



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

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

MATTER OF H-A-Y-

DATE: MAY 17, 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. 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 limited statement and asserts his “position will be more fully explained in [a] forthcoming brief.” To date, we have received no further brief or additional evidence.

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. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act 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 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.

....

- (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 Form I-360 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:

- (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.

The record indicates that the Petitioner was in removal proceedings at the time of the marriage upon which the Form I-360 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 Form I-360 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 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;

(b)(6)

Matter of H-A-Y-

- (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.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Ghana, was last admitted to the United States on December 11, 1999, as a B-2 nonimmigrant visitor. The Petitioner was placed in removal proceedings on or about September 23, 2003. On [REDACTED] 2011, an Immigration Judge ordered the Petitioner's removal to Ghana, finding that the record did not establish the Petitioner's eligibility for voluntary departure or special rule cancellation of removal under section 240A(b)(2) of the Act. The Petitioner appealed the Immigration Judge's decision, and on October 24, 2013, the Board of Immigration Appeals dismissed the appeal. The Petitioner indicates that he has not left the United States since his last entry in December 1999. Accordingly, the Petitioner is subject to a final order of removal. On [REDACTED] 2004, the Petitioner married M-M-¹

III. ANALYSIS

A. Good-Faith Entry into Marriage

The Director denied the Form I-360, determining that the Petitioner did not establish by clear and convincing evidence he entered into his marriage with M-M- in good faith. The Director considered the Petitioner's statements and those submitted on his behalf and concluded they were "vague" and provided few probative details regarding his courtship and experiences with M-M-. The Director acknowledged the Petitioner's submission of his 2004 tax transcript indicating that he and M-M- filed their taxes jointly, but accorded the remainder of the tax information minimal weight as there was insufficient evidence that returns had been filed for the 2005 and 2006 tax years.

¹ Name withheld to protect the individual's identity.

(b)(6)

Matter of H-A-Y-

The Director also discussed the Petitioner's submission of joint bank and utility statements, assigning the majority of the documents no evidentiary value after determining that they covered activity during the timeframe the Petitioner indicated he and M-M- no longer resided together. The Director recognized the remaining documents, which included a lease,² single photograph, and joint bills and statements, but noted that one document was a notice for an overdraft, and another reflected a negative account balance. The Director also noted that the Petitioner provided insufficient evidence to demonstrate joint access to and use of the accounts and of his intent in marriage.

On appeal, the Petitioner asserts the Director "erroneously discounted" the evidence he submitted "without reasonable basis," and which "clearly show[s] his shared life with [M-M-] and his good faith intention when he entered [into their] marriage." In support of this assertion, the Petitioner generally refers to "affidavits from friends, a joint lease agreement, joint utility statement and proof of a shared bank account, as well as joint tax returns." The Petitioner does not point to the specific pieces of evidence he believes were "erroneously discounted" and does not provide any discussion emphasizing where the Director's assignment of evidentiary weight was in error. As discussed above, the Director thoroughly analyzed the Petitioner's evidence and explained the weight accorded to that evidence.

Also on appeal, the Petitioner asserts that the Director erred as a matter of fact and of law in denying the Form I-360 because the Director does not address the abuse inflicted upon him by M-M-. Contrary to this assertion, the Director concluded in her decision that the Petitioner had established some of the eligibility requirements for approval of the Form I-360, including that M-M- subjected him to battery or extreme cruelty.³ Although similar evidence may be submitted to establish multiple eligibility requirements for a particular benefit, the Petitioner still bears the burden of proof in establishing, independently, each of the eligibility requirements as specified by the relevant statutory provisions and corresponding regulations. In this case, the Petitioner bears the burden of proof to establish that he has been subjected to battery or extreme cruelty by a preponderance of the evidence and that he entered into his marriage with M-M- in good faith by clear and convincing evidence, a heightened standard of proof. Similarly, 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, again, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992).

Although the Petitioner states on appeal that he will provide a further explanation in a "forthcoming brief," the record does not indicate that we have received additional documents since the Petitioner

² As it relates to this lease, although not noted by the Director, the Petitioner's administrative file contains a transcript from the Petitioner's proceedings before the Immigration Judge, which includes the Petitioner's testimony on April 20, 2011, that he leased the marital apartment on [REDACTED] from a friend named [REDACTED]. His testimony differs from the lease he submitted with the Form I-360 which indicated the lessor was [REDACTED]. This discrepancy diminishes the evidentiary value of the lease.

³ In this decision, as the Petitioner has not overcome the Director's stated grounds for denial, we are making no determination regarding the Director's affirmative findings on the remaining eligibility requirements. However, we may revisit these issues should they come before us again in another proceeding.

Matter of H-A-Y-

filed his appeal. Moreover, the Petitioner does not contest that he is subject to section 204(g) of the Act and its heightened standard of proving his marriage to M-M- in good faith by clear and convincing evidence. Our *de novo* review of the record demonstrates that the Director gave reasonable consideration to the evidence already submitted by the Petitioner, and when viewed in the aggregate, the relevant evidence does not establish the Petitioner's entry into marriage with M-M- in good faith by clear and convincing evidence. The Petitioner has not submitted any argument or evidence on appeal to overcome that determination or otherwise demonstrate that the Director was in error.

B. Eligibility for Immediate Relative Classification

As the Petitioner has not demonstrated that he is exempt from section 204(g) of the Act, he also has not demonstrated his eligibility for immediate relative classification. *See* section 204(a)(1)(A)(iii)(II)(cc) of the Act; *see also* 8 C.F.R. § 204.2(c)(1)(iv).

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to 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)(8)(v). Here, that burden has not been met. The appeal will be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of H-A-Y-*, ID# 14561 (AAO May 17, 2016)