

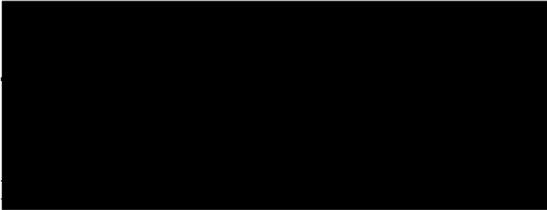
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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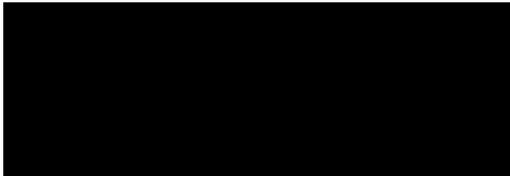
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**MAY 24 2011**

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:

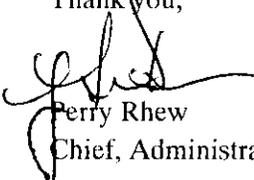


INSTRUCTIONS:

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 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)(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 determined that the petitioner had not established that he 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 sufficient evidence that he qualified for an exemption and that the petition must be denied on this additional basis. On appeal, counsel submits a brief and previously submitted documentation.

#### *Applicable Law and Regulations*

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 based on his or her relationship to the abusive spouse, 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 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 explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are 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.

\* \* \*

(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 Mexico. He entered the United States on or about April 27, 1993 without inspection. On September 15, 2005 he was placed in removal proceedings. He married M-G-T-,<sup>1</sup> the claimed abusive United States citizen on October 12, 2005 in the State of Texas. On April 25, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On February 18, 2010, the director issued a request for evidence (RFE) on the issues of the petitioner's joint residence with M-G-T-, his good moral character, and his good faith entry into marriage. The petitioner provided a response on or about May 13, 2010. Upon review of the record, the director issued a Notice of Intent to Deny (NOID) the petition on June 24, 2010 notifying the petitioner that he had not established his good faith entry into marriage and that he had not requested a bona fide marriage exemption pursuant to section 204(g) of the Act. The petitioner provided a response to the NOID. Upon review of the record, including the petitioner's responses to the RFE and the NOID, the director determined that the petitioner had not established that he had entered into the marriage in good faith and that section 204(g) of the Act precluded approval of the petition. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief in support of the appeal, and previously submitted documentation.

### *Good Faith Entry Into Marriage*

In a May 13, 2008 affidavit, the petitioner declared that he was arrested in August 2005 when police officers witnessed him arguing with his daughter and pulling her hair. The petitioner noted that he was arrested and although the charges were subsequently dismissed, United States Immigration and Custom Enforcement (USICE) placed him in removal proceedings. The petitioner stated that while he was in USICE custody, the woman from whom he was renting

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<sup>1</sup> Name withheld to protect the individual's identity.

rooms came to see him and suggested that he sign over custody of his daughters to her. The petitioner added that as he believed he was to be deported, he did so. The petitioner noted that he married M-G-T- when he was released from USICE custody because she seemed to be a good person to whom he could entrust his children. The petitioner noted that in the beginning he and M-G-T- led a normal married life but she then demanded that he pay her \$30,000 in order for her to return custody of his children to him. The remaining portion of the petitioner's affidavit relates to the abuse perpetrated by M-G-T- and ends with the petitioner's statement that when he had finished paying M-G-T- the money, he moved out of the home with his daughters.

Counsel for the petitioner also provided M-G-T-'s October 30, 2006 statement that had been submitted in support of the petitioner's application for cancellation of removal. In that statement, M-G-T- indicates that she had met the petitioner two years prior to her letter and that the couple dated for one and one-half years and then decided to get married.

In response to the director's RFE on the issue of the petitioner's good faith marriage to M-G-T-, counsel provided a tax return transcript for the 2006 year showing the couple had filed their Form 1040A return as married, filing jointly. Counsel also submitted photographs of the petitioner and his daughters with M-G-T- and provided a copy of a United States Citizenship and Immigration Services' (USCIS) approval notice of the Form I-130, Immigrant Petition for Relative, dated September 6, 2006.

In response to the director's NOID, counsel for the petitioner provided the petitioner's July 26, 2010 affidavit. The petitioner declared that he entered into the marriage with M-G-T- in good faith and that M-G-T- "had proven to be an excellent person, especially to [his] daughters" which made him fall in love with her. The petitioner noted that he did not own joint property with M-G-T- and he did not have identification or credit and so could not open a bank account. The petitioner references the previously submitted tax return receipt submitted. Counsel also submitted a July 19, 2010 statement signed by [REDACTED] the petitioner's stepdaughter. [REDACTED] states that her mother and the petitioner were good friends when he and his three daughters moved into her mother's house and that the couple developed mutual romantic feelings towards each other until they decided to make their relationship official and get married. Counsel referenced the documents submitted and asserted that the documentary evidence clearly and convincingly established that the marriage was entered into in good faith and not to evade the immigration laws of the United States.

Based on the record, the director determined that the petitioner had not entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that the petitioner's stepdaughter's statement shows that there was a joint tenancy and common residence between the petitioner and M-G-T- and that the 2006 income tax return shows a commingling of assets. Counsel requests that the petitioner's appeal be granted for humanitarian reasons.

The petitioner in this matter has not established that he entered into the marriage in good faith. The petitioner in his first affidavit stated that he married M-G-T- because he thought he could

entrust his children to her. He does not provide specific and probative detail that his intent when entering into the marriage was to establish a life together with M-G-T-. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The circumstances of the petitioner's subsequent payment to M-G-T- as described raise further questions regarding the petitioner's intent upon marrying the petitioner as soon as he was released from USICE custody. As the director noted, the transcript of the tax return, the photographs, and the statement of the petitioner's stepdaughter, do not include the necessary probative information to ascertain that the petitioner entered into the marriage in good faith.

The AAO acknowledges that a Form I-130 filed on behalf of the petitioner was approved; however, while relevant, such approval is not prima facie evidence of the petitioner's good faith in entering their marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9<sup>th</sup> Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). In this matter, the petitioner provided only a cursory description of his meeting and initial interaction with M-G-T- prior to marriage and the remaining, relevant evidence lacks probative information sufficient to meet his burden of proof. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with M-G-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Upon review of the totality of the evidence in the record, the petitioner has not described the couple's mutual interests, he has not described their daily routines in detail, and he has not provided any probative information for the record that assists in determining his intent when entering into the marriage. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with M-G-T- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

#### *Section 204(g) of the Act*

Although the director failed to make a specific determination regarding the applicability of section 204(g) of the Act, upon review we find that section 204(g) bars approval of this petition. Section 204(g) of the Act states:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this matter shows that the petitioner married his spouse after being placed in removal proceedings before an immigration judge. The record does not indicate that the petitioner resided outside of the United States for two years after his 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.

The record in this matter does not include probative testimony or documentation establishing the bona fides of the petitioner's marriage. We note that 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 has failed to establish that he entered into his marriage with his wife in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has also failed to demonstrate that he 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.

*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.