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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

APR 17 2007

EAC 06 065 50693

IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadnick

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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)(A)(iii) of 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 pursuant to section 204(g) of the Act and because the petitioner did not establish that she entered into marriage with her husband in good faith.

On appeal, the petitioner submits a letter. On the Form I-290B, the petitioner requested 90 days to submit a brief and evidence in support of her appeal. The petitioner dated the appeal October 11, 2006. To date, over five months later, the AAO has received nothing further from the petitioner.

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 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 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.

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of the Ukraine who entered the United States on June 25, 1993 as a nonimmigrant visitor (B-2). On February 14, 1997, the petitioner was served with an Order to Show Cause and Notice of Hearing in deportation proceedings, which charged the petitioner as deportable for having remained in the United States beyond her period of authorized stay. On April 24, 1998, the Orlando Immigration Court granted the petitioner voluntary departure by August 24, 1998, with an alternate order of deportation to Germany or the Ukraine should the petitioner fail to depart by that date. The petitioner timely filed an appeal, which the Board of Immigration Appeals dismissed on May 31, 2002. Citizenship and Immigration Services (CIS) records show that the petitioner failed to voluntarily depart the United States pursuant to the order of the Immigration Judge.

On May 17, 2004, the petitioner married D-H-¹, a U.S. citizen, in Florida. The petitioner filed this Form I-360 on December 27, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage. The petitioner requested additional time to respond to the RFE. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, good-faith entry into the marriage. The petitioner timely responded with additional evidence. On September 13, 2006, the director denied the appeal pursuant to section 204(g) of the Act and lack of the requisite good-faith entry into the marriage. The petitioner timely appealed.

The petitioner states her reason for appeal as “To contest a non-good marriage” and discusses aspects of her husband’s abuse, but does not address the grounds for denial. We concur with the director’s determination. The petitioner’s statements on appeal fail to overcome the grounds for denial.

¹ Name withheld to protect individual’s privacy.

Good Faith Entry into the Marriage

The petitioner submitted the following evidence relevant to her allegedly good-faith entry into marriage with her husband:

- The petitioner's undated letter initially submitted with the Form I-360 and her June 6, 2006 letter submitted in response to the RFE and NOID;
- Letters from the petitioner's friends, [REDACTED], and Mr. or Ms. [REDACTED] (first name illegible);
- A copy of a card sent to the petitioner from her husband when the petitioner was in the custody of the former Immigration and Naturalization Service (INS) in which her husband references a "Power of Attorney" form that he wants her to sign and asks the location of the title to her home; and
- Seven photographs of the petitioner and her husband taken on their wedding day and the following day.

In her undated letter, the petitioner states that she met her husband in April 2004 and he moved in with her. In her June 6, 2006 letter, the petitioner states that her husband first moved into her house as a roommate in March of 2000. The petitioner does not explain the discrepancy between her two statements regarding the date she met her husband. In her June 6, 2006 letter, the petitioner reports that after her husband moved in with her, she helped him, he liked how she treated him and he was comfortable and happy. The petitioner states:

We got married in May of 2004. At first everything was fine. We loved each other. [He] brought me flowers, we went for walks. [He] bought me presents he could afford. This went on for the first 3 months. He liked that I drove him to the hospital, stayed with him until late. I had to go to work early in the morning. I gave him a ride to the bank and to stores.

The petitioner does not further describe how she met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from her husband's abuse.

The petitioner's friends also fail to provide probative information to support her claim. Mr. [REDACTED] states that he never met the petitioner's husband and was out of town when the former couple was married, but that he heard about their relationship through another friend and that "at first things were great[.]" Mr. or Ms. [REDACTED] only states that the petitioner often spoke of her family life and she and her husband were in love. Ms. [REDACTED] merely attests that she attended the petitioner's wedding party and knows the petitioner's husband. Ms. [REDACTED] states, "I know that [the petitioner] got married because she loved [her husband]," yet Ms. [REDACTED] only describes affectionate behavior of the petitioner's husband. Of the petitioner's own feelings and actions, Ms. [REDACTED] simply states, "[The petitioner] was also happy to have a husband." Ms. [REDACTED] similarly describes the loving behavior of the petitioner's husband during the former couple's courtship, but of the petitioner's own behavior, Ms. [REDACTED] only states, "I know that [the petitioner] met a man, fell in love with him. The

feeling was mutual. They got married. . . . He did not have a lot of money, but always tried to bring her joy. . . . [The petitioner] appreciated this and loved [him].” None of the petitioner’s friends provide detailed accounts of her behavior and actions during her courtship, wedding and early part of her marriage sufficient to support the petitioner’s claim.

The card from the petitioner’s husband shows that they were in contact while the petitioner was in INS detention. However, in her June 6, 2006 letter, the petitioner explains that her husband’s efforts to get her to sign the “power of attorney” form and obtain the title to her home were an abusive attempt to steal her property. Accordingly, the card is more relevant to the issue of abuse rather than the petitioner’s intentions in entering the marriage. The photographs similarly fail to support the petitioner’s claim. Although they show that the former couple was together on the day of their wedding and the following day, the pictures alone do not establish that the petitioner entered into the marriage in good faith.

The petitioner submitted no other evidence of the types listed in the RFE, NOID and the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The petitioner’s brief statements do not describe in probative detail how she met her husband, their courtship, joint residence or any of their shared experiences (apart from the abuse) and the petitioner does not explain the discrepancy in her statements regarding the date that she met her husband and began residing with him. The petitioner’s friends give brief, general statements about the petitioner’s marriage, but fail to provide probative information to support her claim. Accordingly, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

As noted by the director, section 204(g) of the Act also bars the approval of this petition. The record shows that the petitioner married her husband while she remained in administrative proceedings under an order of deportation. Consequently, she is subject to section 204(g) of the Act, which states:

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], 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. The record also does not indicate that the petitioner has satisfied the bona fide marriage exception to section 204(g) of the Act, pursuant to section 245(e) of the Act, 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.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

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.

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 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). *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 be eligible for immigrant classification under section 204(a)(1)(A)(iii)(I)(aa) of the Act, a self-petitioner must demonstrate

good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. 8 C.F.R. § 204.2(c)(2)(i); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or 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). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner has failed to establish that she entered into marriage with her husband in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(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) of the Act. Accordingly, section 204(g) of the Act bars approval of this petition.

The petitioner has failed to demonstrate that she entered into marriage with her husband in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Section 204(g) of the Act also bars approval of this petition because the petitioner has not established that she resided outside of the United States for two years after her marriage or that she qualifies for the bona fide marriage exemption at section 245(e) of the Act.

In visa petition proceedings, the 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.