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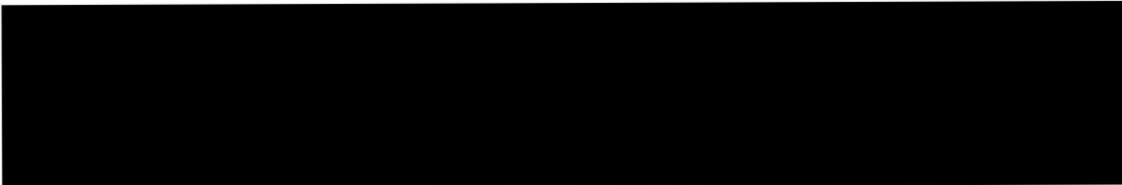
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Petitioner:



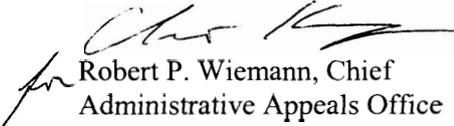
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition finding that the petitioner failed to establish that she had a qualifying marriage to a United States citizen, that she was eligible for immigrant classification based upon a qualifying relationship, that she was a person of good moral character, and that she entered into her marriage in good faith. Additionally, the director found that because she could not establish the qualifying relationship as the spouse of a United States citizen, she was unable to establish that she resided with her spouse and that she was battered or subjected to extreme cruelty by her citizen spouse during her marriage. Finally, the director found that section 204(g) of the Act barred approval of the petition.

The petitioner submits a timely appeal.

Section 204(a)(1)(A)(iii) 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 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility requirements are further 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 . . . and must have taken place during the self-petitioner’s marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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 for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Angola who claims to have entered the United States in February 2003. A Notice to Appear was issued to the petitioner on February 17, 2003, charging her under section 237(a)(1)(B) of the Act as an alien present in the United States in violation of the Act. On May 2, 2003, the petitioner was ordered removed *in absentia*.¹ On December 8, 2005, the petitioner married J-M-², in Buffalo, New York. The petitioner filed this Form I-360 on November 17, 2006. On December 6, 2006, the director issued a Request For Evidence (RFE) of the petitioner's spouse's citizenship, the petitioner's prior relationship with C-M-³, the father of her children, and the requisite abuse, residence, good moral character, and clear and convincing evidence of the petitioner's good faith marriage to J-M-. The petitioner, through counsel, responded to the RFE on February 1, 2007, and requested additional time to respond. On February 26, 2007, the director issued a Notice of Intent to Deny (NOID) the petition. The petitioner, through counsel, responded to the NOID on April 23, 2007. On June 8, 2007, the director denied the petition finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen, that she was eligible for immigrant classification based upon a qualifying relationship, that she was a person of good moral character, and that she entered into her marriage in good faith. The director found that as the petitioner failed to establish a qualifying relationship as the spouse of a United States citizen, she was therefore also unable to establish that she resided with her spouse and that she was battered or subjected to extreme cruelty by her citizen spouse during her marriage. Finally, the director found that section 204(g) of the Act further precluded approval of the petition.

The petitioner submitted a timely appeal and indicated that she would be submitting a brief and/ or additional evidence to the AAO. To date, more than six months later, the petitioner has submitted no further evidence. In response to a facsimile sent by the AAO to counsel, the petitioner indicated that she failed to submit a brief or evidence as indicated on the Form I-290, Notice of Appeal. Accordingly, the record is considered to be complete as it now stands.

¹ The petitioner is in the United States under an Order of Supervision and remains in proceedings.

² Name withheld to protect individual's identity.

³ Name withheld to protect individual's identity.

On appeal, the petitioner reiterates claims made before the director and presents no new evidence or arguments. As will be discussed, we concur with the findings of the director.

