



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

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

MATTER OF M-D-

DATE: SEPT. 7, 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 Mali, who last entered the United States as a B-1 nonimmigrant business visitor. The Petitioner wed M-H-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 petition concluding that the Petitioner did not establish a qualifying relationship with M-H- and his eligibility for immediate relative classification based on that relationship. The Director also concluded that the Petitioner had not established that he entered into the marriage in good faith; resided with M-H-; that M-H- subjected him to battery or extreme cruelty; and that he met the requirement for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act because he married while he was in removal proceedings.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief. The Petitioner claims that he has established, through documentary evidence, that he was eligible for the benefit sought.

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 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 Name withheld to protect the individual's identity.

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:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

....

(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:

....

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, school records, hospital or medical records, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

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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. Joint Residence

The Director correctly determined that the Petitioner did not establish that he resided with M-H-. The Petitioner's VAWA petition indicates that he resided with M-H- from December 8, 2007, after their wedding, until January 2009, and last resided with her in [REDACTED] Pennsylvania. The relevant evidence in the record includes the Petitioner's personal affidavit and letters from two friends, [REDACTED] and [REDACTED]. In his affidavit, the Petitioner recounted the alleged abuse, but he did not describe his residence with M-H-, their shared belongings, and residential routines, or provide any other substantive information sufficient to demonstrate that he resided with M-H- after their marriage.

In his letter, [REDACTED] indicated that he has known the couple since 2010 and that he met the Petitioner when they were co-workers. He stated that he attended the couple's wedding and often socialized with them at their residence. [REDACTED] claim that he attended the couple's wedding in 2007, when he did not meet the couple until 2010 is inconsistent. His statement that he visited the couple at their residence in 2010 is also inconsistent with the Petitioner's claim that he ceased to reside with M-H- on January 1, 2009. These discrepancies diminish the evidentiary value of [REDACTED] testimony. Additionally, in his statement, [REDACTED] did not describe a particular visit or social occasion with the couple. In his letter, [REDACTED] attested that he has known the Petitioner since childhood, that he attended the couple's wedding, and that he often socialized with them at their residence. He did not provide any additional details about the couple's residence. Although both of the Petitioner's friends recounted that they often socialized and visited the Petitioner and M-H- at the couple's residence, they did not describe specific residential visits,

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nor did they provide any probative details of their interactions with the couple at their residence or describe the home in any detail.

On appeal, the Petitioner does not provide any additional evidence to support his claim of joint residence or explain the inconsistencies of the record. Instead, he asserts that he submitted sufficient evidence to satisfy the eligibility requirements. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits of persons with personal knowledge of the relationship or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). In this case, however, the Petitioner's affidavits and the letters from his friends were of a general nature and did not provide sufficient probative details to substantiate the Petitioner's claim of joint residency. Accordingly, the Petitioner has not established by a preponderance of the evidence that he resided with M-H- after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

B. Battery or Extreme Cruelty

We find no error in the Director's determination that the Petitioner's spouse did not subject him to battery or extreme cruelty and the evidence submitted on appeal does not overcome this ground for denial. The relevant evidence in the record contains the Petitioner's affidavit and letters from his friends [redacted] and [redacted].

In his initial affidavit, the Petitioner stated that at first everything in his marriage was fantastic, but then M-H- became a different person. He recalled that she had constant mood swings and he was not sure if she was abusing drugs or alcohol. He recalled that M-H- called him derogatory names and threatened him with deportation. The Petitioner recounted that M-H- threw a glass bottle at him and destroyed his TV and DVR. He did not provide further details about these incidents. The Petitioner recalled asking M-H- to go to counseling with him to resolve their marital problems, but she refused. The Petitioner stated that he finally left the home because of the abuse. In his affidavit, the Petitioner did not further describe specific acts of abuse or otherwise demonstrate that he was subjected to ongoing intimidation, coercion, duress, stress, threats or acts of violence during the marriage.

The letters from the Petitioner's friends also did not demonstrate abuse during the Petitioner's marriage to M-H-. In his letter, [redacted] did not mention any incident of abuse. [redacted] in his letter, described the Petitioner's wife as verbally abusive. He stated that the Petitioner's spouse called him demeaning names such as "stupid African," and that she threw a bottle at him. He recounted that the Petitioner told him that his spouse and "her people" came to his home, stole his clothes and shoes, broke his TV, and took his DVR. [redacted] version of this incident differs from the Petitioner's version, which does not mention that M-L- came to his home with others or that they took his clothes, shoes and DVR. [redacted] did not provide substantive details of specific incidents of battery or extreme cruelty nor did he provide a substantive description of his contemporaneous observations of the effects of any abuse on the Petitioner.

On appeal, the Petitioner asserts that his affidavit and statements from his friends are sufficient to demonstrate by a preponderance of the evidence that he was subjected to battery and extreme cruelty.

(b)(6)

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The Petitioner asserts that he was called derogatory names, threatened with deportation, had objects thrown at him, and had his property damaged. However, the Petitioner's affidavits and the statements from his friends lack probative details about these specific incidents of abuse. They do not demonstrate that the Petitioner's spouse ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the Petitioner has not established that M-H- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

C. Good-Faith Entry into the Marriage

The Director correctly determined that the Petitioner did not establish that he entered into his marriage to M-H- in good faith. The Petitioner submitted the following evidence to establish good faith marriage: a personal affidavit; letters from friends [redacted] and [redacted] his marriage certificate; wedding photographs; a copy of the Form I-130, Petition for Alien Relative (alien relative petition) approval notice; and a copy of an affidavit from the Petitioner's spouse submitted in conjunction with the alien relative petition. The marriage certificate shows that the couple entered into a legal marriage, but it is not sufficient to establish good faith marriage. Similarly, the wedding photographs of the couple reflect that the Petitioner and M-H- were photographed together on their wedding day; however, they are 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-H-.

In his initial affidavit, the Petitioner recounted that he met M-H- in October 2007 and that it was love at first sight. He recalled that they exchanged phone numbers and immediately began dating. He testified that he married M-H- because he loved her, and wanted a family and a future with her. The remainder of the Petitioner's statement focused on the claimed abuse in the marriage. The statements of the Petitioner's friends also lacked substantive information regarding their knowledge of the relationship and the Petitioner's marital intentions. In their brief statements, friends [redacted] and [redacted] affirmed that the marriage between the Petitioner and M-H- was genuine. They recalled attending the couple's wedding and socializing with them but they did not address their interactions with the Petitioner and M-H- during the couple's marriage, or their knowledge of the Petitioner's good-faith marital intentions. Similarly, M-H-'s affidavit submitted in conjunction with the alien relative petition carries little evidentiary weight to establish good faith marriage. In her affidavit, the M-H- attested that she entered into the marriage in good faith. She did not, however, provide sufficient detailed information regarding the couple's courtship, shared residence, and experiences.

On appeal, the Petitioner asserts that he entered into his marriage in good faith as supported by his affidavit, letters from his friends, and documentary evidence. In his statement on appeal, the Petitioner adds that he met M-H- at a gas station. He recalls that they exchanged telephone numbers and that he called her a few days later. He states that on their first date, they dined at a Mexican restaurant and then went the movies. After that, they began to see each other every day. The Petitioner indicates that while they were dating, M-H- was kind, gentle and considerate, but after they

were married, M-H- became a different person. Although in his statement on appeal, the Petitioner provides some additional details about his relationship with M-H-, he does 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). Similarly, the statements from Petitioner's friends do not provide probative information regarding the Petitioner's intentions at the time that he entered into the marriage with M-H-. Accordingly, the preponderance of the relevant evidence does not establish that the Petitioner entered into marriage with M-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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

Because the Petitioner married his spouse while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his self-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 M-H- 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 M-H- 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 VAWA petition.

On appeal the Petitioner further asserts that we should consider the approved alien relative petition, filed by M-H- on his behalf, as evidence of his good-faith entry into the marriage pursuant to 8 C.F.R. § 245.1(c)(8)(v). However, that regulation prescribes that when a visa petition based on the same marriage is approved, it will generally be considered primary evidence of eligibility for the bona fide marriage exemption, unless United States Citizenship and Immigration Services (USCIS) determines additional evidence is needed. 8 C.F.R. § 245.1(c)(8)(v). The fact that a visa petition based on the marriage in question was previously approved does not automatically entitle the beneficiary to subsequent immigrant status. See *INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition

might not *standing alone* prove . . . that the marriage was bona fide and not entered into to evade immigration laws.”).

Moreover, although similar, the parties, statutory provisions and benefits procured through sections 204(a)(1)(A)(i) alien relative petition and 204(a)(1)(A)(iii) VAWA petition are not identical. The Petitioner’s spouse was the Petitioner and bore the burden of proof in the prior alien relative petition adjudication, in which she was required to establish her citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i); 8 C.F.R. §§ 204.1(f), 204.2(a)(2). In contrast, in this case, the Petitioner bears the burden of proof to establish not only the validity of their marriage, but also that he entered the marriage in good faith by clear and convincing evidence, a heightened standard of proof. Section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I); 8 C.F.R. § 204.2(c)(1)(iv). As previously discussed, the evidence submitted below and the Petitioner’s affidavit on appeal does not provide clear and convincing evidence of his entry into the marriage in good faith. Accordingly, he has not established his eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act and section 204(g) of the Act consequently bars approval of this petition.

E. 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).

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 M-D-*, ID# 17964 (AAO Sept. 7, 2016)