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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Bq.

Date: **APR 13 2011** Office: VERMONT SERVICE CENTER FILE: A98 432 726  
EAC 10 021 50132

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)

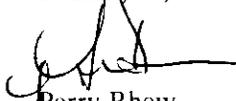
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 the \$630 fee. 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 Vermont Service Center 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 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 on the basis of his determination that the petitioner had failed to establish that she married her former U.S. citizen husband in good faith and resided with him. On appeal, counsel submits a brief and copies of documents previously filed.

### *Applicable Law and Regulations*

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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). An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 petitioner in this case was in removal proceedings at the time of her marriage.<sup>1</sup> In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

*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

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<sup>1</sup> The record shows that the petitioner was served with a Notice to Appear for removal proceedings on January 29, 2005. The notice was filed with the San Diego, California Immigration Court on February 2, 2005. Accordingly, the petitioner was in removal proceedings as of that date. See 8 C.F.R. § 1239.1(a). The petitioner married her former spouse on March 12, 2005.

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.

The eligibility requirements for immigrant classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) of the Act . . . .

(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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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.

\* \* \*

(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.

### *Facts and Procedural History*

The record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of El Salvador who entered the United States without inspection in January 2005. U.S. Immigration and Customs Enforcement (ICE) apprehended the petitioner, placed her into removal proceedings on February 2, 2005 and released her on bond on March 1, 2005.<sup>2</sup> On March 12, 2005, the petitioner married a U.S. citizen in Los Angeles, California. The petitioner and her former husband divorced on May 7, 2009.

The petitioner filed the instant Form I-360 on October 28, 2009. The director subsequently issued a request for further evidence (RFE) that, *inter alia*, the petitioner married her second husband in good faith and resided with him. The petitioner, through counsel, responded with additional evidence. After considering the relevant evidence of record, the director denied the petition.

On appeal, counsel asserts that the petitioner married her husband in good faith and resided with him.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, we find no error in the director's ultimate determinations. Counsel's claims and the additional evidence submitted on appeal fail to overcome the grounds for denial.

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<sup>2</sup> The petitioner remains in removal proceedings before the Los Angeles Immigration Court and her next hearing is scheduled for April 20, 2011.

Beyond the director's decision, section 204(g) of the Act further bars approval of this petition and the petitioner is ineligible for immediate relative classification based on her former marriage.

### *Joint Residence*

On the Form I-360, the petitioner stated that she lived with her former husband on [REDACTED] in Los Angeles from March 10 to September 20, 2005. In her personal declaration, the petitioner described her former husband's abuse in probative detail, but did not discuss their shared residence. The petitioner's friend, [REDACTED] explained that she never saw the petitioner at her home because the petitioner was afraid of her husband. In response to the RFE, the petitioner submitted a copy of the approval notice of the Form I-130, petition for alien relative, filed by her former husband on her behalf, which is addressed to her former husband at the [REDACTED]. However, the notice is dated January 18, 2006, four months after the petitioner stated that she left her former husband due to the abuse. The petitioner also submitted copies of three photographs of her and her husband, none of which are identified or appear to have been taken in a residential setting.

On appeal, counsel asserts that it was unreasonable to expect the petitioner to provide documentation of her residence with her former husband because he was abusive and controlling and would never have given her access to such evidence. Given the short duration of her abusive marriage, the petitioner's lack of documentary evidence of a shared residence is understandable. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i) (Self-petitioners are encouraged, but not required to submit primary evidence and any relevant, credible evidence will be considered). However, the petitioner's mere assertion that she resided with her second husband does not meet her burden of proof. In her declaration, the petitioner does not describe her shared residence with her former husband in any probative detail. She does not, for example, describe their apartment, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with her former husband. The petitioner did not submit any additional statement in response to the RFE or on appeal.

On appeal, counsel further claims that by finding that the petitioner's former husband subjected her to extreme cruelty during their marriage, the director implicitly determined that she resided with her former husband. Counsel misinterprets these two statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may support more than one claim, meeting one eligibility requirement will not necessarily demonstrate the other.

The petitioner does not discuss her residence with her former husband in her declaration and has submitted no further statement on appeal. The remaining, relevant evidence is also insufficient to establish her claim. Consequently, the petitioner has not demonstrated that she resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### *Good-Faith Entry into the Marriage*

In the petitioner's personal declaration, she stated that she met her former husband through her sister who rented him a room and that is how they "became good friends." The petitioner briefly stated that her former husband asked her to marry him on March 5, 2005, four days after her release from ICE detention, and that they married seven days later on March 12, 2005. The petitioner recalled,

“My first month of marriage was good. My husband was the man of whom I had dreamed of, but thereafter, I do not know why he changed so much.” The petitioner did not describe their relationship, apart from the abuse, in any further detail.

The remaining, relevant evidence also fails to provide probative information regarding the petitioner’s marital intentions. The petitioner’s friend, ██████████ attested to the abuse, but did not describe any other aspect of the petitioner’s marriage or the petitioner’s reasons for entering and remaining in the relationship. The copies of the undated photographs show that the petitioner and her husband were pictured together on two or three unspecified occasions, but the photographs are insufficient to establish her good faith in entering the marriage. The approval notice for the alien relative petition filed by the petitioner’s former husband is relevant to his intentions, but is of little probative value in determining the petitioner’s own good-faith entry into the marriage.

In his psychological evaluation of the petitioner, ██████████ stated that the petitioner reported being introduced to her former husband by her sister and speaking to him on the telephone frequently until he visited her in El Salvador in 2002. ██████████ further noted that the petitioner told him her former husband and his mother secured her release from detention after her arrival in the United States and that she accepted her former husband’s marriage proposal shortly after her release. Although relevant, ██████████ summary of the petitioner’s relationship with her former husband is inconsistent with her own statements. In her declaration, the petitioner did not state when she was introduced to her former husband; she did not mention any frequent contact by telephone prior to her arrival in the United States; and she did not recount her former husband ever visiting her in El Salvador.

The record shows that the petitioner was released from ICE custody on a bond secured by a woman with the same last name as the petitioner’s former husband. However, the petitioner herself does not discuss her former husband’s or his mother’s assistance in securing her release from ICE detention, her decision to marry her husband 11 days after her release, their wedding ceremony, their shared residence or any of their shared experiences, apart from the abuse.

On appeal, counsel asserts that it was unreasonable to expect the petitioner to have further documentation of her good-faith entry into the marriage because of her husband’s abuse. Given the nature of spousal self-petitions under section 204(a)(1)(A)(iii) of the Act, 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.” 8 C.F.R. § 204.2(c)(2)(vii).

In this case, however, the petitioner submitted only one personal declaration which does not provide any detailed, probative information regarding her intentions in marrying her former husband. The petitioner did not discuss the former couple’s courtship, decision to marry, wedding, shared residence and marital experiences, apart from the abuse. The remaining relevant evidence discussed above is also insufficient to establish the petitioner’s good-faith entry into the marriage.

On appeal, counsel cites *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990) for the assertion that U.S. Citizenship and Immigration Services (USCIS) bears “the burden to show that a marriage is, in fact,

fraudulent.” [REDACTED] addressed the bar to approval of subsequent visa petitions due to an alien’s prior marriage fraud at section 204(c) of the Act and is inapposite to the determination of an alien’s good-faith entry into the qualifying relationship at section 204(a)(1)(A)(iii)(I)(aa) of the Act. While marriage fraud will preclude a finding of good faith, such fraud is not the only basis for finding a lack of good faith in entering the qualifying relationship. *See* 8 C.F.R. § 204.2(c)(1)(ix). Contrary to counsel’s assertion, USCIS bears no burden to establish fraud in every case it finds an absence of good faith. Rather, the petitioner bears the burden of proof to establish her good-faith entry into the marriage by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N 369, 375 (AAO 2010).

In sum, the relevant evidence fails to 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*

Beyond the director’s decision, section 204(g) of the Act further bars approval of this petition. 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 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. *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.”) As discussed in the preceding section, 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. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. at 375. 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. 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 failed to establish her good-faith entry into her former 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 second 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*

Beyond the director’s decision, the petitioner also has not established her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act, because she has not complied with section 204(g) of the Act. *See* 8 C.F.R. § 204.2(c)(1)(iv).

*Conclusion*

Counsel's claims on appeal fail to overcome the director's grounds for denial. The petitioner has not demonstrated that she married her former husband in good faith and resided with him. Beyond the director's decision, section 204(g) of the Act further bars approval of this petition and the petitioner is consequently ineligible for immediate relative classification based on her former marriage.<sup>3</sup> Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these four grounds.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons, with each considered an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> 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).