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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: [REDACTED]
EAC 08 163 50106

Office: VERMONT SERVICE CENTER

Date: MAY 27 2010

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)

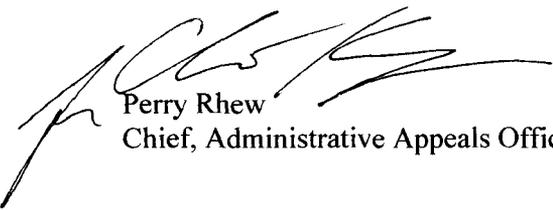
ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. 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 she married her husband in good faith. The director also found that section 204(g) of the Act further bars approval of this petition, as the petitioner was married while she was in removal proceedings and did not establish eligibility for a bona fide marriage exemption.

On appeal, counsel submits a brief and additional evidence, including a sworn statement from the petitioner and notarized statements from the petitioner's daughter, friends, and acquaintances.

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:

(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 filed 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.

* * *

(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 Haiti who attempted to enter the United States on October 13, 2002. A credible fear interview was conducted and the petitioner's asylum application was referred to an Immigration Judge. On October 16, 2002, the petitioner was personally served with a Notice to Appear for removal proceedings charging her as inadmissible under section 212(a)(7)(A)(i)(I) of the Act, 8 U.S.C. § 1152(a)(7)(A)(i)(I). The Immigration Judge denied the petitioner's application for asylum, withholding of removal and protection under the Convention Against Torture on September 24, 2003. The petitioner appealed the decision to the Board of Immigration Appeals (BIA), and on February 4, 2005, the BIA affirmed the Immigration Judge's decision. The petitioner petitioned the U.S. Court of Appeals for the Second Circuit (Second Circuit) for review of the BIA's decision, and on July 6, 2006, the Second Circuit remanded the petitioner's case to the BIA to remand to the Immigration Judge for adjudication of the Form I-485, Application to Register Permanent Residence or Adjust Status, filed by the petitioner. On June 29, 2009, the Immigration Judge reinstated his September 24, 2003 decision denying the petitioner's applications for relief and ordering her removed. On January 29, 2010, the BIA ordered the petitioner's removal proceedings administratively closed, pursuant to the Secretary of Homeland Security's designation of Haiti under the Temporary Protected Status (TPS) Program through July 22, 2011.

On February 24, 2004, the petitioner married [REDACTED]¹, a U.S. citizen, in New York. [REDACTED] subsequently filed a Form I-130, Petition for Alien relative, and the petitioner concurrently filed a

¹ Name withheld to protect individual's identity.

Form I-485 adjustment application. The petitioner filed the instant Form I-360 on May 7, 2008. On January 21, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage. The director also instructed the petitioner that her petition was deniable pursuant to section 204(g) of the Act, and specified what additional information and evidence the petitioner should submit to request a bona fide marriage exemption from the bar to approval of her petition under section 204(g) of the Act. The petitioner, through counsel, responded with additional evidence. On May 27, 2009, the director denied the instant I-360 petition because the petitioner did not establish that she married her husband in good faith. The director found that section 204(g) of the Act further barred approval of the petition and that the petitioner did not establish that she qualified for a bona fide marriage exemption. The petitioner, through counsel, timely appealed.

On appeal, counsel asserts that the record contains more than sufficient evidence to establish that the petitioner married ██████ in good faith. As supporting documentation, counsel submits excerpts from previously submitted documentation and submits additional evidence, including a sworn statement from the petitioner and notarized statements from the petitioner's daughter, friends, and acquaintances. Counsel also asserts that "[t]he Service misapplied the law in the instant case when it required that Appellant submit a bona fide marriage exemption."

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claim that she married her husband in good faith:

- The petitioner's sworn statements, dated May 1, 2008, submitted at the time of filing; dated April 16, 2009, submitted in response to the RFE; and dated June 16, 2009, submitted on appeal;
- The notarized statements from the petitioner's daughter, ██████ dated April 26, 2008; April 7, 2009; and June 19, 2009, respectively;
- The notarized statements from ██████, dated April 7, 2009 and June 10, 2009, respectively;
- The notarized statements from ██████ dated April 15, 2008, April 8, 2009, and June 14, 2009, respectively;
- The notarized statement from ██████ dated June 15, 2009;
- The notarized statement from ██████ dated June 17, 2009;
- The notarized statement from ██████ dated June 12, 2009;
- The notarized statement from ██████ dated June 9, 2009;
- The notarized statement from ██████, dated June 12, 2009;
- The notarized statement from ██████ dated April 13, 2009;
- Statements from Citibank addressed to the petitioner and ██████, dated September 11-October 8, 2007, October 9 – November 7, 2007, December 10 - January 8, 2008, February 8 – March 9, 2008, and March 10 – April 7, 2008, respectively;
- A voided blank check from the Citibank account of the petitioner and ██████;
- A letter from Citibank, addressed to the petitioner, dated April 7, 2009, stating that the

- checking account for the petitioner and [REDACTED] was closed in June 2008; and
- Photocopies of photographs.

In her May 1, 2008 statement submitted at the time of filing, the petitioner states that in April 2003, she met [REDACTED] at a communion party that she attended with her daughter at a friend's house in Elmhurst, New York. The petitioner states that she and [REDACTED] continued to correspond by phone until July 2003, when she invited him to her house for dinner, and that, after dinner, she told the petitioner that she "was strictly looking for a serious relationship" and that she "was a religious woman and that if [they] were ever [to] get married [she] would prefer it to be in [her] church." The petitioner reports that in September 2003, [REDACTED] proposed to her at her house, and in February 2004, they were married at City Hall in the presence of her cousin, [REDACTED] and also [REDACTED], [REDACTED], and [REDACTED]. The petitioner states that after the wedding ceremony, they all went to celebrate at a diner in Long Island. The petitioner states that after their marriage, [REDACTED] moved into her house at [REDACTED] in Long Island, and that they had a "great marriage" until August 2004, when she started attending English as a Second Language (ESL) classes. The remainder of the statement discusses the abuse and reports that [REDACTED] moved out in December 2007.

In her April 16, 2009 statement submitted in response to the RFE, the petitioner states that in July 2003 she invited [REDACTED] to her home and "[t]he power of love overcame [them] very quickly." The petitioner states that they were always together and sometimes with her daughter, that they went to the park and sometimes to the buffet restaurant. The petitioner states that [REDACTED] proposed to her in September 2003, but she explained to him that she needed to wait until she received an answer about her immigration case, whereupon [REDACTED] told her that "he would get further information on lawyers." The petitioner states that [REDACTED] introduced her to his mother and stepfather and that he promised to introduce her to his other family members in Ohio. The petitioner states that during their marriage they did not have any bills together because they had different cell phone companies and her contract with her landlord "included all utilities such as electricity, gas and telephone in the rent." The petitioner states that they did not file their taxes together because [REDACTED] filed his before they were married, and they agreed to file together the next tax year. The petitioner states that she gave [REDACTED] access to her banking account, as he did not have one. The petitioner states that [REDACTED] decided to petition for her and her daughter, whereupon she consulted with her attorney, who told her that she could "have two cases in immigration." The petitioner states that their marriage went well until August 2004, when she decided to take ESL classes, but after she quit school, "things got back to normal between [them]." The petitioner explains that after a few months of marriage, [REDACTED] began drinking, and that in the spring of 2005, she counseled her husband about his drinking and cursing, and told him that he could succeed in life. The petitioner states that afterwards, "our relationship was ok, but he started doing bad things again . . ." The remainder of the statement discusses the abuse.

In her June 16, 2009 statement submitted on appeal, the petitioner asserts that her marriage to [REDACTED] "was a real marriage." The petitioner also reiterates her explanation of why the former couple did not have joint utility or cellular telephone accounts.

In her April 26, 2008 statement submitted at the time of filing, the petitioner's daughter, [REDACTED]

██████████, states that she thought it was wonderful when her mother married ██████████, who treated her like his own daughter. ██████████ also states that about a year after her mother married ██████████, her mother saw him with another woman, and that ██████████ eventually “got meaner to [her] mother.” In her April 7, 2009 statement submitted in response to the RFE, ██████████ makes statements that are in significant part identical or substantially similar to the petitioner’s May 1, 2008 statement, phrasing which calls into question whether the statements expressed by ██████████ are her own. In her June 19, 2009 statement submitted on appeal, ██████████ states, in part, that she, the petitioner, and ██████████ lived together from February 2004 to December 2007, and that, in the beginning, ██████████ was a good person and “[took her] and [her] mom out all the time.” ██████████ also states that they “would go out as a family” and that ██████████ helped her with homework and other school projects.

In his April 7, 2009 statement, ██████████ identifies himself as the petitioner’s nephew and states that he “arrived late toward the ending of the wedding” of the petitioner and ██████████” and that he “greeted and congratulated them on their new marriage outside the town hall” and “[e]very now and then, [he] would visit them in their home.” ██████████ states further, “In the beginning of the marriage . . . they were really in love with each other” and “[the petitioner] would tell [him] that they had a great relationship and her daughter ██████████ was also happy.” In his June 10, 2009 statement, ██████████ states, in part, that the petitioner and ██████████ lived together in the petitioner’s house after their marriage, and that he visited them and sometimes had dinner with them at their house.