Qualifying Relationship and Eligibility for Immediate Relative Classification

On her Forms I-360 and G-325, Biographic Information, the petitioner indicated that she had been married only one time. In his RFE and NOID, the director questioned this claim as other evidence in the record indicated that the petitioner had been married to C-M-, the father of her children, in Angola. Specifically, the record contained an October 12, 2006 sworn statement, in which the petitioner referred to C-M- as her “ex-husband” and acknowledged a prior entry into the United States on a diplomatic passport as the spouse C-M-. Additionally, the mental health evaluation submitted by [REDACTED] indicated that the petitioner “was married in Angola, to the father of her two sons”

In the brief submitted by counsel in response to the director’s NOID, counsel claimed that she was present during the petitioner’s sworn statement where the petitioner referred to C-M- as her “ex-husband” and acknowledged her entry as his spouse. Counsel explained that the petitioner’s answers “were the result of a very poor interpreter” and claimed that the interviewing officer did not allow counsel “to ask clarifying questions that would have revealed that irrespective of [the petitioner] referring to [C-M-] as her husband, she was never legally married to him.” We note that although counsel also claimed that the petitioner’s domestic violence counselor was also present at the interview, counsel provided no explanation as to why the counselor’s evaluation indicated that the petitioner was previously married. Given counsel’s allegations that she was not allowed to clarify the circumstances of the petitioner’s relationship during the sworn statement, we would expect the evaluation to have made such clarifications. Although [REDACTED] later completed a second evaluation where she stated that the petitioner was “never legally married,” she provided no explanation for the change.

In her initial statement, the petitioner claimed that she referred to C-M- as her “husband because in [her] culture [their] relationship was similar to common law marriage, one without official documentation.” As it relates to her entry as C-M-’s spouse, in her supplemental affidavit, the petitioner claims that she did not go to the embassy and that C-M- received passports based upon the petitioner’s identification. The petitioner claims that C-M- “never presented any documents to the Ministry of Foreign affairs that we were ever married, because nothing like that ever existed.”

The petitioner also submitted an undated document which appears to be a petition by C-M- to the Family Tribunal of Provincial Court of Luanda, for custody of their children. The document lists the petitioner and C-M- as “single” and refers to their common law marriage. The document states that the petitioner and C-M- have “lived as a common law marriage as a real couple since 1984,” and that “although not recognized, but recognizable, under n.1 of Article 113 of the Family Code . . . the common law was broken [sic].” Although the petitioner submitted a country report on Angola, the report does not address common law marriages in Angola and offers no support for the petitioner’s contention that in her “culture in Angola it is normal to call a common law partner husband or wife.” As noted by the director, the petitioner failed to submit copies of the relevant Angolan law on the

validity of common law marriages. Therefore, even if the petitioner's explanations are to be believed, that she referred to C-M- as her spouse because they were in a common law marriage, she bears the burden of establishing that the common law marriage was dissolved prior to her marriage to J-M-. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if the petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502, 503 (BIA 1973).

Beyond the decision of the director, we find that the petitioner also has failed to establish that her spouse was a United States citizen. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The sole piece of evidence submitted to establish the petitioner's spouse's citizenship is a copy of the petitioner's Certificate of Marriage Registration which indicates that J-M- was born in Buffalo, New York. Although the director requested additional evidence to establish J-M-'s United States citizenship in both the RFE and the NOID, the petitioner failed to submit any further evidence regarding his citizenship. Despite the fact that the petitioner submitted no further evidence, in his final decision, the director stated that for "purposes of this petition" J-M-'s citizenship has been established. The director provided no explanation or discussion for this determination.

Upon review, we do not find that the petitioner's spouse's provision of this birth information on his marriage license persuasively establishes his citizenship status. Specifically, we find no requirement under New York law that proof of United States citizenship be submitted in order to obtain a marriage license, much less that there be an independent verification of such citizenship. *See N.Y. Dom. Rel. Law, §§ 10-25* (McKinney 2007). We note that although Citizenship and Immigration Services (CIS) must consider any relevant, credible evidence and that the petitioner is not required to demonstrate that primary or secondary evidence is unavailable, ultimately, the determination of the credibility and weight of relevant evidence is within the sole discretion of the Service. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). In this instance, the record contains no other testimonial or documentary evidence regarding the petitioner's spouse's citizenship status. Moreover, CIS electronic records also contain no indication of her spouse's citizenship. *See 8 C.F.R. § 204.1(g)(3)*. As such, we withdraw the determination of the director on this issue and find that the petitioner has failed to establish that J-M- is a United States citizen.

