

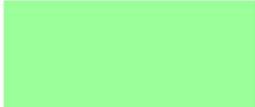


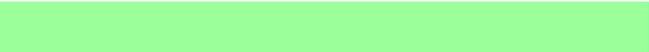
U.S. Citizenship  
and Immigration  
Services

(b)(6)



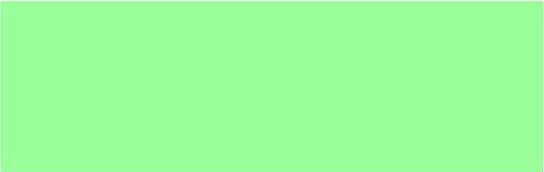
Date: **AUG 14 2013**

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:

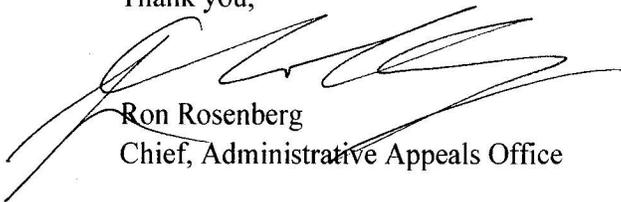


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center, (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

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 a U.S. citizen.

The director denied the petition for failure to establish that she entered into marriage with her husband in good faith and that she met the requirement for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act. On December 18, 2012, the AAO dismissed the appeal on these same grounds.

On motion, counsel submits a brief statement on the Form I-290B, Notice of Appeal or Motion 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 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, which states in pertinent part:

*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.

8 U.S.C. § 1255(e) (emphasis added).

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

(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 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 Ghana who entered the United States as a B-2 visitor on January 3, 2004. The petitioner remained in the United States beyond her period of authorized stay and was placed in removal proceedings on July 1, 2009. The petitioner married D-S-<sup>1</sup>, a U.S. citizen, in Des Moines, Iowa on July 26, 2009. She filed the instant Form I-360 on October 19, 2010. The director denied the petition for failure to establish that she entered into marriage with D-S- in good faith and that she met the requirements for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act. The AAO concurred with the director's decision and additionally determined that the petitioner was ineligible for immediate relative classification based on her marriage to D-S-. For these reasons, the AAO dismissed the petitioner's appeal. The petitioner, through counsel, timely filed a motion to reopen.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner asserts that she married her husband in good faith and her assertion is supported by a third self-affidavit and a third affidavit from her friend [REDACTED]. Accordingly, the motion to reopen is granted.

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

*Good-Faith Entry into the Marriage*

In its decision dated December 18, 2012, the AAO determined that the petitioner did not establish that she married D-S- in good faith because she failed to provide probative testimony regarding their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse. The AAO's prior decision is incorporated here. On motion counsel asserts that the petitioner submitted sufficient evidence below to show that she entered into marriage with D-S- in good faith. The petitioner submits a third self-affidavit and a third affidavit from her friend [REDACTED]. In her affidavit, the petitioner states that she was introduced to D-S- by her friend [REDACTED] and that not too long after they met, they fell in love and she moved in with him. She states that life was pleasant at first and that D-S- introduced her to some of his friends and family. The petitioner further states that Ms. [REDACTED] and a few other friends visited them at their house and asserts that her marriage to D-S- was based on love. However, the petitioner again fails to substantively discuss her marital intentions and does not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the abuse. In her affidavit, [REDACTED] repeats her statements from below and does not add any additional, probative details regarding the petitioner's intentions in marrying D-S-. Accordingly, the evidence submitted on motion fails to establish that the petitioner entered into marriage with D-S- in good faith as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

*Section 204(g) of the Act further Bars Approval*

In its prior decision, the AAO determined that as the petitioner failed to establish her good-faith entry into her marriage with D-S- 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 marriage under the heightened standard of proof required by section 245(e)(3) of the Act. On motion the petitioner again fails to establish by a preponderance of the evidence that she married D-S- in good-faith. Therefore Section 204(g) of the Act continues to bar 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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). On motion, the petitioner has not overcome the grounds for dismissal of her appeal. She has not demonstrated that she entered into marriage with her husband in good faith, that she is exempt from the bar to approval of her petition under section 204(g) of the Act, and that she 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 three grounds.

**ORDER:** The motion is granted. The December 18, 2012 decision of the Administrative Appeals Office is affirmed and the petition remains denied.