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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date:

JUN 09 2009

EAC 07 238 50617

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:

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, 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 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 United States citizen.

The director denied the petition for the petitioner's failure to establish that she entered into the marriage in good faith.

On appeal, counsel submits the petitioner's declaration, two affidavits, and copies of cards and letters sent to the petitioner by her spouse.

The AAO concurs with the director's determination that the petitioner has not established that the petitioner entered into the marriage in good faith.

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 explained 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 further explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico. She entered the United States in 1989 without inspection. On October 6, 2003, the petitioner's application for cancellation of removal was denied by an immigration judge in removal proceedings. The petitioner was ordered deported to Mexico and given until December 15, 2003 to voluntarily depart, but she failed to depart the United States. The petitioner appealed the immigration judge's finding to the Board of Immigration Appeals, which affirmed the judge's decision, and she filed an appeal with the Ninth Circuit Court of Appeals. The petitioner noted on an attachment to the Form I-360 that her case is remains pending in the Ninth Circuit.

The record includes the petitioner's marriage certificate showing she married A-P-¹, a United States citizen, on August 3, 2006 in the State of Colorado. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on August 3, 2007. The petitioner indicated on the Form I-360 that she had resided with A-P- from September 2006 to May 2007. The director issued a request for further evidence (RFE) on February 15, 2008 and upon review of the record, including the response to the RFE, denied the petition on May 30, 2008 finding that the petitioner failed to establish that she entered into the marriage in good faith

¹ Name withheld to protect the individual's identity.

Good Faith Entry into Marriage

The petitioner provided an August 2, 2007 personal statement appended to the petition. The petitioner stated that she first met A-P- in October 2001 and began dating toward the end of 2002. The petitioner noted that she and A-P- had been living together prior to their marriage "around September 2003." The petitioner also indicated that she had obtained a restraining order against A-P- in April 2005 and that A-P- was incarcerated for about a year and got out of jail around June or July of 2005. The record also includes a copy of a residential lease showing that the petitioner, A-P-, and the petitioner's daughter signed the lease as tenants. The lease is dated March 1, 2006 and is for a one-year term. The record also includes photographs of the couple's wedding and of the couple on a few other occasions.

The director denied the petition determining that the information submitted did not establish that the petitioner had entered into the marriage in good faith.

On appeal, the petitioner, in her June 20, 2008 declaration indicates that since A-P- was in and out of jail and had terrible credit the couple did not have any joint documents together, other than a Sears credit card. The petitioner notes that she has provided, however, many of the letters and greeting cards that A-P- sent her while he was in prison. The petitioner states that these documents show that their relationship was in good faith and shows the long history of their courtship between 2003 and 2006. The petitioner submits a photocopy of the front side of two Sears credit cards, one with her name and one with A-P-'s name. The petitioner also provides letters and greeting cards signed by A-P-, as well as an envelope stamped "Orange County Jail" postmarked March 3, 2003 and an envelope stamped "sent from state prison" postmarked August 22, 2003. One letter also includes the notation "be home in 11-15-03 93 Days."

The petitioner also provides a declaration signed by [REDACTED] on June 10, 2008. Mr. [REDACTED] declares that he knew: that the petitioner and A-P- were married and lived together; that he regularly met them for dinner as he was dating the petitioner's daughter whom he eventually married; and that in 2006 A-P- would help him walk his dogs and A-P- often told him of his love for the petitioner on their walks. The petitioner also provides an affidavit signed by [REDACTED] on June 6, 2008. [REDACTED] declares: that she witnessed A-P- propose to the petitioner as well as witnessed him bringing the petitioner flowers, and dropping by the workplace to have lunch with the petitioner.

Upon review of the information in the record, the AAO does not find the petitioner's statements probative. The petitioner does not provide any detailed information regarding the circumstances of meeting A-P- or of their subsequent courtship. The petitioner does not provide sufficient probative details of her initial relationship with A-P- that would enable United States Citizenship and Immigration Services (USCIS) to ascertain the veracity of the statements. The AAO observes that the petitioner does not indicate where the couple resided together prior to their marriage, the circumstances of A-P-'s incarcerations or the dates of those incarcerations, any information

regarding the interactions between the petitioner and A-P-, other than as it relates to the claimed abuse, or any of the information that would assist in determining that the petitioner entered into the marriage with the plan to establish a life together with A-P-. The petitioner's statements do not provide the necessary information to establish her intent upon entering the marriage.

The AAO notes that the photographs provided document that a wedding occurred and that the couple were together on a few occasions, but the photographs do not evidence the petitioner's intent upon entering the marriage. Similarly, the love letters and cards sent from A-P- to the petitioner do not evidence the petitioner's intent within the relationship. The AAO has also reviewed the statement and affidavit submitted on the petitioner's behalf. The AAO finds that the declarants indicate generally that they knew the petitioner and her former husband, visited the couple, and saw the couple together but the declarants provide no probative details regarding their observations of the petitioner's allegedly good faith entry into the marriage. The general statements made on the petitioner's behalf do not substantiate that the petitioner's intent upon marrying A-P- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage. The AAO has also reviewed the lease entered into on March 1, 2006 for a one-year term and the credit card issued to the petitioner and to A-P-. The petitioner does not provide any supplementary evidence to demonstrate that A-P- actually had access to the credit card and used the credit card or that A-P- actually resided at the location listed on the lease. There is no information in the record that the couple commingled funds or paid bills out of joint accounts.

The record lacks any independent documentary evidence suggested by the regulation including: proof that one spouse has been listed as the other's spouse on insurance policies, income tax forms, or bank accounts; detailed testimony or other evidence regarding courtship, the wedding ceremony, the shared residence, and experiences; or other types of readily available evidence such as police, medical, or court documents providing information about the relationship. The AAO finds that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fails to support a finding that she entered into this marriage in good faith. There are no probative, consistent details about the petitioner's initial relationship with A-P- and the subsequent interactions with A-P- that allow a conclusion that the petitioner entered into the marriage in good faith. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the AAO finds that the petitioner is subject to section 204(g) of the Act which further bars approval of this petition. Section 204(g) of the Act 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 in this matter shows that the petitioner married her husband while her petition for review of the Board of Immigration Appeals final decision entered on November 30, 2004 was pending before the U.S. Court District Court and the Court of Appeals for the Ninth Circuit. The record does not indicate that the petitioner resided outside of the United States for two years after her marriage.

The *bona fide* marriage exception to section 204(g) of the Act also does not apply to the petitioner. Section 245(e) of the Act 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 eligibility for 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). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) 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 relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 1154(a)(1)(J); *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. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

As the petitioner has failed to establish that she entered into her 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)(3) of the Act. Accordingly, section 204(g) of the Act also requires the denial of this petition.

Beyond the director’s decision, the petitioner is also ineligible for immediate relative classification. Section 204(a)(1)(A)(iii)(II)(cc) of the Act requires a self-petitioner to demonstrate his or her eligibility for immediate relative classification based on his or her relationship to the U.S. citizen abuser. The regulation at 8 C.F.R. § 204.2(c)(1)(iv) explicates that such eligibility requires the self-petitioner to comply with, *inter alia*, section 204(g) of the Act. As discussed above, the petitioner has failed to comply with section 204(g) of the Act. She is consequently ineligible for immediate relative classification based on her marriage to B-M- and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for this additional reason.

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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.