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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



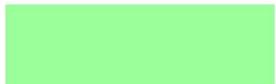
U.S. Citizenship
and Immigration
Services



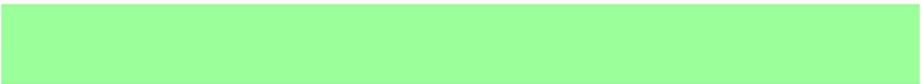
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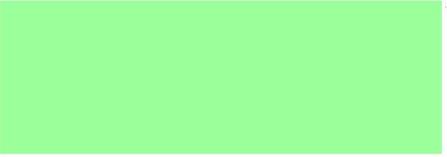


IN RE: Self-Petitioner:



PETITION: Petition for Immigrant Abused 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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

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 based on the petitioner's failure to establish that her self-petition complies with the section 204(g) of the Act, 8 U.S.C. § 1154(g), bar against the approval of immigrant visa petitions based on marriages contracted while an alien is in removal proceedings.

On appeal, counsel submits a statement.

Applicable Law

Section 204(a)(1)(A)(iii)(I) 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, 8 U.S.C. § 1154(a)(1)(J) 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:

(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.

* * *

(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.

In addition, the regulations require that to remain eligible for immigration classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

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 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, which states in pertinent part:

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.

8 U.S.C. § 1255(e) (emphasis added).

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(iii) states, in pertinent part:

Marriage during proceedings – general prohibition against approval of visa petition. A visa petition filed on behalf of an alien by a United States citizen . . . shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . deportation . . . proceedings, or judicial proceedings relating thereto. . . . [T]he burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

- (A) Request for exemption. . . . The request must be made in writing The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.
- (B) Evidence to establish eligibility for the bona fide marriage exemption. The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:
- (1) Documentation showing joint ownership of property;
 - (2) Lease showing joint tenancy of a common residence;
 - (3) Documentation showing commingling of financial resources;
 - (4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary;
 - (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the

- marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or
- (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

Facts and Procedural History

The petitioner, a citizen of Honduras, entered the United States on February 19, 2005 without inspection by an immigration officer. The petitioner was placed in removal proceedings and was ordered removed on December 1, 2005 as an alien present in the United States without being admitted or paroled. The petitioner does not claim to have departed the United States since the order of removal was entered. The petitioner married E-M-¹, a U.S. citizen, in [REDACTED] Florida on October [REDACTED] and filed the instant Form I-360 self-petition on October 25, 2011. The director issued a Request for Evidence (RFE) of good-faith entry into the marriage, among other issues. The director notified the petitioner that because she married E-M- while she was in removal proceedings, section 204(g) of the Act barred approval of her self-petition. The director provided guidance on requesting a bona fide marriage exemption from that bar. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility, and denied the petition.

The petitioner, through counsel, subsequently appealed the director's decision and submitted a statement.

We review these proceedings *de novo*. Upon a full review of the record, approval of the petition is barred by section 204(g) of the Act as the petitioner has not demonstrated her eligibility for the bona fide marriage exemption pursuant to section 245(e) of the Act. The petitioner is thus ineligible for classification as an immediate relative under section 201(b)(2)(A)(i) of the Act.

Section 204(g) of the Act and Eligibility for Immediate Relative Classification

Because the petitioner married her husband after she was ordered removed from the United States, and did not depart the United States and remain outside of the United States for two years after their marriage, her self-petition cannot be approved pursuant to section 204(g) of the Act unless she establishes the bona fides of her 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.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) 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 credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J);

¹ Name withheld to protect the individual's identity.

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 or her good-faith entry into the 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). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

In her initial Form I-360 submission, the petitioner provided a personal affidavit in which she briefly described meeting E-M- at the restaurant where she worked, and provided limited information regarding the couple's courtship, stating only that they went to restaurants and that he gave her gifts. The petitioner indicated that she and her young daughter from a prior relationship began residing with E-M- in September 2009, before turning to the details of the abuse. The petitioner also provided an affidavit from her former brother-in-law, [REDACTED] who recounted picking up E-M- at a bus stop in Honduras and taking him to meet the petitioner's parents. He stated that he subsequently came to the United States to reside with the petitioner and E-M-, and that E-M- picked him up in Texas. The petitioner also submitted unlabeled photographs of what appear to be the petitioner and E-M- at their wedding ceremony, and on two additional occasions. In addition, the petitioner provided affidavits from [REDACTED] attesting to being aware that the petitioner and E-M- were a married couple, an affidavit from [REDACTED] stating that she was a witness to E-M-'s and the petitioner's wedding ceremony, and [REDACTED] who attested to knowing the couple and performing their wedding ceremony as a notary public. The petitioner also submitted copies of her federal income tax returns for 2008, 2009, and 2010. Each return reflects the petitioner's filing status as "Head of Household." E-M- was not included on the returns.

