



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

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

In Re: 25785559

Date: JUNE 8, 2023

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), concluding that the Petitioner did not establish that he had a qualifying relationship with his U.S. citizen spouse, whom he married while in removal proceedings, and did not establish by clear and convincing evidence that his marriage was entered in good faith as required under section 204(g) of the Act. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand the matter to the Director for the issuance of a new decision.

## **I. LAW**

A VAWA petitioner must establish, among other requirements, that they entered into the qualifying marriage to the U.S. citizen spouse in good faith and not for the primary purpose of circumventing the immigration laws. Section 204(a)(1)(A)(iii)(I)(aa) of the Act; 8 C.F.R. § 204.2(c)(1)(ix). Evidence of a good faith marriage may include documents showing that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; evidence regarding their courtship, wedding ceremony, shared residence, and experiences; birth certificates of any children born during the marriage; police, medical, or court documents providing information about the relationship; affidavits from individuals with personal knowledge of the relationship; and any other credible evidence. 8 C.F.R. § 204.2(c)(2)(i), (vii). Although we must consider any credible evidence relevant to the VAWA petition, we determine, in our sole discretion, what evidence is credible and the weight to give to such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The Act bars approval of a VAWA petition if, while in removal proceedings, the petitioner entered into the marriage giving rise to the petition, unless the petitioner has resided outside the United States for a period of two years after the date of marriage or establishes by clear and convincing evidence

that the marriage was entered into in good faith. See sections 204(g) and 245(e)(3) of the Act, 8 U.S.C. §§ 1154(g) and 1255(e)(3) (outlining the restriction on, and exception to, marriages entered into while in removal proceedings); see also 8 C.F.R. § 204.2(c)(1)(iv) (providing that a self-petitioner “is required to comply with the provisions of . . . section 204(g) of the Act”). Clear and convincing evidence is that which, while not “not necessarily conclusive, . . . will produce in the mind . . . a firm belief or conviction, or . . . that degree of proof which is more than a preponderance but less than beyond a reasonable doubt.” *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966).

## II. ANALYSIS

The record reflects that the Petitioner, a citizen of India, married D-W-<sup>1</sup> a U.S. citizen, in [ ] 2017. In June 2018, he filed the instant VAWA petition based on this marriage. As supporting evidence, the Petitioner submitted a marriage certificate, photographs, personal statements, banking records, a copy of a life insurance policy, a copy of a 2017 tax return, and letters from acquaintances indicating that they knew the Petitioner and his spouse during the marriage.

Through a request for evidence (RFE), the Director informed the Petitioner that the record did not contain sufficient evidence demonstrating a good faith marriage and noted the following concerns: (1) the submitted bank statements did not reflect payment of ongoing shared expenses such as rent, utilities, or regular grocery purchases for a shared household – apart from “small and casual purchases at grocery stores, convenience and liquor stores, gas stations, and fast food restaurants;” (2) all activity in the bank accounts, aside from a few transactions, were linked to only one card; (3) the tax return was not accompanied by a tax return transcript demonstrating that the form was submitted to and processed by the Internal Revenue Service (IRS); and (4) the insurance policy documentation reflected a non-verified address that was not related to the claimed shared residence.

In response to the RFE, the Petitioner submitted an affidavit, third party affidavits, copies of IRS tax return transcripts for 2017 and 2018, additional bank statements, and a copy of a residential lease. The Director denied the petition, explaining that, because the Petitioner married D-W- while in deportation, removal, or judicial proceedings, and because the record did not indicate that he resided outside of the United States for the requisite two-year period, he was subject to the bar at section 204(g) of the Act. The Director additionally determined that the Petitioner did not establish, by clear and convincing evidence, that he married D-W- in good faith. Specifically, the Director stated the following:

The Wells Fargo statements, dated between August 30, 2017 to June 26, 2018, indicate that you and D-W- shared a joint checking account. While the statements show recurring payments made to New York Life Insurance Company (December 22, 2017, January 19, 2018, February 20, 2018, March 19, 2018, April 19, 2018, May 21, 2018, and June 19, 2018), the statements do not contain evidence to show any other financial transactions that would generally be associated with a household account such as payments towards utilities, rent, or other jointly held responsibilities . . . . This gives the bank statements less weight as evidence and does not meet the clear and convincing standard necessary under this requirement to demonstrate a bona fide marriage . . . it is noted that payments for this policy were made from the Wells Fargo

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<sup>1</sup> We use initials to protect the privacy of individuals.

joint checking account with your spouse in the amount of \$90.10, as reflected in the account statements between December, 2017 and May, 2018. Although this suggests some commingling of finances between you and your spouse, these documents provide minimal insight into the dynamics of your relationship . . . . Your federal and state tax returns and IRS transcripts indicate that you and D-W- filed jointly for tax year 2017 and separately for tax year 2018, and that your tax forms were submitted to and processed by the IRS. However, within the context of the evidence as a whole, these documents do not provide sufficient insight into your shared domestic life such as routines and shared responsibilities as a couple.

