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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B9

[redacted]

DATE: JUL 22 2011 OFFICE: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to demonstrate: (1) that she married her husband in good faith; and (2) her compliance with section 204(g) of the Act, 8 U.S.C. § 1154(g). On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

> (iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section . . . 204(g) of the Act. . . .
>
> * * *
>
> (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.

Section 204(g) of the Act states the following:

> *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.

Section 245(e) of the Act, 8 U.S.C. § 1225(e), states, in pertinent part, the following:

> *Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings: bona fide marriage exception.* –
>
> * * *
>
> (3) [S]ection 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)(8)(v) states, in pertinent part, the following:

> *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.

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

> *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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Venezuela, married O-E-,[1] a lawful permanent resident of the United States, on February 28, 2009. She filed the instant Form I-360 on February 17, 2010.[2] The director issued a subsequent request for additional evidence to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the request for additional evidence, the director denied the petition on December 1, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying the petition. Beyond the decision of the director, we additionally find that the petitioner is ineligible for classification as the spouse of an alien admitted for lawful permanent residence under section 203(a)(2)(A) of the Act based upon her marriage to O-E- because she has not complied with section 204(g) of the Act.

Good Faith Entry into Marriage

The petitioner stated in her February 26, 2010 self-affidavit that she and O-E- had a child together and provided no further information about the relationship apart from the abuse. In her September 13, 2010 self-affidavit, the petitioner stated that she met O-E- in 2005 at a friend's wedding while she was still married to her first husband. She recounted that her marriage was not going well, and that because O-E- was kind and understanding toward her, she felt that he truly cared for her. They began dating and, after learning she was pregnant, O-E- proposed marriage. The petitioner stated that after they married, they went to baseball games, to a friend's home, and to a park.

The record also contains an evaluation and a follow-up letter from [redacted] of the Counseling & Psychotherapy Center of Coral Springs, located in Coral Springs, Florida. [redacted] recounting of the petitioner's description of her allegedly good faith entry into marriage with O-E- contained in his September 8, 2010 evaluation was similar to that of the

[1] Name withheld to protect individual's identity.
[2] The petitioner remains in removal proceedings before the Immigration Court in Miami, Florida.

petitioner's September 13, 2010 self-affidavit. No additional details, apart from the abuse, were presented. In his December 21, 2010 follow-up letter, [redacted] stated that the petitioner married O-E- for love, and that they had a child together "as a testament to that love and devotion."

The petitioner also submitted letters from several of her friends. In his September 9, 2010 letter, [redacted] stated that during their courtship he observed O-E- and the petitioner holding hands, kissing, and talking. He also stated that the petitioner looked very happy with O-E-.

[redacted] stated in her September 9, 2010 letter that the petitioner met O-E- through a friend, and that during their courtship O-E- bought the petitioner flowers, treated her with respect, and tried to make her happy.

The record contains two statements from [redacted] In her September 9, 2010 letter, [redacted] stated that while the petitioner and O-E- were dating the petitioner told her how happy she was, and that the couple's wedding celebration was small and humble. She also stated that the petitioner and O-E- had a baby together. In her undated letter submitted on appeal, [redacted] stated that the petitioner married O-E- for love.

The record also contains two statements from [redacted] In her September 10, 2010 letter, [redacted] stated that O-E- was a gentleman during the couple's courtship. She also stated that the petitioner and O-E- had a baby together. In her December 20, 2010 letter submitted on appeal, [redacted] stated that she spent time with the petitioner and O-E- during their courtship and that the couple seemed happy and very much in love, and that she knows the petitioner married O-E- in good faith.

The testimonial evidence of record does not establish that the petitioner married O-E- in good faith. The petitioner's testimony is vague and lacks detailed, probative information about the relationship. For example, she failed to provide meaningful details about the couple's courtship, their engagement, or their wedding that would have allowed us to examine her good faith entry into the marriage. Nor did the petitioner's affiants provide such information, as their testimony also lacked meaningful details about the relationship.

Nor does the documentary evidence of record establish that the petitioner married O-E- in good faith. The copies of envelopes addressed to the couple provide no probative information about the petitioner's intentions upon entering into the marriage, and the pictures of O-E- and the petitioner establish only that they were together on several occasions. Nor is the paperwork regarding a joint bank account evidence of a good faith marriage, as there is no evidence that both individuals actually had access to, and used, the account to pay for any of their joint expenses. Nor is the evidence regarding the petitioner's health insurance policy and health savings account evidence that she entered into the marriage in good faith as O-E- is not named on either account. The evidence that the petitioner and O-E- shared a car insurance policy and signed a lease together is not, in the absence of detailed and probative testimony, evidence of her good faith entry into the marriage.

