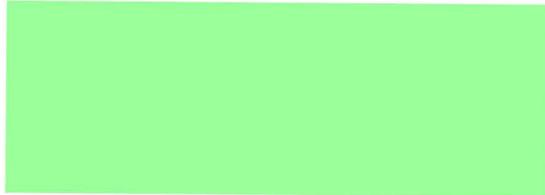


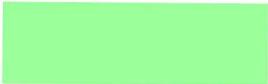


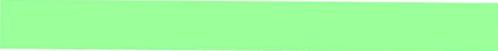
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **SEP 30 2014**

Office: VERMONT SERVICE CENTER File: 

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 Vermont Service Center acting 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.

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 her U.S. citizen former spouse.

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification because she failed to establish eligibility for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act. The director also determined that she failed to establish that she entered into marriage with her former husband in good faith.

On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

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 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 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, 8 U.S.C. § 1154(g), prescribes, in pertinent part:

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, 8 U.S.C. § 1255(e), which states:

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.

(Emphasis added)

The eligibility requirements for a self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act 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(c) of the Act, section 204(g) of the Act, and section 204(a)(2) 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 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Ethiopia who entered the United States on April 6, 2005, as a nonimmigrant visitor. On November 11, 2005, the petitioner was placed into removal proceedings which remain pending.¹ The petitioner married M-B-², a U.S. citizen, in ██████████ County, Maryland on May 19, 2008, 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.³

The petitioner filed the instant Petition for Abused Spouse (Form I-360) on March 15, 2012. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the petitioner's eligibility for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act, eligibility for immigrant classification based on her marriage to M-B-, and entry into their marriage in good faith. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

¹ The petitioner's removal proceedings were administratively closed by the Arlington Immigration Court on March 19, 2013. As the proceedings were not terminated and none of the other exemptions at 8 C.F.R. § 245.1(c)(8)(iii) apply, the petitioner remains subject to section 204(g) of the Act.

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.).

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that she married M-B- in good faith. In response to two RFEs, the petitioner submitted a personal affidavit, affidavits from family and friends, a copy of an [REDACTED] life insurance policy application, a copy of joint letters from [REDACTED] and [REDACTED] and a copy of a [REDACTED] statement. The life insurance application was filed by M-B- designating the petitioner as the beneficiary and speaks more towards his marital intentions and not the petitioner's intentions. The submitted bank letters are dated February 23, 2009, approximately nine months after the petitioner and M-B- were married and December 14, 2011, approximately ten months after they separated. In addition to being dated well after the petitioner and M-B- were married, the letters do not show account activity that would indicate its use for shared marital expenses and therefore have little probative value in demonstrating that the petitioner entered into her marriage in good faith. The [REDACTED] statement shows that the account was in M-B-'s name and lists only one cellular telephone number. This statement likewise does not demonstrate that the petitioner and M-B- had access to the account and shared any fiscal responsibilities.

Regardless of the deficiencies of the record, 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). 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." See 8 C.F.R. § 204.2(c)(2)(vii). In her affidavit submitted in response to the second RFE, the petitioner stated that she first met M-B- through a friend that she knew through work. The petitioner recounted that after dating for two months, M-B- asked her to marry him and she agreed. She then stated that they got married a week later and briefly listed some activities that they enjoyed doing together. She did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the abuse. The affidavits of the petitioner's family and friends submitted below also did not contain probative details regarding the petitioner's intentions in marrying M-B-. The text of the affidavits from [REDACTED] and [REDACTED] submitted in response to the first RFE, is repeated nearly verbatim, which detracts from their credibility as evidence of these individuals' personal knowledge of the relationship. In response to the second RFE, the petitioner submitted second affidavits from [REDACTED] and an affidavit from her twin sister [REDACTED]. They attested to knowing the petitioner and her husband as a married couple, but they did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

On appeal, counsel claims that the record contains more than sufficient evidence to prove that the underlying marriage was bona fide. Counsel asserts that the petitioner's previous attorney did not

properly advise her on what documents to obtain as evidence of her bona fide marriage to M-B- and that as a result, they have only recently attempted to do so. Counsel states that the bank statements will take seven to ten days to obtain. On appeal, counsel submits: a second affidavit from the petitioner; a second affidavit from her brother [REDACTED] an affidavit from her brother-in-law [REDACTED] a letter from [REDACTED] dated December 4, 2013, stating that [REDACTED] will review the petitioner's account and contact her in writing with the results when completed; photographs of the petitioner and M-B- on their wedding day and several other unidentified occasions; and previously submitted documents. In her second affidavit, the petitioner repeats her earlier statements regarding how she met M-B- and how they got married after two months of dating. The petitioner adds that her parents were not very happy with her decision but that they supported her because she was in love with M-B-. She states that though she and M-B- had two bank accounts, M-B- was fiscally irresponsible and the petitioner had to pay their bills using her separate account. The petitioner lists activities that they did together and briefly mentions that seven months after they were married, she became pregnant with M-B-'s child and he forced her to terminate the pregnancy. She does not further discuss this event or otherwise provide substantive information regarding her good faith marital intentions. The petitioner also states that she is in the process of obtaining account information from [REDACTED] but that it would take seven to ten days to receive.⁴ In his affidavit, [REDACTED] states that the petitioner first introduced M-B- to him at a family function and that when they went out to a club afterwards, he could tell they were in love. Mr. [REDACTED] states that he supported her decision to marry M-B- and celebrated their marriage with them at an Ethiopian restaurant after the civil ceremony. He did not, however, further provide probative details to adequately address the petitioner's good faith intent. In his affidavit, [REDACTED] states that he liked M-B- when he first met him and that he supported the petitioner's decision to marry M-B-. He recounts spending time with the petitioner and M-B- on two occasions but does not probatively describe either of these events or provide substantive information regarding the petitioner's marital intentions.

Upon *de novo* review, the petitioner has failed to establish that she married M-B- in good faith. The petitioner's affidavits predominantly spoke of the abuse and did not provide sufficient detail to adequately address her good-faith intent upon marrying M-B-. The letters from friends also failed to provide relevant, substantive information and did not show that the authors had any personal knowledge of the relationship. The photographs show that the petitioner and M-B- were pictured together but absent the petitioner's probative testimony about her good-faith marital intentions, the photographs do not demonstrate this. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her former husband 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 her former husband while she was in removal proceedings and did not 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

⁴ To date, we have not received any additional evidence showing that the petitioner and M-B- both accessed their [REDACTED] joint account or otherwise shared residential and financial responsibilities.

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. *See 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. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *see also 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. *See* Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); *see also* 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *See Matter of Arthur*, at 478.

As the petitioner failed to establish her good-faith entry into her marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she also has not demonstrated the bona fides of her 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

The record reflects that because the petitioner is not exempt from section 204(g) of the Act, she has failed to demonstrate 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).⁵

Conclusion

On appeal, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, that she is exempt from the bar to approval of her petition under section 204(g) of the Act, and that she is eligible for immediate relative classification. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁵ To the extent that the director determined that the petitioner failed to establish a qualifying relationship because she did not demonstrate that she that she is exempt from section 204(g) of the Act, that portion of the decision is withdrawn.