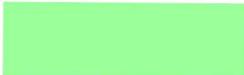


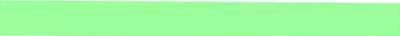


U.S. Citizenship
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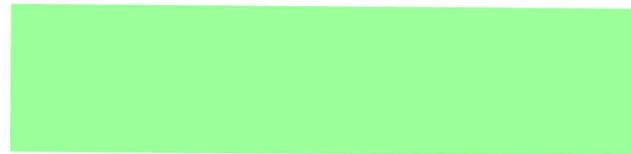


Date: **SEP 25 2014** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

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:

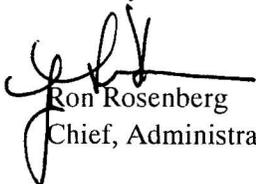


INSTRUCTIONS:

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.

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 because the petitioner married her husband while she was in removal proceedings and did not establish by clear and convincing evidence that she entered into the marriage in good faith, and was consequently subject to the bar to approval of her petition under section 204(g) of the Act.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) 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 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) of the Act, 8 U.S.C. § 1154(a)(1)(B)(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 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 further explicated 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)(B)(ii) of the Act are further explicated 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 her marriage. 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) of this section, except as provided in section 1255(e)(3) of this title, a petition may not be approved to grant an alien . . . preference 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 be admitted or 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 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.

8 U.S.C. § 1255(e) (emphasis added).¹

Pertinent Facts and Procedural History

The petitioner is a citizen of Nicaragua who entered the United States as a visitor on May 6, 1998, and remained in the United States without authorization. On June 30, 2010, the petitioner was placed in removal proceedings.² The petitioner married O-H-³ a lawful permanent resident, on February 5, 2011, thus subjecting herself 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.⁴ The petitioner filed the instant Form I-360 on September 20, 2011. The petitioner subsequently received a Request for Evidence (RFE) that, among other things, the petitioner establish by clear and convincing evidence that she entered into the marriage in good faith. Counsel responded to the RFE with additional evidence, which the director found insufficient, and the director denied the petition.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 204(g) of the Act

In her initial statement the petitioner discussed only the abuse in her marriage. In her second statement the petitioner generally stated that she first met O-H- at a friend's house and that they

¹ "Clear and convincing evidence" is a more stringent standard than "preponderance of the evidence." *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.").

² On May 28, 2013, the immigration judge ordered that the petitioner's removal proceedings be administratively closed. Administrative closure does not result in a final order and is not equivalent to the termination of removal proceedings. *Matter of Avetisyan*, 25 I&N Dec. 688, 695 (BIA 2012).

³ Name withheld to protect the individual's identity.

⁴ 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.).

exchanged phone numbers. She stated that they would go out together to dances and to places to eat. In her third statement, the petitioner stated that she first met her husband at a friend's house, and he was given her telephone number. She stated that they would talk on the telephone and when their relationship became more serious they spent time at each other's apartments. The petitioner stated that O-H- moved in with her after he lost his job, and after five months they decided to get married. She stated that O-H- was an excellent person and she fell in love with him. The petitioner does not provide any probative, detailed information about her first meeting with O-H-, their courtship, engagement, her decision to marry, marriage ceremony, joint residence, and shared experiences, apart from the abuse.

In addition to her statements, the petitioner also submitted affidavits from her friends, [REDACTED] her employer and friend, [REDACTED] and a letter with an indecipherable signature from a friend. Her friends stated that they attended the petitioner's and O-H-'s marriage ceremony and her employer stated that the petitioner and O-H- visited her at her house after their wedding. Ms [REDACTED] also mentioned that she visited the couple many times at their residence and briefly stated that they "seemed like a stable and happy couple." The friend with the indecipherable signature stated that she/he was often received by the petitioner at her home. The petitioner's friends provide little substantive information about the petitioner's good-faith intent upon marrying O-H- or their observations of the petitioner and her husband as a couple.

The petitioner submitted photographs of the petitioner and O-H- pictured together or with other people at their wedding reception, and photographs of the couple taken on four separate unidentified occasions, and copies of three envelopes addressed to O-H- at the couple's joint residence. The photographs show the petitioner and O-H- together at their marriage ceremony and on a few other occasions, but do not establish the petitioner's intentions in marrying O-H-. Although the envelopes are addressed to O-H- at the marital home, they are not probative of the petitioner's good faith intentions in marrying.

On appeal, counsel addresses the inconsistencies noted by the director regarding how the petitioner met O-H-, and the date that the couple started to reside together. Counsel also states that given her short marriage the petitioner does not have joint documents to establish the bona fides of her marriage.

The inconsistencies noted by the director are not significant, and we recognize that traditional forms of joint documentation are not required 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).⁵ However, we do concur with the director's determination that the petitioner's statements lacked specifics about her "experiences, thoughts, or feelings during [her] acquaintance and courtship; and details of [her] relationship or memorable experiences [she] may have shared."

⁵ 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." *See* 8 C.F.R. § 204.2(c)(2)(vii).

Overall, the petitioner's statements about the first time she met her husband, their courtship, engagement, decision to marry, marriage ceremony, joint residence, and shared experiences are general and lack detail. The affidavits from her friends do not provide detailed, probative information about the petitioner's intentions in marrying O-H-. Without a probative account from the petitioner or any of the affiants of her relationship with O-H-, the remaining evidence of photographs and envelopes are not sufficient to demonstrate by clear and convincing evidence her good faith intentions in marrying.

Upon a full review of the record, the petitioner has not demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. She has therefore not established that she is exempt from section 204(g) of the Act.

Eligibility for Immediate Relative Classification

The petitioner has not established that she has a qualifying relationship with a lawful permanent resident and that she is exempt from section 204(g) of the Act, and has not demonstrated her eligibility for preference classification, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

Entry into the Marriage in Good Faith

Beyond the decision of the director, the record also fails to establish by a preponderance of the evidence that the petitioner married her husband in good faith.⁶

As previously discussed, the petitioner's statements about the first time she met her husband, their courtship, engagement, decision to marry, marriage ceremony, joint residence, and shared experiences are general and lack detail, and the affidavits from her friends do not provide detailed, probative information about the petitioner's intentions in marrying O-H-. The same evidence that the petitioner submitted to show, by clear and convincing evidence, her good faith intent in marrying O-H- is also insufficient to meet her burden of establishing by a preponderance of the evidence that she married O-H- in good faith, as section 204(a)(1)(B)(ii)(I)(aa) of the Act requires.

Conclusion

On appeal, the petitioner has not established that she complied with the provisions of section 204(g) of the Act and that she is eligible for immigrant classification based on her marriage to a lawful permanent resident. Beyond the director's decision, the petitioner has not demonstrated that she entered into her marriage in good faith as required under section 204(a)(1)(B)(ii)(I)(aa) of the Act. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.⁷

⁶ To demonstrate eligibility under section 204(a)(1)(B)(ii)(I)(aa) of the Act, the petitioner must establish her good-faith entry into the qualifying relationship by a preponderance of the evidence.

⁷ Section 823 of the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005) amended the relief sought under the Cuban Adjustment Act (CAA) to include abused spouses of qualifying Cuban permanent residents. See section 101(a)(51) of the Act, which defines the term "VAWA

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.

self-petitioner.” The petitioner is not precluded from filing for adjustment of status under the CAA. An application for adjustment of status under the CAA is submitted on a Form I-485, and filed with the U.S. Citizenship and Immigration Services (USCIS) Lockbox. See <http://www.uscis.gov/i-485-addresses>.