Although the petitioner, her affiants, and [redacted] all state that the petitioner and O-E- had a son together, the child's birth certificate does not name O-E- as the father and states "mother refuses information on husband." The petitioner stated in her September 13, 2010 self-affidavit that she did not name O-E- as the father of the child on the birth certificate because she did not want him to have O-E-'s last name. While that may be true, the petitioner's brief assertions alone do not establish that O-E- is in fact the child's father. As the petitioner has failed to demonstrate that O-E- is the father of her son, his birth does not establish that the petitioner married O-E- in good faith.

Nor do the evaluation and letter from [redacted] establish that the petitioner married O-E- in good faith. As noted by the director in his decision denying the petition, [redacted] September 8, 2010 account of the petitioner's claim to have entered into marriage with O-E- in good faith was similar to the generalized claims made by the petitioner in her September 13, 2010 self-affidavit, and did not provide any additional insight into the relationship. We agree. [redacted] September 8, 2010 evaluation did not contain any detailed and probative information about the couple's relationship and does not establish that the petitioner married O-E- in good faith. In his December 21, 2010 follow-up letter submitted on appeal, [redacted] states that the petitioner married O-E- for love, and that the director's statement that the evaluation mirrored the testimony of the petitioner called his professional integrity into question. We disagree, as the director was stating a fact: [redacted] statements regarding the petitioner's alleged good faith entry into marriage with O-E- were nearly identical to those contained in the petitioner's self-affidavit. While we do not question the professional qualifications of [redacted], his evaluation and follow-up letter do not establish that the petitioner married O-E- in good faith, as they lack detailed, probative information regarding the couple's relationship.

Counsel argues on appeal that in denying the decision, the director ignored the testimony of the affiants. We disagree. The director did not ignore the testimony of the petitioner's affiants; he merely found it insufficient to satisfy her burden of proof. Also, contrary to counsel's assertion otherwise, the mere statement that the petitioner and O-E- "held themselves out to the community as husband and wife" is not, in the absence of probative supporting evidence, sufficient to satisfy her burden.

Nor are we persuaded by counsel's assertion that the [redacted] evaluation and letter establish the petitioner's good faith entry into the marriage. As discussed, the submissions from [redacted] lack detailed, probative information about the couple's relationship, apart from the abuse. While counsel is correct that [redacted] provided detailed information about the petitioner's treatment for her mental health condition, that testimony speaks to the abuse, not to the petitioner's intentions upon entering into the marriage.

Counsel also asserts that the director's determination that the petitioner failed to demonstrate her good faith entry into the marriage conflicts with his determination that the petitioner did establish that O-E- subjected her to battery or extreme cruelty during their marriage. We disagree. The statutory and regulatory criteria for establishing good faith entry into marriage were set forth previously and differ from those for establishing battery or extreme cruelty during marriage.

Whether O-E- subjected the petitioner to battery or extreme cruelty while married to her is a separate matter from whether the petitioner married him in good faith.

Considered in the aggregate, the relevant evidence does not establish that the petitioner married O-E- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Section 204(g) of the Act

The petitioner has also not overcome the director's determination that section 204(g) of the Act bars approval of this petition. Again, the petitioner and O-E- were married on February 28, 2009, after the petitioner had been placed into removal proceedings.

As was set forth previously, the regulation at 8 C.F.R. § 204.2(c)(1)(iv) clarifies that a self-petitioner is required to comply with section 204(g) of the Act. The record does not indicate that the petitioner resided outside of the United States for two years after her marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act.

We have affirmed the director's determination that the petitioner failed to establish that she entered into marriage with O-E- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(B)(ii)(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)(B)(ii) of the Act, the petitioner must establish 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)(B)(ii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(B)(ii)(I)(aa), 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish 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)(9)(v); *Dielmann v. I.N.S.*, 34 F.3d 851, 853 (9th Cir. 1994). "Clear and convincing evidence" is a more stringent standard. *Matter of Arthur*, 20 I&N Dec. at 478. *See 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 married O-E- in good faith by a preponderance of the evidence, as required by section 204(a)(1)(B)(ii)(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 further bars approval of this petition.

Ineligibility for Classification as the Spouse of an Alien Admitted for Lawful Permanent Residence

Section 204(a)(1)(B)(ii)(II)(cc) of the Act requires a self-petitioner to demonstrate his or her eligibility for classification as the spouse of an alien admitted for lawful permanent residence under section 203(a)(2)(A) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(iv) explains that such eligibility requires the self-petitioner to comply with, *inter alia*, section 204(g) of the Act. As discussed above, the petitioner here has failed to comply with section 204(g) of the Act. She is consequently ineligible for classification as the spouse of an alien admitted for lawful permanent residence under section 203(a)(2)(A) of the Act based upon her marriage to O-E- and is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act for that reason. Beyond the decision of the director, the petition may not be approved for this additional reason.

Conclusion

As set forth above, the petitioner has failed to establish that she married O-E- in good faith, complied with section 204(g) of the Act, and is eligible for classification as the spouse of an alien admitted for lawful permanent residence under section 203(a)(2)(A) of the Act based upon her marriage to O-E-.[3] Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and this petition must remain denied.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.

[3] 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); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).