The Director concluded that although the evidence submitted suggests some comingling of finances, the totality of evidence provided minimal insight into the dynamics of the Petitioner and D-W-'s marriage, and therefore, the Petitioner did not establish, by clear and convincing evidence, that he entered into a bona fide marriage.

On appeal, the Petitioner does not dispute that he is subject to section 204(g) of the Act and must establish, by clear and convincing evidence, that he married D-W- in good faith. Instead, he asserts that he submitted all evidence requested by the Director, including but not limited to, tax transcripts; bank statements reflecting numerous purchases at grocery stores, convenience stores, gas stations, and fast-food restaurants; a life insurance policy and related billing records; utility statements that include that he and D-W- are account owners; and detailed third-party affidavits which contain explanations of how the affiants had knowledge of his marriage. He also asserts that the Director erred in concluding that his affidavit did not include sufficient detail or insight into his relationship with D-W- as he provided a full explanation of the ins and outs of their relationship prior to their engagement and information about their married life, which was corroborated by third party affidavits. He also notes that the Director used one full page of the decision to summarize his eight-page affidavit, which indicates that his affidavit was detailed.

As stated above, because the Petitioner married D-W- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, section 204(g) of the Act bars approval of his VA WA petition unless he satisfies the bona fide marriage exemption under section 245(e)(3) of the Act by demonstrating that his marriage was entered into in good faith by clear and convincing evidence. While identical or similar evidence may be submitted to establish a good-faith marriage pursuant to section 204(a)(1)(A)(iii)(1)(aa) of the Act and the bona fide marriage exemption 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. INS*, 993 P.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

In his personal statements, the Petitioner described the beginning of his relationship and marriage to D-W- as follows: He met D-W- at a sports bar while watching football – a sport that he became interested in due to his prior experience playing rugby in India. D-W- was excited to hear that he was from India because she had an Indian friend in high school with whom she would watch Indian movies with. He and D-W- exchanged numbers and they began to text and speak on the phone, and she frequently visited him at the gas station where he worked. They eventually began dating, and early on, D-W- surprised him with tickets to a local National Football League (NFL) game. He asked D-W- to move in with him after dating several months, and he looked forward to coming home rather than sulking and going to sleep and having a life outside of work. The beginning of their marriage

was great; he and D-W- entertained his friends at their home; D-W- surprised him for his birthday by inviting his friends over and cooking Indian food and wearing a traditional Punjabi suit that his parents sent to her from India; and they spent Thanksgiving, D-W-'s birthday, and Christmas with D-W-'s family.

The record reflects that the third-party affidavits submitted by the Petitioner contain probative details regarding the establishment of the Petitioner's relationship and marriage to D-W-, observations of the couple's behavior together, and their activities. For instance, in the affidavit from the Petitioner's friend, B-S-, the affiant describes D-W-'s willingness to embrace the Petitioner's culture, including attending services at the [REDACTED] and learning to cook traditional Indian food. In another affidavit, the Petitioner's friend, S-S-, explains how the Petitioner was often sad before meeting D-W- because he missed his family and was grateful to be able to spend time with D-W-'s family. S-S- also related that the Petitioner and D-W- shared several dinners at his home and he appreciated D-W-'s efforts to assimilate into their culture. S-S- also highlighted that the Petitioner confided in him regarding the impact that the Petitioner's father's illness had on his mental state and relationship with D-W-.<sup>2</sup>

Contrary to the Director's determination, we conclude that the Petitioner provided credible details regarding the development of his relationship with D-W- along with documentation of a shared life and explanations of the submitted documentation. The third-party affidavits are also consistent in describing the affiants' familiarity with the Petitioner and D-W- and provide insight into the dynamics of the Petitioner's relationship prior to or during the marriage that assist in demonstrating the Petitioner's intent when he entered into the marriage. When considered in their totality, the submitted documentation establishes, by clear and convincing evidence, that the Petitioner entered into a bona fide marriage with D-W-.

As the Petitioner has demonstrated that he entered into a bona fide marriage under the heightened standard of proof required by section 245(e)(3) of the Act, he has established his good faith entry into his marriage with D-W- by a preponderance of the evidence as required under section 204(a)(1)(A)(iii)(I)(aa) of the Act. Accordingly, we will remand the matter to the Director to redetermine whether the Petitioner is otherwise eligible for immigrant classification under VAWA.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded to the Director for the issuance of a new decision consistent with the foregoing analysis.

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<sup>2</sup> Medical documentation in the record indicates that in 2019, the Petitioner was admitted to the emergency room and diagnosed with an acute stress reaction. The hospital report notes that the Petitioner indicated that he was experiencing marital problems at home and the "friend at bedside states he found patient with knife in his pocket threatening to cut his wrists."