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U.S. Citizenship  
and Immigration  
Services

B3

FILE:

[REDACTED]  
EAC 07 022 50428

Office: VERMONT SERVICE CENTER

Date: **FEB 24 2009**

IN RE:

Petitioner: [REDACTED]

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 because the petitioner did not establish that he had a qualifying relationship with a U.S. citizen, that he was eligible for immediate relative classification based on such a relationship and that he entered into a qualifying relationship in good faith.

On appeal, counsel submits a brief.

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, 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

\* \* \*

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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 pertinent facts and procedural history. The petitioner is a native and citizen of Mali who states on the Form I-360 that he entered the United States (U.S.) on October 4, 1994. The petitioner subsequently filed a Form I-589, Request for Asylum, which U.S. Citizenship and Immigration Services (USCIS) referred to the New York Immigration Court. On August 12, 1997, an immigration judge denied the petitioner's applications for asylum and withholding of deportation, but granted the petitioner voluntary departure until October 14, 1997 with an alternate order of deportation to Mali. The record shows that the petitioner did not depart the U.S. voluntarily and did not report for his scheduled deportation on February 17, 1999.

On September 3, 1997, the petitioner married S-G-<sup>1</sup>, whom the petitioner claims is a U.S. citizen, in New York. The petitioner filed the instant Form I-360 on October 27, 2006. On May 2, 2007, the director issued a Request for Evidence (RFE) of the U.S. citizenship of S-G- and the petitioner's entry into their marriage in good faith. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish his eligibility. The director consequently denied the petition on October 17, 2007 for lack of a qualifying relationship, corresponding eligibility for immediate relative classification and good-faith entry into the qualifying relationship. The petitioner, through counsel, timely appealed.

On appeal, counsel claims that the petitioner submitted sufficient evidence of S-G-'s U.S. citizenship and the validity of their marriage. We concur with the director's determinations. Counsel's assertions on appeal fail to overcome the grounds for denial.

Beyond the decision of the director, the petitioner has failed to establish that he resided with S-G- and section 204(g) of the Act, 8 U.S.C. § 1154(g), further bars approval of this petition. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

#### *Qualifying Relationship*

The petitioner failed to establish both the U.S. citizenship of S-G- and the validity of their marriage. The petitioner submitted no evidence of S-G-'s citizenship. Although the petitioner's marriage certificate states that S-G- was born in New York, the petitioner submitted no evidence that the New York City Clerk's Office, which issued the marriage certificate, requires the parties to a marriage to submit documentation of their place of birth.

The regulation at 8 C.F.R. § 204.1(g)(3) prescribes that if a self-petitioner is unable to present evidence of the abuser's citizenship status, USCIS will attempt to verify the abuser's status through a search of USCIS records. If USCIS is unable to verify the abuser's status, the petition will be adjudicated based on the information submitted by the self-petitioner. 8 C.F.R. § 204.1(g)(3). In this case, the RFE informed the petitioner that USCIS was unable to verify the citizenship of S-G- and requested the petitioner to submit further evidence. The petitioner submitted no relevant evidence in response to the RFE.

On appeal, counsel claims that the petitioner submitted S-G-'s birth certificate showing she was born in New York. The record contains no such birth certificate and counsel does not submit a copy of

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<sup>1</sup> Name withheld to protect individual's identity.

the birth certificate on appeal. Accordingly, the petitioner has not demonstrated that S-G- is a U.S. citizen.

