



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

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

MATTER OF G-K-K-

DATE: SEPT. 8, 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), concluding that 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 Petitioner filed motions to reopen and reconsider the Director's decision. The Director considered the motions but affirmed the previous decision. The Petitioner filed a timely appeal and submits a brief, in which he contends that the Director did not consider the totality of the evidence.

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

I. 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).

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(g) of the Act

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:

- (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.

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.

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- (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;
 - (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. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner is a citizen of Kenya, who entered the United States as a B-2 nonimmigrant visitor and changed his status to a F-1 nonimmigrant student. The Petitioner was placed in removal proceedings on or about [REDACTED] 2012, and his next hearing in Immigration Court is on [REDACTED] 2016. On [REDACTED] 2012, the Petitioner married S-K-, while his removal proceedings remained pending.¹ He subsequently filed a VAWA petition. As the initial record was insufficient to establish the Petitioner's eligibility, the Director issued a request for evidence (RFE) establishing that he entered into his marriage with S-K- in good faith by clear and convincing evidence. The Petitioner timely responded to the RFE with additional evidence, which the Director

¹ Name withheld to protect the individual's identity.

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found insufficient to establish the Petitioner's eligibility. The Director denied the VAWA petition and the Petitioner timely appealed. We have reviewed all of the evidence in the record of proceedings.

II. ANALYSIS

A. Entry into Marriage in Good Faith

The relevant evidence submitted below and on appeal does not demonstrate by clear and convincing evidence that the Petitioner entered into his marriage with S-K- in good faith, as required under section 245(e)(3) of the Act.

The Petitioner submitted with his VAWA petition the following evidence to establish his good faith entry into his marriage to S-K-: a personal statement; a letter from a friend; a record listing the Petitioner as the emergency contact for S-K-; medical insurance records; utility bills; bank statements; a lease; a vehicle title; letters from S-K-; and photographs. In response to the RFE, the Petitioner submitted another personal statement, letters from two other friends, life insurance records, an application for an identification card for S-K-, another lease, a cable bill, and additional photographs. In support of his motions to reopen and reconsider, the Petitioner filed the following evidence: a third personal statement; a notice from U.S. Citizenship and Immigration Services (USCIS) indicating that a Form I-130, Petition for Alien Relative (alien relative petition), filed by S-K- on behalf of the Petitioner was approved; a letter from his sister; documents relating to an immigration bond; and additional photographs.

In his personal statements, the Petitioner recounts that he first saw S-K- at a birthday party in June 2010, he obtained her telephone number from a friend, and they began dating the last week of September 2010. The Petitioner recalls that their first date was to a restaurant, on their second date they went bowling, and after that they spent time together on a daily basis. In November 2010, the Petitioner asked S-K- to be his girlfriend, she then introduced him to her daughters, and, in December 2010, the Petitioner moved in with S-K- and her two daughters, although his VAWA petition indicates that he and S-K- started living together in November 2010. The Petitioner proposed to S-K- on Valentine's Day in 2011, and they married approximately [REDACTED] months later in a private ceremony with no attendees, followed by a trip to the beach to celebrate. He relates that S-K- later joined the [REDACTED] and was in [REDACTED] starting in October 2013 and, in May 2014 they moved from Virginia to Kansas, and separated in February 2015. He also recalls that he and S-K- spent Sundays together with her daughters, and, during the week, he got her daughters ready for school, picked them up from their bus stop after school, and helped them with homework. According to the Petitioner, he and S-K- came to know each other's families, and they made plans for him to adopt her oldest daughter.

The Petitioner also shares that he and S-K- "made plans to get married" after they were engaged but, approximately one year after they became engaged, he was placed in removal proceedings and this "changed [their] lives completely . . . [because] [t]he thought of being separated forever was scary." The Petitioner and S-K- married two weeks following his release from more than [REDACTED] months in immigration detention. He does not describe what plans they made with respect to their wedding

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before he was placed in removal proceedings, and he does not further explain why being placed in removal proceedings prompted him to marry S-K-. We note that, when he was interviewed by an officer with U.S. Immigration and Customs Enforcement (ICE) on [REDACTED] 2012, he informed that officer that S-K- was expecting their child in [REDACTED] 2012, but he does not discuss whether S-K- was ever pregnant with their child in his personal statements. The Petitioner's personal statements generally chronicle his relationship with S-K- but he does describe in probative detail their decision to marry, any wedding plans they made following their engagement, his reasons for marrying, or the couple's wedding, shared residences and experiences, and marital routines in order to establish his good-faith marital intentions by clear and convincing evidence.

