U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-E-N-

DATE: MAR. 11, 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) § 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 dismissed.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 is divorced from an abusive U.S. citizen spouse 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 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)(1), which provides, in pertinent part:

> (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:
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> . . . .
>
> (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].
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> . . . .
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> (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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.
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> . . . .
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> (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:

> (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.
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> (ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . . It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage

> certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .
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> . . . .
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> (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.
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> . . . .
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> (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.

In addition, the regulations require that to remain eligible for immigration classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), 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 or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

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.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exemption to section 204(g) of the Act as follows:

> *Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –*
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> (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).
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> (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.
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> (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.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

> *Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if

> the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a native and citizen of Cameroon, last entered the United States on August 10, 2005, as an F-1 nonimmigrant student. The Petitioner was placed in removal proceedings on March 5, 2012. He married G-W-,[1] a U.S. citizen, on 2013, in Nevada. G-W- filed a Form I-130, Petition for Alien Relative, on the Petitioner's behalf on July 22, 2013. G-W- subsequently withdrew the Form I-130 on , 2014, and the Form I-130 was denied in a decision dated March 19, 2014. On April 3, 2014, an Immigration Judge granted the Petitioner's request for voluntary departure.

The Petitioner and G-W- were divorced on 2014. The Petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on September 23, 2014. The Director issued a request for evidence (RFE) of, among other things, the Petitioner's qualifying relationship with G-W-, battery or extreme cruelty of the Petitioner by G-W-, and the Petitioner's good-faith marriage with G-W-. The Petitioner responded to the RFE with additional evidence, which the Director found insufficient to establish that the Petitioner was battered or subjected to extreme cruelty by G-W-, and married G-W- in good faith. The Director also noted that the Petitioner married G-W- while in removal proceedings, and concluded that the Petitioner did not demonstrate by clear and convincing evidence that his marriage to G-W- was *bona fide*. Therefore, the Director denied the Form I-360. The Petitioner filed a timely appeal, in support of which he submits a statement and additional evidence.

III. ANALYSIS

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not demonstrate that the Director's decision to deny the Form I-360 was in error. Therefore, we will dismiss the appeal.

A. Battery or Extreme Cruelty

The preponderance of the evidence does not establish that the Petitioner was battered or subjected to extreme cruelty by G-W- during their marriage. On appeal, the Petitioner asserts that he has submitted sufficient evidence to establish that he was battered.

The Petitioner submitted a personal statement with the Form I-360, dated September 2, 2014, in which he indicated that things went well in the relationship until G-W- quit her job, after which she was in a "bad mood" and began to yell due to the stress of being unemployed. The Petitioner stated that G-W- became angry at him and "would verbally abuse [him], say hurtful things and blam[e]" him. According to the Petitioner, when he arrived home on the night of 2014, G-W- "welcomed [him] with a

[1] Name withheld to protect the individual's identity.

series of insults, yelling and calling [him] names." The Petitioner indicated that he told G-W- that he was tired of the way she treated him, and that G-W- later apologized. The Petitioner claimed that "everything seemed fine and normal" for the following three days, but that at their scheduled interview with immigration officials on 2014, G-W- "shocked [him] by saying she didn't wish to continue with the marriage and wanted to withdraw [the] application for [the Petitioner's] change of status." The Petitioner believed that G-W- did this in order to punish him for standing up to her during their argument on , 2014. The Petitioner further asserted that he later discovered that G-W- had stolen some of his unpublished writings "to torment" him. According to the Petitioner, G-W- later[2] arrived at the apartment they had shared in order to collect her belongings, at which point the Petitioner requested a police escort "to ensure [his] safety." He stated that although G-W- later returned his writings during divorce proceedings, she had "partly destroyed" them with markings. The Petitioner contended that G-W- "abused and hurt [him] whichever way she could from the time that she quit her job." In his second personal statement, dated August 11, 2015, which he submits on appeal, the Petitioner claims that G-W- mocked his Christian beliefs and pressured him to change his religion. He stated, "She put me down, made me feel bad about myself, for remaining a Christian and more . . . ."