In response to the RFE, the petitioner provided an additional personal affidavit, dated July 29, 2013, in which she provided a credible explanation for her lack of traditional joint documentation with E-M-. The petitioner described the gifts that E-M- gave her during their courtship, and briefly described their wedding reception and additional social occasions that she and E-M- shared. The petitioner discussed E-M-'s trip to Honduras to meet her parents, and a road trip the couple took to meet his parents in [REDACTED] and her sisters in North Carolina. Also in response to the RFE, the petitioner submitted an affidavit from [REDACTED], who attested to knowing the petitioner since the petitioner's arrival in the U.S., and observing that the petitioner and E-M- were initially happy. [REDACTED] did not describe occasions shared with the petitioner and E-M-. The petitioner also submitted an additional affidavit from [REDACTED] again attesting to performing the petitioner's and E-M-'s wedding ceremony. The petitioner also provided affidavits from [REDACTED] that did not address the bona fides of the petitioner's marriage to E-M-, and low resolution photocopies of three unlabeled photographs.

In her decision, the director correctly determined that the petitioner established that she married E-M- in good faith by a preponderance of the relevant evidence, but that she failed to establish eligibility for the bona fide marriage exemption by clear and convincing evidence as required by section 204(g) of the Act. The director correctly indicated that the petitioner's affidavit and the third-party affidavits contained insufficient probative information to establish the petitioner's intent in marriage under the heightened evidentiary standard.

On appeal, the petitioner, through counsel, submits no additional evidence to establish her eligibility for the bona fide marriage exemption, such as more detailed affidavits. On the appeal notice, counsel asserts that the director inappropriately insists on the production of traditional joint documentation that does not exist in this matter due to the dynamics of the petitioner's abusive relationship. A review of the director's decision shows that the director did not insist on a specific type of evidence, but rather denied the petition because the petitioner failed to provide sufficient evidence to satisfy her burden of proof to establish by clear and convincing evidence that she is eligible for the bona fide marriage exemption.²

Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). The petitioner may establish eligibility for the bona fide marriage exemption by submitting "[a]ffidavits of third parties having knowledge of the bona fides of the marital relationship" as described in the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B)(5). Here, the petitioner's affidavit contains only general descriptions of the petitioner's courtship and subsequent marriage and marriage ceremony. Further, although the record indicates that there are several individuals who may have personal knowledge of the petitioner's relationship with E-M-, including her sisters, parents, and friends, the petitioner has not submitted third-party affidavits from these individuals that contain sufficient probative information to meet the petitioner's burden of proof under the heightened clear-and-convincing standard required to establish eligibility for the bona fide marriage exemption at section 245(e) of the Act. The remaining third-party affidavits are not sufficiently detailed to establish the petitioner's eligibility. Although the affidavits attest to knowledge that the petitioner is married to E-M-, that a marriage ceremony occurred, and that the couple was happy at the beginning of the relationship, such statements do not provide sufficient probative information from which USCIS may conclude that the marriage is bona fide and not entered into for the purpose of evading the immigration laws. Further, the submitted affidavits do not comply with the technical requirements delineated at 8 C.F.R. § 204.2(a)(1)(iii)(B)(5). The petitioner submitted photographs of her and E-M-, but did not provide a description of the photographs, or state where and when they were taken.

The present record does not show by clear and convincing evidence that the petitioner entered into the marriage in good faith as required to establish eligibility for the bona fide marriage exemption of section 245(e) of the Act from the bar at section 204(g) of the Act. Because the petitioner is not exempt from section 204(g) of the Act, she has also failed to demonstrate her 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).

² The director's decision refers to "discrepancies" in the submitted evidence; however, as the decision does not actually identify any discrepancies in the evidence, this sentence of the director's decision is withdrawn.

Conclusion

On appeal, the petitioner has not demonstrated her eligibility for the exemption under section 245(e)(3) of the Act to the bar at section 204(g) of the Act. The petitioner has therefore also not established her eligibility for immediate relative classification.

The petitioner bears the burden of proof to establish eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed.