

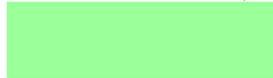


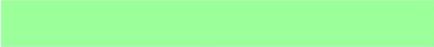
U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 17 2013**

Office: VERMONT SERVICE CENTER

File: 

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:

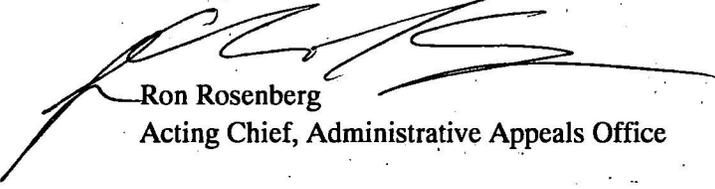
SELF-REPRESENTED

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 in accordance with the instructions on 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“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 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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith, his wife subjected him to battery or extreme cruelty during their marriage, and that he complied with the provisions of section 204(g) of the Act.

On appeal, the petitioner submits a statement 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 his 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 his 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 a self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical, or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(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.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(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 Jamaica who entered the United States on February 2, 2005 as a temporary agricultural worker. The petitioner married his first wife, A-S-, a U.S. citizen, on

[REDACTED], New York.¹ The petitioner was charged with remaining in the United States beyond his period of authorized stay and placed in removal proceedings on October 25, 2007.²

The petitioner's marriage to his first wife was terminated in a divorce on October 29, 2007. On [REDACTED] the petitioner wed A-I, a U.S. Citizen, in New York City, New York. The petitioner filed the instant Form I-360 on April 26, 2010 asserting that A-I- abused him. The director subsequently issued a request for further evidence (RFE) that, *inter alia*, the petitioner married his second wife in good faith, that he qualified for a bona fide marriage exemption from section 204(g) of the Act, and that his wife battered him or subjected him to extreme cruelty during their marriage. The petitioner timely responded to the request with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and 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. The petitioner's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his statement, the petitioner asserted that A-I- proposed to him while he was in immigration proceedings because she did not want him to leave her. He stated that A-I-'s child from another relationship was attached to him and he loved both of them. The director correctly determined that the petitioner did not describe how he met A-I-, and their courtship, wedding ceremony, shared residence and experiences.

In his letter, the petitioner's friend, [REDACTED] briefly discussed knowing of the petitioner's marriage to A-I, but he spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship.

The petitioner submitted credit card, cellular telephone, telephone and cable television bills issued during and after his shared residence with A-I-. The petitioner also provided four undated photographs of himself with A-I- taken at unspecified locations. The cellular telephone bills were issued to the petitioner and reflect that A-I- had a cellular phone that was included on the account. Although the cable television bills were jointly issued to the petitioner and A-I-, the credit card, cellular telephone and telephone bills were in the petitioner's name only. These documents reflect that the petitioner and A-I- were jointly responsible for a cable television account and they were photographed together. The petitioner also submitted an incomplete copy of a bank statement that does not identify the account holder's name, and therefore is of no probative value.

¹ Name withheld to protect the individual's identity.

² The petitioner remains in removal proceedings before the New York Immigration Court and his next hearing is scheduled for May 1, 2013.

On appeal, the petitioner reasserts his previous statements and claims that although he was in immigration proceedings at the time of his second marriage, he was in love with A-I- and they were in a serious relationship. The petitioner submits copies of three additional photographs of himself and A-I-, additional cellular telephone bills issued during his residence with A-I-, and letters from his friends, [REDACTED] and [REDACTED]. Although the petitioner submitted evidence of having a joint cable television account, photographs of himself and A-I-, and evidence of having A-I- included on his cellular phone account, he did not describe how he met A-I- and their courtship, wedding ceremony, shared residence and experiences. The petitioner's friends, [REDACTED] and [REDACTED] also only speak of the alleged abuse and do not discuss the petitioner's good faith in entering the relationship. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that he entered into marriage with A-I- 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 his second wife while he was in removal proceedings and did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his 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 his good-faith entry into his second marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his 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 decision of the director, because the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate his 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).³

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal also fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty. The petitioner submitted a statement in which he recounted that A-I- would leave him with her child and go out for the day. He stated that he thought she was having an extramarital affair because he acquired a sexually transmitted disease from her. The petitioner further recounted that A-I- called him and his acquaintances names, took away his cellular phone, and physically assaulted him. He stated that he was not aware of the credit card and telephone accounts in his name. The petitioner's statements do not indicate that A-I-'s behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Although the petitioner claims that A-I- physically assaulted him, he failed to discuss the physical abuse in probative detail.

The petitioner's friend, [REDACTED] recounted that the petitioner's wife called the petitioner names, overdrew on their bank account, opened new credit card accounts in his name, had an extramarital affair, and at the end of their relationship she would not allow him to enter her apartment. These statements do not demonstrate that the petitioner was subjected extreme cruelty, as that term is defined in the regulation.

The petitioner also submitted a photograph in which he appears to have a small bump on his lip. The director correctly noted that without further explanation of the significance of the photograph, it is of limited evidentiary value.

On appeal, the petitioner asserts that A-I- physically assaulted him, constantly nagged him, created accounts in his name, and spent the money he earned. The petitioner briefly mentions the alleged physical abuse in a one-sentence statement without any detail. The other actions described by the petitioner do not constitute extreme cruelty as that term is defined in the regulation. The petitioner submits a copy of a hospital admission card issued to him on October 28, 2008. However, he does not submit corresponding medical records or explain the significance of the admission card and how it relates to his claims. In their letters submitted on appeal, the petitioner's friends, [REDACTED] and [REDACTED] attest to witnessing two incidents of physical abuse in the couple's relationship. The petitioner, however, did not mention either of these incidents in his statements. The petitioner has submitted no other evidence of the alleged abuse and his brief statements lack probative detail and substantive information. Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

³ 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).

Conclusion

On appeal, the petitioner has not overcome the director's grounds for denial. He has not established that he entered into his second marriage in good faith and was subjected to battery or extreme cruelty by his second wife. Approval of the petition is further barred by section 204(g) of the Act. Consequently, the petitioner also has not established that he is eligible for immediate relative classification based on his second marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N 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.