The Petitioner's personal statements do not contain probative detail regarding specific violent acts or an overall pattern of violence amounting to battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). The Petitioner states generally that G-W- was verbally abusive, but he does not describe in detail any specific abusive incidents. Although he claims in his statement on appeal that G-W- mocked his religion and pressured him to change, he does not describe her behavior in detail. The two specific acts the Petitioner mentioned were G-W-'s withdrawal of the immigration petition she filed on his behalf and her theft and defacement of the Petitioner's writings. These actions are not comparable to the acts described in 8 C.F.R. § 204.2(c)(1)(vi), such as sexual abuse, forced prostitution, forceful detention, or other acts or threats of violence which qualify as battery or extreme cruelty.

The Petitioner also submitted with his RFE response a letter from a friend, stated, in pertinent part, that he was visiting the Petitioner on one occasion when G-W- "came into the living room screaming and yelling at [the Petitioner]." claimed that G-W- told the Petitioner that "he's good for nothing and he would never amount to anything without her." According to the Petitioner was "controlled and discouraged because of [G-W-]." Although discussed one specific incident involving G-W-, it is not sufficient to establish that the Petitioner was the victim of battery or extreme cruelty as described in 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the Petitioner provided three psychological evaluations from In his first evaluation, dated May 7, 2014, reported that the Petitioner claimed that G-W- "was abusive and neglected him." stated that, according to the Petitioner, G-W- was verbally abusive, told immigration officials that she no longer wanted to be married to the Petitioner, stole his

[2] In his statement dated September 2, 2014, the Petitioner indicated that G-W- "came back to pick up her belongings at our apartment on the /2014 at about 6:27 pm." This date is prior to the date he claims their argument occurred, on 2014, and the date G-W- withdrew the Form I-130, on 2014. The reason for this discrepancy is not clear.

writings, and posted "harassing notes on his door" after their separation. In his second evaluation, dated June 11, 2014, asserted that G-W- "was abusive verbally, emotionally, and neglectful." Additionally, stated that G-W- continued to leave notes on the Petitioner's door despite being "banned from the apartment management for aggressive and violent behavior," and threatened to have the Petitioner deported. In the third evaluation, dated March 31, 2015, provided additional detail about alleged abuse. stated that, according to the Petitioner, G-W- was not physically abusive but threatened the Petitioner, isolated him from his friends and family, did not provide him with money, was possessive, and told the Petitioner, "I control your life and your future depends on me." Furthermore, reported that, per the Petitioner's statements, G-W- "constantly told him that he would never amount to anything," yelled and called him derogatory names, "made him work li[k]e a slave for her around the house, took his money, and stole and defaced his writings as a form of harassment. first two evaluations discuss the alleged abuse by G-W- in general terms and do not provide detail about any specific incidents. Although third evaluation provides some additional detail about the actions of G-W-, the evaluation nonetheless does not contain probative detail about specific abusive incidents. Furthermore, third evaluation discusses abusive behaviors that the Petitioner did not mention in his own personal statements. Therefore, the preponderance of the relevant evidence does not demonstrate that the Petitioner was battered or subjected to extreme cruelty by G-W- as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

B. Good-Faith Marriage

The Petitioner has not established by a preponderance of the evidence that he married G-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. In his September 2, 2014, statement, the Petitioner stated that he and G-W- married on 2013, and lived together. He stated that, following an argument which occurred on 2014, G-W- withdrew the Form I-130 she had filed on the Petitioner's behalf and later removed her belongings from their shared apartment. In his statement dated August 11, 2015, which he submits on appeal, the Petitioner contends that he married G-W- in good faith after dating her for more than a year. He states that he and G-W- were in love, that he met some of her family members in and that she spoke with his family in Africa over the telephone. The Petitioner's personal statements lack probative detail regarding his relationship with G-W- and his intentions in marrying her. His statements focus on the abuse he allegedly suffered and do not contain specific information about how or when he met G-W-, their courtship, their marriage ceremony, or their life together as spouses.

