

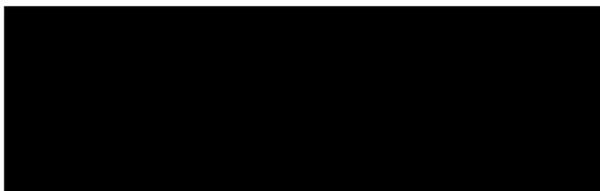
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B9

DATE: MAY 12 2011

Office: VERMONT SERVICE CENTER

FILE:   


IN RE:

Petitioner: 

PETITION:

Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

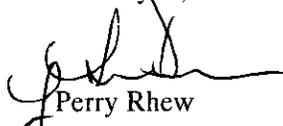


INSTRUCTIONS:

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 a fee of \$630. 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

The director determined that the petitioner had not established that: she had a qualifying relationship with a United States lawful permanent resident; she is eligible for immediate relative classification based on the qualifying relationship; she is a person of good moral character; or she had entered into the marriage in good faith. The director also found that section 204(g) of the Act applied and that the petitioner had not submitted evidence that she qualified for an exemption and that the petition must be denied on this additional basis. On appeal, counsel for the petitioner submits a statement and resubmits evidence already in the record.

#### *Applicable Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act 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].

Section 208(d)(6) of the Act states in pertinent part:<sup>1</sup>

Frivolous applications

If the [Secretary of Homeland Security] determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A), the alien shall be permanently ineligible for any benefits under this chapter, effective as of the date of a final determination on such application.

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<sup>1</sup> Section 208 of the Act (8 U.S.C. § 1158) is applicable to asylum applications.

Section 101(f) of the Act states in pertinent part:

No person shall be regard as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established is, or was - -

(6) one who has given false testimony for the purpose of obtaining any benefits under this chapter;

The eligibility requirements are explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

(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 set forth

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 . . . .

\* \* \*

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

(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 petitioner is a native and citizen of India. She last entered the United States on or about January 3, 2004 on a B-2 visa.<sup>2</sup> Prior to her last entry into the United States she filed a Form I-589, Application for Asylum, using her nickname. She was placed in removal proceedings before an immigration judge on May 8, 2002. The petitioner claims that she married J-R,<sup>3</sup> the claimed abusive lawful permanent resident on March 21, 2004. On July 25, 2006 the immigration judge ordered the petitioner removed pursuant to section 237(a)(1)(A) of the Act for having procured or attempted to procure a benefit under the Act by fraud or willfully misrepresenting a material fact. On February 13, 2008, the Board of Immigration Appeals (BIA) adopted and affirmed the immigration judge's decision and on June 9, 2008 dismissed the petitioner's motion to reopen the proceedings. On September 2, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On December 8, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that: the petitioner had not established a qualifying relationship with the claimed abusive United States lawful permanent resident spouse; she had not established eligibility for immigration classification based on a qualifying relationship; she had not established that she had entered into the claimed marriage in good faith by clear and convincing evidence as required under section 204(g) of the Act; and she is a person of good moral character. The director also determined that the petitioner had been permanently barred from any benefits under the Act for submitting a frivolous asylum application. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides a statement attached to the Form I-290B. Counsel also resubmits previously provided documentation.

### *Qualifying Relationship*

The petitioner has failed to establish that she had a qualifying relationship with a United States lawful permanent resident when the petition was filed on September 2, 2008. The petitioner in this matter did not provide a marriage certificate establishing her marriage. In response to the director's RFE on this issue, the petitioner in a February 11, 2010 affidavit declared that she had married [REDACTED] in a church in Tracy, California and that the marriage had not been registered with any civil authority. The director determined that without evidence of a civilly registered marriage certificate, the record did not demonstrate that a qualifying relationship existed between the petitioner and [REDACTED].

On appeal, counsel for the petitioner asserts that the affidavits submitted, the petitioner's church marriage ceremony, photographs of the church ceremony, and a marriage invitation card demonstrate that the petitioner had a qualifying relationship as the spouse of a United States lawful permanent resident. Counsel reiterates that the petitioner's marriage was not registered with a civil authority.

Upon review of the record and the statements of the petitioner that her claimed marriage was not registered with a civil authority, the petitioner has not established a qualifying relationship with a

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<sup>2</sup> The petitioner entered the United States on several occasions including February 25, 1997, February 26, 1998, April 1, 1999, and August 17, 2001.

<sup>3</sup> Name withheld to protect the individual's identity.

United States lawful permanent resident. We observe that the State of California where the church ceremony took place and where the petitioner resided does not recognize common law marriages. The record does not establish that the petitioner had a qualifying relationship with a United States lawful permanent resident.

*Immigrant Classification*

As the petitioner has not established that she has a qualifying relationship with a United States lawful permanent resident, she is also precluded from establishing that she is eligible for immediate relative classification based on her relationship with ■■■■, as required by section 204(a)(1)(B)(ii)(II) of the Act. She also is not eligible to be classified as a spouse of a lawful permanent resident under section 203(a)(2)(A) of the Act, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act. Beyond the director's decision, the petitioner is also ineligible for immigration classification because, as shall be discussed below, she has not complied with section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).<sup>4</sup>

*Good Faith Entry Into Marriage*

Upon review of the photographs and letters and affidavits submitted on the petitioner's behalf, the record does not provide probative evidence or testimony of the petitioner's intent when entering into the claimed relationship. The record does not include any probative documentary indicia of the petitioner's intent when entering into the relationship and the petitioner's testimony regarding her intent is general. The record lacks information regarding the couple's joint life for the time that the couple was allegedly married. The petitioner does not provide the requisite information regarding her interactions with ■■■■ except as it relates to the claimed abuse.

On appeal, counsel references the information already in the record and asserts that this information demonstrates that the petitioner entered into the qualifying relationship in good faith. We disagree. The director articulated the reasons why the information in the record did not support a finding of the petitioner's good faith intent when entering into the marriage and we find no error in the director's assessment of the relevant evidence. In this matter the record does not demonstrate the petitioner's intent in probative detail and does not include probative evidence that the couple established a life together. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with ■■■■- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

*Section 204(g) of the Act*

As the director determined, section 204(g) of the Act further bars approval of this petition. Section 204(g) of the Act states:

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<sup>4</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*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's claimed marriage was entered into after she was ordered removed from the United States. The record does not indicate that the petitioner resided outside of the United States for two years after the claimed marriage. The record does not include sufficient information to determine that the bona fide marriage exception to section 204(g) of the Act applies to this 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.

Eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). 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 (5<sup>th</sup> Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”). As the petitioner failed to establish that her claimed marriage with J-R- was entered into 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 requires the denial of this petition. For this additional reason, the petition may not be approved.

#### *Good Moral Character*

The petitioner’s California criminal history clearance shows that she was convicted of providing false information on documents submitted to the California DMV/CHP on August 11, 2005 and was sentenced to three years probation and 60 days in jail. In addition, as the director observed, the immigration judge found that the petitioner had filed a frivolous asylum claim and had given false testimony for the purpose of obtaining an immigration benefit. The BIA affirmed the immigration judge’s decision.

On appeal, counsel for the petitioner asserts that the petitioner is a person of good moral character. Counsel does not address the finding that the petitioner filed a frivolous asylum claim and had given false testimony in the asylum interview to obtain a benefit under the Act. Counsel does not offer any evidence or argument establishing that section 101(f) of the Act or section 208(d)(6) of the Act as set out above is inapplicable to the petitioner. The petitioner has not established that she is a person of good moral character and she is ineligible to receive any benefit under the Act.

#### *Conclusion*

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.