



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

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

MATTER OF B-I-

DATE: OCT. 24, 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 Petitioner is a citizen of Morocco, who entered the United States on February 22, 1998, as a nonimmigrant visitor. The Petitioner wed E-R-,¹ a U.S. citizen, and subsequently filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant (VAWA petition). The Director, Vermont Service Center, denied the VAWA petition concluding that the Petitioner did not establish that he was battered or subjected to extreme cruelty by E-R-, and that he did not meet the requirement for the *bona fide* marriage exemption from the bar to approval at section 204(g) of the Act because he married E-R- while he was in removal proceedings. The Director also found that the Petitioner did not establish a qualifying relationship with E-R- and his eligibility for immediate relative classification based on that relationship.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and claims that the Director did not properly analyze or consider the evidence in the record of proceedings.

Upon *de novo* review, we will dismiss the appeal.

I. 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

¹ Initials are used in this decision in order to protect individuals' identities.

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.

The eligibility requirements are 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(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

....

(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 . . . and must have taken place during the self-petitioner’s marriage to the abuser.

....

(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:

(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.

.....

(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 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 VAWA petition, 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.

(b)(6)

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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 burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). 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

A. Entry into the Marriage in Good Faith

The Director correctly determined that the Petitioner did not establish that he entered into his marriage to E-R- in good faith. The Petitioner submitted the following evidence with the VAWA petition: his birth certificate, a marriage certificate, and a photograph. In response to a request for evidence (RFE) issued by the Director, the Petitioner submitted a personal statement, letters from friends and acquaintances, tax records, and photographs. On appeal, the Petitioner submits additional tax records, bank statements, a statement from E-R-, a letter from the [REDACTED] and copies of photographs. We have reviewed all of the evidence in the record of proceedings.

In his personal statement, the Petitioner recalls that he met E-R- when they were both customers at an ice cream cart, they "started to know each other," married in 2003, and they bought an ice cream business. He also recounts that they vacationed in the [REDACTED] before they married and then moved to [REDACTED] New York. The remainder of his personal statement relates to the claimed abuse during their marriage. The Petitioner does not provide sufficient details in his personal statement regarding his courtship, shared residence, and marital experiences with E-R- to establish that he entered into his marriage with E-R- in good faith.

In their letters, A-A-, M-K-, and A-Q- indicate that they socialized with the Petitioner and E-R- but do not provide probative information regarding the Petitioner's intentions at the time he entered into his marriage with E-R- or provide sufficient detailed information regarding the couple's courtship, shared residence, and experiences. The Petitioner also submits a statement from E-R-, dated May 1,

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2003, which is shortly after she and the Petitioner married, and was prepared in connection with a Form I-130, Petition for Alien Relative, filed by E-R- on behalf of the Petitioner. In her statement, E-R- reports that she has known the Petitioner since 2000 and their marriage “was not entered into solely for the purpose of [the Petitioner] obtaining immigration benefits.” E-R- does not, however, provide sufficient detailed information regarding the couple’s courtship, shared residence, and marital experiences in her statement to establish that the Petitioner entered into their marriage in good faith.

The marriage certificate confirms that the Petitioner and E-R- entered into a legal marriage, but it is not sufficient to establish a good faith marriage. Similarly, the photographs of the couple reflect that the Petitioner and E-R- were photographed together on several occasions; however, because they are undated and do not contain captions indicating the context of the photographs, they are insufficient to establish the Petitioner’s good-faith marital intentions, particularly in the absence of a probative account from the Petitioner in his personal statement of his relationship with E-R-.

The remaining documentary evidence, including the tax records, bank statements, and letter from the [REDACTED] are also not sufficient to establish that the Petitioner entered into his marriage with E-R- in good faith. The tax records include the first page of a federal tax return for tax year 2003 and correspondence from the Internal Revenue Service regarding the payment of taxes for tax year 2003. The bank statements refer to a very limited period of time, reflect a low balance, and do not indicate purchases related to marital expenses or whether the Petitioner and E-R- both accessed the account. The letter from the [REDACTED] is addressed to E-R- and does not refer to the Petitioner. In sum, this documentary evidence does not provide any information regarding the Petitioner’s motivation to marry E-R- and is not sufficient evidence that the Petitioner entered into his marriage with E-R- in good faith.

Accordingly, the preponderance of the relevant evidence in the record of proceedings does not establish that the Petitioner entered into his marriage with E-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. Battery or Extreme Cruelty

The Petitioner’s personal statement is the only document in the record of proceedings which relates to the claimed abuse by E-R-. The Petitioner claims that E-R- abused him financially and emotionally. He recounts that E-R- “took all the revenues and profit” from the business they operated together. He also reports that E-R- is a heavy smoker and drinker and that this “caused lots of troubles and problems to [their] marriage and relation” but he does not describe how her actions related to those troubles and problems and he does not further describe such troubles or problems. The Petitioner indicates that he and E-R- ceased having sexual relations, she controlled where he went and who he saw, criticized him and put him down, embarrassed him in front of family and friends, ignored him, and restricted his access to money and the telephone. The Petitioner’s personal statement does not, however, contain specific descriptions or probative details of any particular incident of the claimed abuse and is not sufficient evidence that E-R- subjected him to battery or extreme cruelty.

On appeal, the Petitioner does not address the Director's discussion concerning the insufficiency of the Petitioner's evidence to establish that E-R- subjected him to battery or extreme cruelty and submits no additional relevant evidence. The general claims made by the Petitioner in his personal statement as they relate to E-R-'s behavior, do not demonstrate that E-R-'s behavior involved battery, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). In his statement, the Petitioner also does not sufficiently describe any behavior or acts by E-R- to establish that her behavior was part of an overall pattern of violence. Accordingly, when viewed in the aggregate, the record of proceedings does not establish by a preponderance of the evidence that E-R- subjected the Petitioner to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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

Because the Petitioner married E-R- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, the VAWA petition 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").

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. at 369. 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 E-R- 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.

As we have already determined, the Petitioner has not established his good-faith entry into his marriage to E-R- 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 the VAWA petition.

D. Eligibility for Immediate Relative Classification

We also find that, because the Petitioner is not exempt from section 204 (g) of the Act, he has also not demonstrated his eligibility for immediate relative classification, 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).

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III. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility. 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 not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of B-I-*, ID# 10116 (AAO Oct. 24, 2016)