Based upon the above discussion, we find the petitioner has failed to resolve the questions surrounding her prior relationship with C-M- and has not provided evidence that J-M- is a United States citizen.

Accordingly, the petitioner has failed to establish that she had a qualifying relationship as the spouse of a United States citizen, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act and that she is eligible for immigrant classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA)(cc) of the Act.

Residence and Abuse

The director determined that there was sufficient evidence to establish that the petitioner resided with J-M- and that she was battered or subjected to extreme cruelty by J-M-. However, the director then determined that because the petitioner failed to establish that she qualified as the spouse of a United States citizen, she was unable to establish that she resided with her citizen spouse and that she was abused by her citizen spouse during the marriage.

As discussed above, the petitioner failed to establish that she had a qualifying marriage as the spouse of a United States citizen. Accordingly, we concur with the determination of the director that the petitioner has failed to establish that she resided with her citizen spouse and was battered by or subjected to extreme cruelty by her citizen spouse during their marriage, as required by sections 204(a)(1)(A)(iii)(II)(dd) and 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

In his decision, the director determined that the petitioner failed to establish her good moral character because she admitted to providing false information to obtain immigration benefits and because she failed to submit police clearances based on "fingerprint analysis." While we do not agree with the director's rationale for determining that the petitioner failed to establish her good moral character, we do agree with his ultimate conclusion.

The director's finding of false testimony was based upon a sworn statement dated October 12, 2006 in which the petitioner acknowledged that she had altered a passport in order to obtain a visa and enter the United States. In addition, the petitioner admitted to lying to a Border Patrol agent. The statement is recounted as follows:

Q. What is your true and correct name?

A. [REDACTED]

Q. Have you used any other names?

A. I never used any other name for anything else, but when I came to the United States for the 2nd time I entered with a Portuguese passport.

Q. Was that passport in your name?

A. No.

Q. Have you used any other names?

A. Yes I used [sic] when I entered here for the 2nd time.

Q. What was that name?

A. I don't remember the whole name it started with something [sic] like this?

In addition to the sworn statement, the record also contains the affidavit submitted by the petitioner in response to the director's NOID, in which the petitioner provided the following explanation regarding her use of the Portuguese passport that belonged to another individual:

My friend arranged for me to get a Portuguese passport in somebody else's name so I could enter the U.S. and be with my children. That is what I did. I remember the name on the passport was [redacted] and she was a real person, but it was my picture on the passport.

I did not think to go to the U.S. embassy in Lisbon because I believed it would be the same. I would be denied a visitor's visa so long as I tried to get one in my name”

* * *

[Once I entered the United States] we all got on a bus to the border near Montreal. At the bus stop, we took a taxi to the border. I'm not sure exactly what happened, but I think it was U.S. immigration that gave me some papers. I told them that I had just arrived from Angola with the children with Portuguese passports. I told them that because I believed if they knew that they were children of an Angolan Diplomat they would try to contact the Angolan Embassy and I would lose my children again.

Section 101(f) of the Act states, in pertinent part:

For the purposes of this Act – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act[.]

8 U.S.C. § 1101(f) (2007).

False testimony under section 101(f)(6) of the Act is limited to oral statements made under oath with

the subjective intent of obtaining immigration benefits. *Kungys v. United States*, 485 U.S. 759, 780 (1988). The false testimony need not be material and does not include misrepresentations made for reasons other than obtaining immigration benefits, such as statements made out of embarrassment, fear or a desire for privacy. *Id.* In this case, the petitioner admits to using someone else's passport in order to gain entry into the United States and to lying to a border patrol agent. However, the record does not contain a sworn statement taken at the time the petitioner was apprehended. Moreover, given the petitioner's claim that she was trying to get to Canada, which is supported by Mr. Rascoe's description of the petitioner's apprehension, it is not clear that the petitioner was attempting to gain any immigration benefit. On the contrary, she was trying to leave the United States. Thus, while we find that there was an admission after the fact, we cannot make a finding of false testimony.