The petitioner has also failed to establish the validity of his marriage to S-G-. The petitioner submitted copies of the birth certificates of two of his children, [REDACTED] born on April 21, 1999 and [REDACTED], born on November 1, 2000. The birth certificates list the petitioner as the father of these children and list [REDACTED] as their mother. The petitioner submitted a copy of his petition for custody and possession filed on June 17, 2005 with the Providence, Rhode Island Family Court (Case Number [REDACTED] in which he states that he and [REDACTED] are married. The RFE specifically asked the petitioner to explain why he fathered two children with [REDACTED] when he was allegedly still married to S-G-. In response, the petitioner stated that shortly after S-G- was imprisoned for assaulting him, he met [REDACTED] in 1998 and he "liked her so much because [they] had the same last names." The petitioner explains that he and [REDACTED] "dated for a while" and had three children, [REDACTED] and [REDACTED] and they all moved to Rhode Island where they lived for five years before he and [REDACTED]. The petitioner failed to explain the discrepancy between his claim that he has been married to S-G- since 1997 and his statement on his 2005 family court petition that he and [REDACTED] are married.

The petitioner's June 15, 2007 statement lacks credibility given his own 2005 family court declaration that he and [REDACTED] are married and the birth certificates of [REDACTED] and [REDACTED] which list the petitioner and [REDACTED] as the children's parents. The petitioner submitted no evidence that under New York law, his marriage to S-G- would be valid despite his bigamy; or that his marriage to [REDACTED] was legally terminated prior to the filing of this petition and that his marriage to S-G- would then be valid under New York law.

The petitioner has not demonstrated that S-G- was a U.S. citizen and that their marriage was valid at the time he filed this petition or their marriage was legally terminated within two years of the filing of this petition. Accordingly, the petitioner has not established a qualifying relationship with S-G- pursuant to section 204(a)(1)(A)(iii)(II) of the Act.

#### *Eligibility for Immediate Relative Classification*

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that he had a qualifying relationship with S-G-. He consequently has also failed to establish that he was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

*Entry into the Marriage in Good Faith*

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with S-G- in good faith:

- The petitioner's June 15, 2007 statement;
- Copy of one blank check listing the petitioner and S-G- and a copy of one joint deposit ticket dated September 9, 1997;  
Copy of undated letters addressed to the petitioner and S-G- individually at the same address regarding their banking cards for their joint account;
- Copies of the birth certificates of the petitioner's children, [REDACTED] and [REDACTED]  
Copy of the petitioner's petition for custody and possession filed on June 17, 2005 with the Providence, Rhode Island Family Court (Case Number [REDACTED] in which he states that he and [REDACTED] are married;
- Copies of the petitioner's 1997, 1999, 2002, 2003 and 2004 income tax returns; and
- Copies of four photographs of the petitioner and S-G- on their wedding day.

In his statement, the petitioner reported that he met S-G- in January 1997 when they were coworkers, that they began living together after dating for five months and that they got married in September 1997. The petitioner does not further describe how he met S-G-, their courtship, wedding, shared residence and experiences (apart from the abuse) in any probative detail. His brief statements are insufficient to establish that he entered into their marriage in good faith.

The remaining, relevant evidence also fails to establish the petitioner's claim. The single blank check, deposit slip and bank letters do not show that the petitioner and S-G- actually used their joint bank account for any significant period of time. The photographs simply show that the petitioner and S-G- were pictured together on one occasion, which appears to be their wedding, but the photographs are undated and unidentified. The petitioner's tax returns show that he filed individually as head of household. The birth certificates of [REDACTED] and [REDACTED], born in 1999 and 2000, and the 2005 petition show that the petitioner fathered two children with [REDACTED] who he stated was his wife, while he was allegedly still married to S-G-.

The preponderance of the relevant evidence fails to demonstrate that the petitioner entered into marriage with S-G- in good faith. Apart from the petitioner's failure to meet his burden of proof in regards to his good faith, the petitioner has also failed to establish that he had a valid marriage or qualifying relationship with S-G-, as discussed above. Accordingly, the petitioner has not demonstrated that he entered or intended to enter into marriage with S-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Section 204(g) of the Act*

Beyond the director's decision, section 204(g) of the Act also bars the approval of this petition. The record shows that the petitioner married S-G- while removal proceedings were pending against him. Consequently, he 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 his marriage to S-G-. 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, 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.