In response to the RFE, the Petitioner submitted a Deposit Account Balance Summary, dated July 17, 2013, indicating that he and G-W- jointly held a bank account, which they opened prior to their marriage. The Petitioner also provided photocopies of five bank statements, covering the period between September 11, 2013, and March 10, 2014. Two of the bank statements reflect no transactions other than a service fee, and two others reflect only one transaction. The fifth statement reflects transactions that occurred approximately one week prior to the Petitioner's separation from G-W-. On appeal, the Petitioner asserts that he and G-W- generally used cash. Although the Petitioner is not required to demonstrate commingling of funds with G-W-, the bank statements do not reflect his

intentions in marrying G-W-. The Petitioner also submitted, in response to the RFE, a letter from a utility company confirming utility service at the address he shared with G-W- and a letter from friend, Although the letter from the utility company is addressed to the Petitioner and G-W-, it indicates that only the Petitioner is listed as the account holder. Additionally, the letter is dated 2014, three days prior to the date the Petitioner claims he and G-W- separated. In his letter, stated that he was aware of the Petitioner's marriage to G-W- and that he visited them at their home. did not provide any details regarding the circumstances of the Petitioner's marriage with G-W-, aside from alleged abuse.

On appeal, the Petitioner provides federal income tax return transcripts from 2007, 2009, 2013, and 2014. The 2007 and 2009 transcripts are not relevant to the Petitioner's relationship with G-W- because he married her on 2013. Additionally, the 2014 transcript indicates that the Petitioner filed his 2014 taxes as "Single," and the Petitioner stated in his September 2, 2014, personal statement that he and G-W- separated on or about 2014. The 2013 transcript indicates that the Petitioner and G-W- filed their taxes as "Married Filing Joint" that year. However, even when considered in conjunction with the other evidence in the record of proceedings, without probative testimony by the Petitioner, the 2013 transcript does not establish the Petitioner's intentions in marrying G-W-.

On appeal, the Petitioner also submits evaluations from In his May 7, 2014, evaluation, states that the Petitioner reported that he met G-W- in 2012 at the apartment building where they both lived. indicates that, according to the Petitioner, G-W- stated at an immigration interview on 2014, that she no longer wanted to be married to the Petitioner. also recounts that G-W- was removed from the apartment by police on , 2014. states that, according to the Petitioner, G-W- continued to harass him after they separated. In his June 11, 2014, evaluation, indicates that the Petitioner reported anxiety over fights with G-W-. In his evaluation dated March 31, 2015, does not provide new information regarding the Petitioner's relationship with G-W-, aside from the alleged abuse. The psychological evaluations focus on the claimed abuse and do not provide other probative detail about the Petitioner's marital relationship with G-W-.

Accordingly, the Petitioner has not established by a preponderance of the evidence that he married G-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

C. Section 204(g) of the Act Further Bars Approval

Because the Petitioner married G-W- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his Form I-360 cannot be approved pursuant to section 204(g) of the Act unless he establishes the *bona fides* of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act.

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.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the Petitioner must 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, 8 U.S.C. § 1154(a)(1)(J); *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 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)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. As the Petitioner failed to establish his good-faith entry into his marriage with G-W- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also 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 petition.

D. Qualifying Relationship and Eligibility for Immediate Relative Classification

Beyond the Director's decision, the Petitioner is also not eligible for immediate relative classification based on his marriage to G-W-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act 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.[3]

In addition, beyond the Director's decision, the Petitioner has not established a qualifying relationship with G-W-. The Petitioner and G-W- were divorced on , 2014, and the Petitioner filed the Form I-360 on September 23, 2014. A petitioner who divorces a U.S. citizen spouse within two years prior to the filing of the Form I-360 may petition under section 204(a)(1)(A)(iii)(I) of the Act if the petitioner establishes that the divorce was connected to battery or extreme cruelty by the U.S. citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. In this case, as noted above, the preponderance of the relevant evidence does not establish that the Petitioner was battered or subjected to extreme cruelty. Therefore, the Petitioner has not demonstrated a causal connection between his divorce and battery or extreme cruelty and, accordingly, the Petitioner does not have a qualifying relationship with G-W-. Additionally, he is ineligible for corresponding immediate relative classification under section 201(b)(2)(A)(i) of the Act.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden. Accordingly, the appeal will be dismissed.

[3] We may deny a petition that fails to comply with the technical requirements of the law 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).

ORDER: The appeal is dismissed.

Cite as *Matter of F-E-N-*, ID# 15963 (AAO Mar. 11, 2016)