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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

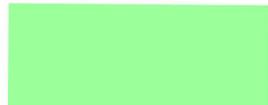


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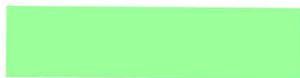
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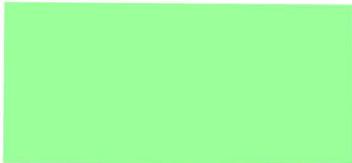
IN RE:

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 Director, Vermont Service Center (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 pursuant to 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 U.S. citizen.

The director denied the petition for failure to establish that the petitioner entered into marriage with his former spouse in good faith, and was not subject to the bar on approval of petitions based on marriages entered into while the alien was in removal proceedings at section 204(g) of the Act.

On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

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 further 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 explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

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

(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.

The record in this case indicates that the petitioner was in removal proceedings at the time of his marriage.¹ In such a situation, section 204(g) of the Act prescribes:

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 his 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).

¹ The petitioner has been in removal proceedings since July 12, 2009, and married his spouse, a lawful permanent resident, on March 2, 2010.

- (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 or a lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . removal 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.* [T]he 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Trinidad and Tobago who entered the United States as a visitor on May 26, 2004, and remained in the United States without authorization. On July 12, 2009, the petitioner was placed in removal proceedings. The petitioner married B-P-,² a lawful permanent resident, in New York on March 2, 2010, thus subjecting himself to the bar on approval of immigrant petitions based on marriages entered into while the alien is in removal proceedings at section 204(g) of the Act.³ The petitioner's former wife became a U.S. citizen on December 2, 2010. He filed the instant Form I-360 on August 6, 2012. The petitioner subsequently received a Request for Evidence (RFE) that, among other things, the petitioner entered into marriage with his former wife in good faith. Counsel responded to the RFE with additional evidence, which the director found insufficient, and denied the petition.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On a full review of the record, we find that: (1) the petitioner has not demonstrated that he married his former wife in good faith; (2) he is subject to the bar on approval of petitions under section 204(g) of the Act. Beyond the director's decision, the petitioner is ineligible for immediate relative classification based on being subject to the bar at section 204(g) of the Act.⁴

Good-Faith Entry into the Marriage

De novo review of the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner married B-P- in good faith. The record below contains the following: affidavits from the petitioner and his former wife, a joint income tax record for 2010, a bank letter showing the petitioner and his wife have a joint account, a blank check and a check reorder form, and photographs. The petitioner asserted in his affidavit, dated September 25, 2013, that upon his move from his marital residence, documents to establish his good faith entry into the marriage were no longer accessible to him. Traditional forms of joint documentation are not required to

² Name withheld to protect the individual's identity.

³ See 8 C.F.R. § 245.1(c)(8)(ii)(A) (Section 204(g) of the Act applies and proceedings remain pending until the removal order is executed and the alien departs the United States, is found not to be removable or the proceedings are otherwise terminated.).

⁴ 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).

demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). In this case, the petitioner declared in his affidavit, dated July 24, 2012, that he was at his apartment when his cousin introduced him to B-P- before they all went to a club. The petitioner recounted spending time with B-P- before they married, briefly stating that he cooked for B-P-, watched television with her, and that they shopped and dined together at a mall. The petitioner declared that they mutually decided to marry, and that his uncle and a friend of B-P- were present when they wed on March 2, 2010 at City Hall. He stated that afterwards they went to a restaurant. The petitioner recounted that they did not have much money to spend on their apartment, but his former wife kept them organized. The petitioner did not describe in any detail his first meeting with B-P- at his apartment and at the club, and gave only a cursory description of his courtship, engagement, wedding, joint residence, and shared experiences with his former wife, apart from the abuse.