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 (5<sup>th</sup> Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate good faith entry into the qualifying relationship for a self-petition 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. 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 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 has failed to establish that he entered into marriage with S-G- in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has also failed to demonstrate that he qualifies for the bona fide marriage exemption from section 204(g) of the Act under the heightened standard of proof required by section 245(e) of the Act. Accordingly, section 204(g) of the Act also requires the denial of this petition.

#### *Joint Residence*

The evidence listed in the preceding section regarding entry into the marriage in good faith is also relevant to the petitioner’s alleged residence with S-G-, with the addition of the following:

- Copy of the petitioner’s marriage certificate listing a residence on [REDACTED] in New York City as the petitioner’s and S-G-’s address;
- Copy of New York City Police Department domestic incident report dated November 18, 1997, which lists the petitioner’s address as on [REDACTED] and S-G-’s address as on [REDACTED];
- November 26, 1997 and February 11, 1998 letters addressed to the petitioner at [REDACTED] in New York City from the New York County District Attorney’s Office;

- Copy of the petitioner's medical claim dated October 28, 1998 for the New York Crime Victims Board listing his address as on [REDACTED] in New York City;
- Copy of the New York State Family Court Paternity Summons (Docket Number [REDACTED]) dated June 9, 1998 and listing the petitioner's address on [REDACTED] in New York City;
- Copies of letters dated January 22 and March 12, 1999 from the New York State Child Support Enforcement Unit listing the petitioner's address on [REDACTED] in New York City;
- Copy of a Rhode Island Family Court Summons issued August 3, 2004 and listing the petitioner's address at [REDACTED] in Woonsocket, Rhode Island;
- November 28, 2006 letter from [REDACTED] the petitioner's landlord, stating that the petitioner has resided on [REDACTED] in Woonsocket, Rhode Island for the past three years; and
- November 25, 2006 letter from [REDACTED] and [REDACTED] who state that the petitioner resides on [REDACTED] in Woonsocket, Rhode Island and that they have known him since 2003.

On the Form I-360, Part 7, Section B, the petitioner stated that he lived with S-G- from 1997 until an unspecified date. The petitioner did not list the last address where he lived with S-G- or the date they last lived together at that address. In his June 15, 2007 statement, the petitioner indicated that he and S-G- moved in together in June 1997 and that he moved to Rhode Island with [REDACTED] sometime in or after 1998. The petitioner does not state the dates or location(s) of his alleged joint residence with S-G- and his brief statement that they lived together for an unspecified period is not sufficient to establish the requisite joint residence.

The remaining, relevant evidence also fails to demonstrate that the petitioner resided with S-G-. The only documents listing a common address for the petitioner are his September 3, 1997 marriage certificate, the undated blank check and the undated bank letters. All the remaining, relevant evidence lists five different addresses for the petitioner. The November 18, 1997 police report lists the West [REDACTED] address as the petitioner's residence, as do the petitioner's 1997 tax returns, the 1997 and 1998 letters from the New York County District Attorney's Office, the 1998 letter summons from the New York State Family Court and the 1999 letters from the New York State Child Support Enforcement Unit. The [REDACTED] address is also listed as [REDACTED] residence on [REDACTED]'s birth certificate. The petitioner's 1999 federal income tax return lists his address as on West [REDACTED] in New York City. His 1999 New York State income tax return lists his address as on [REDACTED] in the Bronx, the same residence listed for [REDACTED] on [REDACTED]'s birth certificate.

The remaining, relevant evidence shows that the petitioner resided on [REDACTED] and [REDACTED] in Woonsocket, Rhode Island from 2002 to the present.

In sum, the relevant evidence fails to demonstrate that the petitioner resided with S-G-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. Even if the petitioner established that he resided with S-G-, he has not shown that their marriage was valid. Accordingly, he has not demonstrated that he resided with S-G- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen, was eligible for immediate relative classification based on such a relationship, entered into such a relationship in good faith and resided with the U.S. citizen. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied. Section 204(g) of the Act further bars approval of this petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.