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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

B9.

FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 28 2011**

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:

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 U.S. citizen husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act; and because she was subject to bar on approval of petitions based on marriages entered into while the alien was in removal proceedings at section 204(g) of the Act. On appeal, counsel submits a brief, additional evidence 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).

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 record in this case indicates that the petitioner was in removal proceedings at the time of her marriage. 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 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 second marriage (upon which this petition is based). 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

* * *

(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.

* * *

(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 the Philippines who married her first husband in that country in 1994. The petitioner first came to the United States as a nonimmigrant visitor in 2002. On July 23, 2007, the petitioner was served with a Notice to Appear for removal proceedings.¹ On [REDACTED] the petitioner divorced her first husband. On [REDACTED] the petitioner married her second husband, a citizen of the United States.

The petitioner filed the instant Form I-360 on May 2, 2008. The director subsequently issued a request for further evidence (RFE) that, *inter alia*, the petitioner married her second husband in good faith and that she qualified for a bona fide marriage exemption from section 204(g) of the Act. 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 has demonstrated by clear and convincing evidence that she married her U.S. citizen husband in good faith and that the director erred in focusing only on the petitioner's tax return and not considering other relevant evidence.

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. Beyond the director's decision, the record also fails to establish that the petitioner resided with her second husband and is eligible for immediate relative classification based on their marriage.

Joint Residence

On the Form I-360, the petitioner stated that she lived with her second husband at her residence in [REDACTED] from November 2007 until February 2008, although in her personal statement, the petitioner recounted that she asked him to move out in early March 2008. The petitioner submitted copies of three envelopes addressed to her second husband at the [REDACTED] residence, but the only postmarked envelope is dated March 21, 2008, after the petitioner indicated that they had separated. The petitioner also submitted copies of six bills and one automobile insurance statement,

which were all jointly addressed to the petitioner and her second husband, but are also all dated after their separation.

Given the short duration of her second, 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 September 23, 2008 statement, the petitioner indicated that her second husband moved into her home sometime after their marriage, but he became abusive and she asked him to leave in early March 2008. The petitioner does not describe their shared residence 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 second husband after their marriage. Consequently, the petitioner has not demonstrated that she resided with her second 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 statement, she explained that she met her second husband in 2005 when her cousin invited her to his daughter's birthday party. The petitioner recounted that at the time she met her second husband, she was still married and being abused by her first husband. She explained that she found "comfort from him as a friend and share[d her] problems." The petitioner described her eventual separation and divorce from her first husband and marriage to her second husband as follows:

The more I feel helpless and worried when he threat me that he will get even with me when I we go back to the Philippines, I am scared for my life and the thoughts that I will not be able to see my children again, that's why when [my second husband] asked me to marry him I don't have my second thoughts He said he's willing to help me.

The petitioner then recounted her second husband's abuse, which began shortly after their marriage. She explained, "I stayed with him because I want our relationship to work and to give my children the opportunity to live and work here in the future." The petitioner did not further discuss her intentions in marrying her second husband or describe their relationship, apart from the abuse.

The petitioner's cousin, [REDACTED], stated that when the petitioner began dating her second husband, she believed that he was nice and "they were truly in love," but [REDACTED] provided no further information about the petitioner's relationship with her second husband, apart from the abuse.

The petitioner also submitted photographs of her and her second husband; copies of three envelopes addressed to her second husband at their marital residence; an automobile insurance statement effective March 23, 2008 and jointly addressed to the petitioner and her second husband; a jointly addressed electricity bill dated April 28, 2008; and the petitioner's 2007 federal income tax return on which she indicated her filing status as "married filing separately" and listed the name of her second husband.

On appeal, the petitioner submits copies of two additional joint electricity bills dated April 4 and May 8, 2008; two joint gas bills dated March 13 and April 9, 2008 and a joint television service bill dated April 4, 2008.

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner married her second husband in good faith. The envelopes sent to the petitioner's second husband indicate that he may have used the petitioner's address, but they are not indicative of the petitioner's intentions in entering their marriage. The photographs show only that the petitioner and her second husband were pictured together at their wedding and on three other, unspecified occasions. The insurance statement is for the single, not joint, policy of the petitioner's second husband. In addition, the insurance statement and the joint bills are all dated after the former couple separated and have no probative value in demonstrating the petitioner's entry into the marriage in good faith.

On appeal, counsel claims that the director erroneously based his decision on the petitioner's 2007 tax return, which she completed as "married filing separately." Although counsel asserts that the petitioner filed her tax return separately from her second husband "as per the instruction of her accountant," the petitioner herself does not discuss her 2007 tax filing status. Even if the return had been jointly filed, however, it alone would not demonstrate the petitioner's good-faith entry into the marriage.

Regardless of these deficiencies, 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 does not provide any detailed, probative information regarding her intentions in marrying her second husband. In her statement, the petitioner indicated that she married her second husband because she was frightened of her first husband, she feared losing contact with her children in the Philippines and her second husband was "willing to help." The petitioner does not substantively discuss the former couple's courtship, wedding, shared residence and marital experiences, apart from the abuse.

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 further Bars Approval

Because the petitioner married her second 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 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) 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. 369 (AAO 2010). 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 second 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

Because the petitioner is not exempt from section 204(g) of the Act, she has also failed to demonstrate her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

Conclusion

The petitioner has not overcome the director’s grounds for denial on appeal. She has not demonstrated that she entered into marriage with her second husband in good faith and that she is exempt from the bar to approval of her petition under section 204(g) of the Act. Beyond the director’s decision, the record also fails to demonstrate that the petitioner resided with her second husband and is eligible for immediate relative classification based on their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these four grounds.

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).

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.