U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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U.S. Citizenship and Immigration Services

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DATE: SEP 29 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 additional testimonial evidence and a memorandum of law.

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 preference immigrant classification 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. . . .
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> * * *
>
> (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, 8 U.S.C. § 1225(e), 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 or preference 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.* –
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> * * *
>
> (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 Colombia, married J-P-,[1] a lawful permanent resident of the United States, on July 13, 2004. She filed the instant Form I-360 on August 15, 2008. The director issued two subsequent requests for additional evidence to which the petitioner, through her prior representative, filed timely responses. After considering the evidence of record, including the petitioner's responses to the requests for additional evidence, the director denied the petition on August 27, 2010. The petitioner, through current counsel, filed an untimely appeal, which the director treated as a motion to reopen pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*) and rendered a new decision accordingly. On January 7, 2011, the director affirmed his decision denying the petition. The petitioner, through current counsel, filed the instant appeal in timely fashion on February 7, 2011.

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 this petition. Beyond the decision of the director, we find additionally that because the petitioner has failed to demonstrate her compliance 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 J-P-.

Good Faith Entry into Marriage

The petitioner's testimony regarding her relationship with J-P- is inconsistent. In her August 7, 2008 letter, she stated that she met J-P- in August 2003 through a group of mutual friends, and that several months later, in December 2003, they met again at a Christmas party and realized they had a great deal in common after speaking with one another all night. According to the petitioner, "[f]rom there, a mutual attraction was born."

In her September 24, 2010 letter, the petitioner stated that she was introduced to J-P- in August 2003 when she met him and a mutual friend for lunch. She stated that she and J-P- flirted with one

[1] Name withheld to protect individual's identity.

another and that she was happy to learn that he was not married. According to the petitioner, they had lunch with one another again two weeks later and began dating.

In her February 4, 2011 letter submitted on appeal, the petitioner reiterated her assertion that she married J-P- for love, and not for immigration benefits.

The petitioner has provided two separate timelines regarding her relationship with J-P-. In her August 7, 2008 letter, she indicated that she and J-P- did not see one another during the period of time that elapsed between their first introductions in August 2003 and a Christmas party held later that year. However, in her September 24, 2010 letter she indicated that she and J-P- began dating two weeks after their initial meeting. This inconsistency diminishes the probative value of the petitioner's testimony regarding her allegedly good faith in marrying J-P-.

Although the petitioner's son and daughter-in-law also addressed the petitioner's alleged good faith entry into marriage with J-P- in their statements, their testimony lacked probative details regarding the relationship, apart from the abuse. The same is true of [redacted] and [redacted] testimony. The petitioner also submits a sworn statement of J-P- in which he asserts that the petitioner married him because she loved him, but his brief statements are insufficient to establish the petitioner's good faith marriage.

Accordingly, the relevant testimonial evidence of record fails to establish that the petitioner married J-P- in good faith.

Nor does the relevant documentary evidence demonstrate that the petitioner married J-P- in good faith. The pictures of J-P- and the petitioner indicate only that they were together on two occasions. Although the petitioner held a joint bank account with J-P-, there is no indication that both individuals had access to, and used, this account to pay for any joint expenses. The residential lease and rent receipts are not sufficient evidence that the petitioner married J-P- in good faith absent detailed, probative information about their relationship.

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

Section 204(g) of the Act

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, and the record in this case 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 J-P- 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 J-P- 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

The petitioner here has failed to comply with section 204(g) of the Act and is consequently ineligible for classification as the spouse of an alien admitted for lawful residence under section 203(a)(2)(A) of the Act based upon her marriage to J-P-. 8 C.F.R. § 204.2(c)(1)(iv). Beyond the decision of the director, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act for that additional reason.

Conclusion

As set forth above, the petitioner has failed to establish that she married J-P- in good faith or that she has complied with section 204(g) of the Act. Beyond the decision of the director, the petitioner has also failed to demonstrate her eligibility for preference immigrant classification based upon her marriage to J-P-.[2] Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her 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

[2] 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).

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.