



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

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

MATTER OF W-J-D-

DATE: MAR. 1, 2017

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 Petitioner's Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, concluding that the Petitioner had not established that he entered into marriage with his U.S. Citizen in good faith 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 and additional evidence. The Petitioner claims that he has established, through documentary evidence, that he is eligible for the benefit sought.

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

I. LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that a foreign national who is the spouse of a United States citizen may self-petition for immigrant classification if the foreign national demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the foreign national or a child of the foreign national was battered or subjected to extreme cruelty perpetrated by the foreign national's spouse. In addition, the foreign national 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.

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.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *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. Good Faith Entry Into Marriage

The relevant evidence submitted below and on appeal does not demonstrate the Petitioner’s entry into his marriage with M-N- in good faith. In his affidavit, the Petitioner recounted that when he met M-N-, they hit it off immediately. They exchanged telephone numbers and subsequently communicated with each other on a daily basis. The Petitioner indicated that after a whirlwind romance, he and M-N- wed. He revealed that during their marriage, he became close to his stepdaughter. He made sure that his stepdaughter had everything that she needed, and he attended her basketball games. The remainder of the Petitioner’s statement addressed the abuse during his marriage. The Petitioner did not further provide probative details about their courtship, wedding ceremony, shared experiences, and joint residence together, apart from the abuse.

Likewise, the letters from the Petitioner’s family and friends contained no probative information regarding the Petitioner’s intentions in marrying his spouse. In his affidavit, the Petitioner’s friend V-M- stated that he has known the Petitioner for 4 years, that they often socialized together, and that the Petitioner told him about the abuse in his marriage. However, V-M- did not provide substantive information the Petitioner’s relationship with M-N-. In her brief statement, M-S- recounted that while the Petitioner was working at her house, M-N- came over, and yelled at him. She did not further describe the Petitioner’s intentions or interactions with his spouse in probative detail. In their statements, the Petitioner’s mother, L-; his sister, A-L-; and their family friend, G-F- attested that the Petitioner was married to M-N-, but their statements focused on the abuse and they did not further address their interactions with the Petitioner and M-N- during the couple’s marriage, and their knowledge of the Petitioner’s good-faith marital intentions.

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To further support his claim of good faith marriage, the Petitioner submitted an affidavit from his spouse, M-N-. In her affidavit, M-N- stated that she met the Petitioner, they fell in love, and they were married. M-N- added that she and the Petitioner struggled throughout their marriage because they were young, poor, and they had too many responsibilities. The remainder of M-N-'s statement addressed the abuse that she suffered as a child, and how it affected her behavior during their marriage. She did not, however, provide detailed information regarding her and M-N-'s marriage, their shared residence, and experiences.

The documentary evidence was also insufficient to establish that the Petitioner entered into his marriage in good faith. Specifically, although the residential lease agreement was issued in both M-N-'s and the Petitioner's names, it was signed only by the landlord, thus diminishing its evidentiary value. The [REDACTED] and [REDACTED] statements showed joint checking accounts with little transaction history, and it is unclear if both parties had access to these accounts, and used them for marital expenses.

In addition, although the electric bill and the jointly addressed mail may demonstrate that the couple shared a joint mailing address, they are not sufficient to establish that the Petitioner entered into his marriage with M-N- in good faith. Likewise, the bank credit cards, the two rental receipts, copies of text messages, telephone logs, and the emergency contact form support the Petitioner's claim of good faith entry into the marriage. However, without detailed testimony from the Petitioner, they are insufficient to establish his good faith marriage. Similarly, the photographs of the couple are undated and taken at unspecified locations. They also do not contain any captions and the Petitioner does not explain the circumstances in which they were taken.

On appeal, the Petitioner submits a supplemental affidavit in which he provides some additional details of his relationship with M-N-. In his supplemental statement, the Petitioner recounts that he met M-N- in 2012, through their mutual friend, V-M-. He states that they initially exchanged telephone numbers, and subsequently spoke with each other often. He recalls that shortly after they met, M-N- became homeless and temporarily left Connecticut and moved to California to reside with her brother. He reveals that he lost contact with M-N-, but when she returned to Connecticut, M-N- called and invited him to meet with her at the local laundromat. He recalls chatting with her as he helped her with her laundry. They later drove to pick up M-N-'s daughter from her basketball game. He recalls that they ordered pizza on the way to M-N-'s apartment and they spend the rest of the evening together talking about their lives, dreams, and goals. He states that after that night, they continued to speak daily, and spend time with each other after work. The Petitioner stated that in August 2013, he and M-N- moved in together on [REDACTED] in [REDACTED] Connecticut. A letter from the Petitioner's landlord indicates that the Petitioner began residing at the apartment on [REDACTED] in [REDACTED] 2013.

The Petitioner explains that in [REDACTED] 2013, he was detained by U.S. Immigration and Customs Enforcement (ICE). He indicates that he was released with a GPS device to monitor his movements, and because he and M-N- resided in an attic apartment, which could not accommodate a telephone landline, he temporarily moved in with his mother. He recalls that this put an additional strain on

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their marriage. He recalls that upon his release from ICE detention in the summer of 2014, he was placed in removal proceedings. He states that M-N- was very upset at the prospect that he may be removed from the United States, and she suggested that they should get married. He recalls that he and M-N- wed at [REDACTED] on [REDACTED] 2014, followed by a small gathering at a friend's house, and then drinks downtown. The Petitioner recalls that initially during the marriage, he and M-N- shared the household expenses, but subsequently M-N- lost her job because of her drug use.

While in his supplemental statement, the Petitioner provides some additional information about his relationship with M-N-, he does not provide sufficient probative detail the circumstances of their courtship, wedding, or shared residences and experiences to establish his good-faith marital intentions. In the absence of detailed and credible testimony from the Petitioner regarding his good faith marital intentions, the documentary evidence alone are insufficient to establish that he married M-N- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

B. 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 2 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. 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 to M-N- 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.

On appeal, the Petitioner asserts that by clear and convincing evidence, he has established his good faith entry into his marriage with M-N-. However, as we have already determined that the Petitioner has not established his good-faith entry into his marriage to M-N- 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.

C. 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

On appeal, the Petitioner has not demonstrated that he entered into marriage with his spouse in good faith, that he is exempt from the bar to approval of his petition under section 204(g) of the Act, and that he is eligible for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of W-J-D-*, ID# 158044 (AAO Mar. 1, 2017).