To demonstrate that his entry into his marriage with B-P- was in good faith, the petitioner submitted a copy of a request for a bona fide marriage exemption that his former wife submitted in conjunction with a Petition for Alien Relative (Form I-130) filed on the petitioner's behalf. In the request for exemption, B-P- recounted that in March 2008, when she and her friends were going to a club, the petitioner was introduced to her by her friend's daughter-in-law. She declared that at the club the petitioner did not dance or speak to her, but a few days later her friend's daughter-in-law told her that the petitioner wanted her number. B-P- stated that she told the petitioner that she was married, and when she talked to the petitioner two weeks later told him that her marriage was over. She recounted that they immediately started dating and lived together in November 2009. B-P- indicated that they wed after her divorce became final in December 2009, but her request for an exemption lacks a detailed description of her courtship, engagement, wedding, and shared residence and experiences with the petitioner. More importantly, the request for an exemption doesn't provide any insight into the petitioner's intent upon entering into his marriage.

The joint income tax return, bank account letter, blank check and check reorder forms, and photographs do not demonstrate that the petitioner's entry upon the marriage with his former wife was in good faith. The blank check and check reorder forms show the names and address of the petitioner and his former wife. The bank letter shows that the petitioner and his former wife had a joint account, but provides no details about the account's activities. The joint tax record for 2010 is unsigned and is not accompanied by any evidence that it was filed with the Internal Revenue Service (IRS). The photographs are of unspecified individuals at unspecified locations and dates.

On appeal, counsel submits new evidence to demonstrate the petitioner's marital intent. The new evidence of joint bank records, and a joint tax return transcript for 2010 show the names and address of the petitioner and B-P-, but the bank account statements lack detailed information about deposits. Although the joint tax record for 2010 reflects wages or salaries of \$29,879, the joint bank account records do not show these deposits. Furthermore, without a detailed probative description from the petitioner about his relationship with B-P-, the submitted relevant evidence fails to establish the petitioner's intent upon entry into the marriage.

Counsel contends that the director's findings of joint residence and battery are probative in establishing the petitioner's entry into the marriage in good faith. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other. Section 204(a)(1)(A)(iii)(I)(aa) of the Act specifically requires the petitioner to establish that "the marriage . . . was entered into good faith by the alien." Thus, the statutory requirements of good faith entry into the marriage, joint residence, and battery or extreme cruelty are separate from each other, and therefore a petitioner must separately establish each requirement.

Counsel declares that the director erred by discounting the actions of the petitioner's former wife in filing a Form I-130 and request for exemption on the petitioner's behalf. In this proceeding the petitioner must demonstrate his own intentions in marrying B-P-. The petitioner bears the burden of proof to establish not only the validity of their marriage, but also his own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(a)(A)(iii) of the Act further explicate the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). Moreover, in making a decision on a self-petition U.S. Citizenship and Immigration Service (USCIS) has sole discretion to determine what evidence is relevant and credible and the weight to be given that evidence. 8 C.F.R. § 204.2(c)(2)(i). In this case, the petitioner provided only a cursory description of his marital relationship, and the remaining relevant evidence lacks probative information to meet his burden of proof.

Counsel cites several decisions to argue that the intent of the parties at the time of the marriage determines if a marriage was entered into in good faith.⁵ The cited cases indicate that in determining whether a marriage was entered into in good faith, the inquiry turns on whether the parties intended to establish a life together at the time of the marriage. We have described the deficiencies in the relevant evidence, foremost being that the record lacks a substantive description from the petitioner about his marital relationship, and that without a probative description from the petitioner, he cannot establish his intent upon entry into the marriage. When viewed in the totality, the relevant evidence does not demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

Because the petitioner married his former wife while he was in removal proceedings and did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage

⁵ Counsel cites *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975), *Matter of McKee*, 17 I&N Dec. 322 (BIA 1980), *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1988), *Matter of Soriano*, 19 I&N Dec. 764 (1988).

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); *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.

As the petitioner failed to establish his good-faith entry into his former marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his second marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Because the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate his 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).

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. 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. The petition remains denied.