The letters from the Petitioner's friends and sister focus primarily on the abuse and do not provide probative information regarding the Petitioner's intentions at the time that he entered into his marriage with S-K-. V-M- indicates that she visited the couple but only describes the claimed abuse she witnessed. In their letters, I-W- and C-N- both recount that the Petitioner introduced S-K- to them as his girlfriend in September 2010, which is two months before the Petitioner asked S-K- to be his girlfriend, according to his personal statements. I-W- and C-N- also report that they visited the Petitioner and S-K- at two different addresses they lived at in Virginia but they do not describe these shared residences or any interactions between the Petitioner and S-K-. In her letter, M-K-, the Petitioner's sister, indicates that she visited the couple when they lived in Virginia, she and S-K- frequently communicated with each other, and S-K- told her that she appreciated that the Petitioner was a father figure for her daughters and cared for them when she was in [REDACTED]. The letters from the Petitioner's friends and sister do not provide detailed information regarding the couple's courtship, residence, and shared experiences and, therefore, are not sufficient to establish the Petitioner's good faith intentions by clear and convincing evidence at the time that he entered into his marriage with S-K-.

The record of S-K-'s emergency contacts and the application for a military identification card reflect that the Petitioner is listed as S-K-'s spouse, there is no indication regarding who prepared these documents and whether they were filed, and they do not reflect the Petitioner's marital intentions. Similarly, medical and life insurance records indicate that S-K- included the Petitioner as a beneficiary for her military-issued medical and life insurance policies but do not establish the Petitioner's intentions in entering into his marriage with S-K-. The bank statements indicate that the Petitioner and S-K- maintained a joint bank account but the statements are for a limited period of time from September 2013 until January 2014, and do not demonstrate that both parties used the account for marital expenses. The letters from S-K- are undated but appear to date from when she was in [REDACTED] they reflect the sentiments of S-K- but do not establish the Petitioner's good-faith marital intentions. The documents relating to an immigration bond reflect that S-K- posted a bond in [REDACTED] 2012 in order for the Petitioner to be released from detention but do not reveal additional details regarding the Petitioner's marital intentions.

The remaining evidence, although evidence of joint residence, is insufficient to establish the Petitioner's entry into his marriage in good faith by clear and convincing evidence. We also note that the utility bills are for very brief periods of time, the cable bill reflects a substantial unpaid balance and is primarily for a period when the Petitioner and S-K- were separated, the lease for a residence

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in Virginia does not account for the period when the Petitioner and S-K- lived together prior to [REDACTED] 2012 and does not list S-K's daughters as occupants, and the vehicle title only indicates that the Petitioner and S-K- owned a vehicle in common.

The photographs submitted by the Petitioner reflect that the Petitioner and S-K- were photographed together on a few occasions. Several photographs are of the Petitioner with S-K- and her daughters, except for one photograph, which depicts the Petitioner and S-K- socializing with an unnamed person on an unspecified date. Other photographs are posed studio ones of the Petitioner with S-K- and her daughters. Although the photographs provide some evidence of the Petitioner's intentions when entering into his marriage, they are not sufficient, either alone or in conjunction with the other evidence in the record of proceedings, to demonstrate by clear and convincing evidence that the Petitioner entered into his marriage with S-K- in good faith.

On appeal, the Petitioner asserts that, because USCIS approved the alien relative petition filed by S-K- on his behalf, their marriage was bona fide. However, the fact that an alien relative petition based on their marriage was previously approved does not automatically entitle the Petitioner 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"). Moreover, although the parties, statutory provisions and benefits procured under sections 204(a)(1)(A)(i) (alien relative petition) and 204(a)(1)(A)(iii) (VAWA petition) of the Act are similar, they are not identical. S-K- was the petitioning spouse and bore the burden of proof in the adjudication of the alien relative petition she filed on behalf of the Petitioner, to establish her citizenship and the validity of the couple's marriage. Section 201(b)(2)(A)(i) of the Act; 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 by clear and convincing evidence not only the validity of their marriage, but also that he entered into his marriage with S-K- in good faith. As discussed, the Petitioner has not met that burden here.

Accordingly, the relevant evidence does not establish the Petitioner's entry into marriage with S-K- in good faith by clear and convincing evidence. The Petitioner has not submitted any argument or evidence on appeal to overcome that determination or 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).

III. 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.

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ORDER: The appeal is dismissed.

Cite as *Matter of G-K-K-*, ID# 18144 (AAO Sept. 8, 2016)