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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

[redacted]

B9

Date: MAY 3 1 2012 Office: VERMONT SERVICE CENTER File: [redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, ("the director") denied the immigrant visa petition. The director granted a subsequent motion to reopen, but affirmed the decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner complied with the provisions of section 204(g) of the Act.

On appeal, counsel submits a brief and additional evidence.

Relevant 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, 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 further 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 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.
>
> (Emphasis added)

The eligibility requirements for immigrant classification as an abused spouse are further explicated 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 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Guatemala who claims that she entered the United States in December 1983 with an unknown status. The record reflects that the petitioner filed a Form I-589, Request for Asylum, on November 5, 1993 and had an interview with the Los Angeles Asylum Office. Her asylum application was referred to an Immigration Judge. On August 3, 1995 she was served with an Order to Show Cause (OSC) for a hearing in deportation proceedings. In the OSC, the Immigration and Naturalization Service alleged that the petitioner entered the United States at or near Los Angeles, California on or about November 15, 1991, as a non-immigrant visitor for pleasure, with authorization to remain in the United States for a temporary period not to exceed May 14, 1992. On October 20, 1995, the petitioner was ordered removed *in absentia*. She was granted a motion to reopen on November 30, 1995 and scheduled to appear for a hearing on March 8, 1996. The petitioner failed to appear for her hearing and she was again ordered deported *in absentia*. On February 4, 2008, the petitioner filed a second motion to reopen, which was denied by the Los Angeles Immigration Court. A subsequent appeal was dismissed by the Board of Immigration Appeals.

The petitioner married J-G-[1], a U.S. citizen, on June 19, 1999 in Los Angeles, California. The petitioner filed the instant Form I-360, based on her marriage to J-G-, on June 7, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage. The director stated that because the petitioner married her husband after she was placed in deportation 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. The petitioner timely responded to the request with additional evidence which the director found insufficient to fully establish the petitioner's eligibility. The director determined that the petitioner submitted evidence that establishes by a preponderance of the evidence her good faith marriage to J-G-, but the evidence is not sufficient to meet the heightened clear and convincing

[1] Name withheld to protect the individual's identity.

evidentiary standard. The director granted a subsequent motion to reopen, but affirmed his decision to deny the petition. The petitioner timely appealed.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Section 204(g) of the Act

Because the petitioner married her 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.

Upon a full review of the evidence, we find that the petitioner has not demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. In the petitioner's initial statement, dated June 15, 2010, she recalled that she met J-G- in September 1992 though a mutual friend at a dinner party. She stated that they started to date and she "fell in love with him." The petitioner recounted that they went shopping, cooked food, and "would do everything together." The petitioner stated that they have been separated since she received a protection order against him in October 2000. On appeal, the petitioner states in a declaration, dated September 9, 2011, that she resided with J-G- for three years prior to their marriage. She recalls that she married J-G- because she loved him and he told her that he had changed. The petitioner states that after their marriage, they resided in two apartments in [redacted] until J-G- moved out in 2000. Neither of the petitioner's two statements describes her wedding ceremony, shared residence and experiences with her husband, apart from the alleged abuse.

The petitioner initially submitted a letter from the Elder in her church, [redacted] who briefly discussed his knowledge of the petitioner's marriage to J-G- in June 1999, but provided no probative information regarding the petitioner's good faith intentions in marrying her spouse. On motion, the

petitioner submitted letters from her brother, and her friends, and attest to knowing the petitioner and her husband as a married couple, but they do not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing their personal knowledge of the relationship. briefly stated that the petitioner and J-G- came to family gatherings and he resided with them in 2000. However, his statement is of little probative value because it fails to discuss in probative detail his observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage.

The petitioner initially submitted: a month-to-month joint rental agreement, dated March 5, 2000; two handwritten notes from J-G-, dated February 16, 1994 and February 21, 1994, respectively; her wedding programs; three wedding cards; photographs of her wedding ceremony; and photographs of her and J-G- at various locations. In response to the RFE, the petitioner submitted: copies of three additional photographs of herself and J-G-; a copy of a certified mail receipt addressed to the petitioner and signed by J-G- in December 1995; and evidence that J-G- was added to the petitioner's automobile insurance in August 2007 as an excluded driver. On motion, the petitioner submitted three additional, undated photographs of herself and J-G-.

The wedding programs, wedding cards and photographs of the petitioner with J-G- have some probative weight as evidence of the petitioner's good-faith entry into the marriage. However, the remaining evidence is of little probative value. The month-to-month joint rental agreement is only signed by J-G- as the renter and does not contain the petitioner's signature. The handwritten notes from J-G- are evidence of his courtship with the petitioner, but the notes are dated over four years prior to their marriage. The certified mail receipt signed by J-G- is evidence that they resided together in December 1995, but does not offer insight into the petitioner's good-faith entry into the marriage. Finally, the addition of J-G- as an excluded driver is almost seven years after she claims they separated in October 2000.

On appeal, counsel contends that the petitioner has submitted clear and convincing evidence of her good faith marriage and that the director did not give proper weight to the evidence under the "any credible evidence standard" for battered spouse petitions. Counsel asserts that the petitioner's good-faith entry into the marriage is evidenced by the fact that she was in a relationship with J-G- for several years prior to her removal order and married him three years after her removal order was issued. Counsel states that since J-G- submitted a Form I-130 on the petitioner's behalf "many years later," her marriage was not entered into in order to obtain immigration benefits. Counsel submits a copy of a motion to reopen that the petitioner previously filed with the Board of Immigration Appeals, which counsel states shows that the petitioner resided with J-G- in 1995.

For self-petitioning abused spouses and children, the Act prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J)

of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. Although the petitioner has submitted evidence of her residence with J-G- several years prior to their marriage, she has not demonstrated the bona fides of her marriage under the heightened clear and convincing evidence standard. The petitioner submitted letters from her church and her brother, None of these individuals discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. In her statements, the petitioner discussed how she first met J-G- and their courtship, but she failed to describe their wedding ceremony, shared residence and experiences, apart from the alleged abuse. The petitioner also submitted photographs of herself and J-G- during their wedding and on other occasions, wedding programs and wedding cards. Although the totality of the petitioner's documents demonstrate by a preponderance of the evidence that the petitioner entered into marriage with her former husband in good faith, because of the above noted deficiencies they do not establish her good-faith entry into the marriage under the heightened clear and convincing evidence standard. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Beyond the director decision, 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

On appeal, the petitioner has not overcome the director's determination that she did not establish the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Beyond the decision of the director, she has also not established that she is eligible for immediate relative classification based on her marriage.[2] She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Approval of the petition is further barred by section 204(g) of the Act.

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

[2] A 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).

Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.