Upon review of the evidence in the record of proceedings, the Director concluded, and we concur, that the Petitioner did not enter into his marriage in good faith by clear and convincing evidence, as required under section 245(e)(3) of Act. "Clear and convincing evidence" is a more stringent standard than "preponderance of the evidence." *See Arthur, supra*, at 478. Section 204(g) of the Act consequently bars approval of this VAWA petition, despite the approval of the alien relative petition that S-C- filed on the Petitioner's behalf.

B. Eligibility for Immediate Relative Classification

In addition, the Director correctly determined that the Petitioner was ineligible for immediate relative classification based on his marriage to S-C-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act

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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.

C. Good Moral Character

Beyond the decision of the Director, the record of proceedings contains evidence that negatively impacts on the Petitioner's claim that he is a person of good moral character.² The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a Petitioner's good moral character is an affidavit from the Petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the Petitioner has lived for at least six months during the three-year period immediately preceding the filing of the VAWA petition. The Petitioner did not submit an affidavit but he submitted a certificate of conduct from the [REDACTED]. However, information in U.S. Citizenship and Immigration Services systems indicates that the Petitioner was arrested on [REDACTED] 2013, under a slightly different name, and charged with possessing, transporting, or offering for sale unstamped cigarettes, and making or knowingly possessing or using a counterfeit cigarette tax stamp pursuant, respectively, to sections 1814(b) and 1814(g) of the Tax Law of New York. N.Y. Tax Law §§ 1814(b) and (g) (McKinney 2016). Records reflect that the Petitioner was also arrested on [REDACTED] 2014, for disorderly conduct pursuant to section 240.20 of the Penal Law of New York. N.Y. Penal Law § 240.20 (McKinney 2016).

The regulation at 8 C.F.R. § 204.2(c)(2)(v) provides that, “[a] self-petitioner will . . . be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character.” As noted, the Petitioner does not acknowledge his arrest history or otherwise address his moral character, and nor does the Petitioner submit copies of the information, judgment, and sentencing records relating to the arrests noted above. However, as we will dismiss the appeal on other grounds, we will not further discuss this separate ground for dismissal under section 204(a)(1)(A)(iii)(II)(bb) of the Act, and as explicated in the regulation at 8 C.F.R. § 204.2(c)(2)(v).

III. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish his good-faith entry into his 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)(8)(v). Here, that burden has not been met. The appeal will be dismissed.

² An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the Director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

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ORDER: The appeal is dismissed.

Cite as *Matter of B-M-A-M-*, ID# 17498 (AAO July 22, 2016)