More importantly, even if we found that the petitioner previously made a false statement, her statements appear to have been voluntarily corrected by the petitioner prior to any revelation by the government. Where an alien voluntarily corrects false testimony prior to any exposure of fraud by the government, perjury has not been committed. See *Matter of M*, 9 I & N Dec. 118, 119 (BIA 1960), and *Matter of R-R-*, 3 I & N Dec. 823, 825 (1949). There is nothing in the record suggesting that the inaccuracy of the petitioner's prior statements would have been revealed by the government without the petitioner's voluntary admission. See *Costa v. Attorney General of the United States*, 2007 WL 4296754,*3 (3d Cir. 2007). Accordingly, we withdraw the director's finding as it relates to false testimony.

Although the petitioner's admission appears to render her inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentation, her actions do not fall within the bars to establish good moral character under section 101(f) of the Act and admissibility is not an eligibility criterion for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The director also found the petitioner had failed to establish her good moral character because of the petitioner's failure to submit "clearances obtained by fingerprint analysis . . ." Upon review, however, we find no support in the regulations for the director's requirement of a clearance based upon "fingerprint analysis." The regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner's good moral character is an affidavit from the petitioner accompanied by a police clearance from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition. While we understand the director's concern regarding the petitioner's use of a name other than her own, we cannot impose requirements that go beyond what is required by regulation. As such, we withdraw the director's finding that the petitioner failed to establish her good moral character based upon the lack of a clearance obtained by "fingerprint analysis."

Despite our withdrawal of the director's findings, we concur with the ultimate finding of the director that the petitioner failed to establish her good moral character. According to the petitioner's own statement, she entered the United States and left for Canada in 2003. The petitioner's Form I-360 and Form G-325A, Biographic Information, indicate that the petitioner returned to the United States in June

2005. As such, during the 3-year period prior to filing, the petitioner lived in both Canada and the United States. Although the petitioner submitted a police clearance from the police department in Buffalo, New York, the petitioner submitted no police clearance from Canada. We acknowledge the evidence in the record that reflects the petitioner's *attempt* to obtain a police clearance from Canada, however, the record contains no documentation regarding the outcome of that attempt. Despite counsel's statement that the Canadian government's response would be forwarded to CIS, no further documentation from Canada was submitted and the petitioner has failed to make any claim that this clearance is unavailable. In addition, the petitioner's affidavits fail to address her good moral character in either the United States or in Canada. Accordingly, the petitioner has failed to demonstrate that she is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

Good Faith Marriage

To support her claim of a good faith marriage, with the initial filing, the petitioner submitted an affidavit and photographs of what appear to be her wedding ceremony. In her affidavit, the petitioner states that she met her spouse while she was working. The petitioner explains that their friendship "turned into a relationship in less than two weeks" and that after two months of dating, they decided to marry. In her affidavit submitted in response to the NOID, the petitioner provided no further details of their courtship or times shared together after their marriage, except as it relates to the claimed abuse. The petitioner submitted a statement from [REDACTED] the petitioner's former landlord, who acknowledges that the petitioner and her spouse signed a lease for the apartment and had "marital problems." As it relates to the petitioner's good faith marriage, however, [REDACTED] states only that he would "stop by and see them both there." He provides no probative details regarding the petitioner's interactions with her spouse or other testimony to establish the petitioner's good faith marriage. Other than the undated, uncaptioned photographs, the petitioner submitted no documentary evidence to establish her claim of a good faith marriage. Accordingly, we concur with the finding of the director that the petitioner has not demonstrated that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Section 204(g) of the Act 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], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this case shows that the petitioner married her spouse while still in proceedings. There

is no evidence that proceedings were canceled or terminated or that the petitioner resided outside of the United States for two years after her marriage.

The bona fide marriage exception to section 204(g) of the Act does not apply to the petitioner. Section 245(e) of the Act states:

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.
- (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 corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

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 eligibility for 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). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good-faith entry

into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(aa), (a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into 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). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

As the petitioner has failed to establish that she entered into her marriage with her spouse in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.