In her April 15, 2008 statement, ██████████ states that she has known the petitioner since 2003, that she was the petitioner’s landlord, and that the petitioner and ██████████ lived together until their separation. In her April 8, 2009 statement, ██████████ discusses how the petitioner and ██████████ met, and states that she attended their wedding. ██████████ also states that after their marriage, the petitioner and ██████████ started living together and that she saw them “going many places together” ██████████ also states that she saw ██████████ “going places with [the petitioner’s] daughter . . .” In her June 14, 2009 statement, ██████████ confirms that she was the petitioner’s landlord and that the petitioner and ██████████ lived together from February 2004 through December 2007. ██████████ also states that the utilities were under her name, and were included in the petitioner’s monthly rent.

In his June 15, 2009 statement, ██████████ states, in part, that he witnessed the marriage of the petitioner and ██████████, and that after the wedding, ██████████ moved in with the petitioner. ██████████ also states that he “visited them on numerous occasions and often had dinner with them.”

In a statement dated June 17, 2009, ██████████ states, in part, that she met the petitioner at church in 2003, and that she “visited her home twice when she was with ██████████.” ██████████ also states that ██████████ “treated [the petitioner] good” and that they “were all over each other always kissing and hugging.”

In a statement dated June 12, 2009, ██████████ states, in part, that she met the petitioner through mutual friends at a party and that in October 2007, she stayed with the petitioner and ██████████ for a week. ██████████ states, “I met ██████████ he was very nice . . . We all went shopping that week and spend [sic]

days together going out to eat and [the petitioner and ██████ along with ██████ taking me out on the town.” ██████ statement conflicts with the petitioner’s own statements that describe her relationship with ██████ as having deteriorated prior to ██████ claimed visit. For example, in her April 16, 2009 statement, the petitioner describes ██████ escalating abuse from June through December 2007 and she does not describe any periods of contrition during this time.

In her June 9, 2009 statement, ██████ states, in part, that she has known the petitioner since childhood, and that she visited the petitioner and ██████ “at their home often” and also went out to eat with them and took them to Atlantic City a couple of times.

In his June 12, 2009 statement, the petitioner’s uncle, ██████ states, in part, that he “had numerous encounters with [the petitioner and ██████] at their marital home.”

In her April 13, 2009 statement, ██████ states, in part, that she knows of the petitioner’s marriage to ██████ because the petitioner “use[d] to tell [her] about her relationship with ██████.” ██████ also states that she witnessed the love between the petitioner and ██████ while at a barbecue hosted by the petitioner’s landlord.

Apart from describing their courtship, the petitioner does not provide substantive, detailed testimony regarding her wedding, her residence or any of her shared experiences with ██████, apart from the abuse. In addition, her account of the latter stage of her relationship with ██████ is inconsistent with the statement of ██████. The majority of the testimonial evidence submitted on the petitioner’s behalf also lacks probative and detailed information about the petitioner’s relationship and interactions with her spouse. For example, most of the affiants provide only general statements regarding having visited the petitioner and ██████ at their house. Their statements provide no probative details regarding the petitioner’s relationship with ██████ and their interactions with each other and contain only vague statements such as “they were really in love with each other.” The Citibank documentation, which consists of two complete statements and three partial statements, reflects only minimal activity, and does not establish that both the petitioner and ██████ used the account to commingle their earnings and pay shared expenses. The photocopies of photographs of the petitioner and ██████ show that they were pictured together on their wedding day, but these documents alone do not establish the petitioner’s good-faith entry into the marriage. In sum, the relevant evidence fails to demonstrate that the petitioner 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 stated by the director, section 204(g) of the Act 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 case shows that the petitioner married her husband while she was in removal proceedings. 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, 8 U.S.C. § 1255(e) 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)(8)(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)(8)(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, as stated by the director, section 204(g) of the Act further requires the denial of this petition.

Eligibility for Immediate Relative Classification

On appeal, counsel claims that “[n]owhere in the statute or the regulations is it required that the self-petitioner submit a bona fide marriage exemption.” Counsel is mistaken. Section 204(a)(1)(A)(iii)(I)(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 section 204(g) of the Act. As discussed above, the petitioner has failed to comply with section 204(g) of the Act by either residing outside of the United States for two years after her marriage or by demonstrating her eligibility for a bona fide marriage exemption. *See* sections 204(g), 245(e) of the Act, 8 U.S.C. §§ 1154(g), 1255(e). She is consequently ineligible for immediate relative classification based on her marriage to [REDACTED] and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for this additional reason.

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.