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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



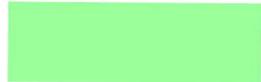
U.S. Citizenship  
and Immigration  
Services



Date:

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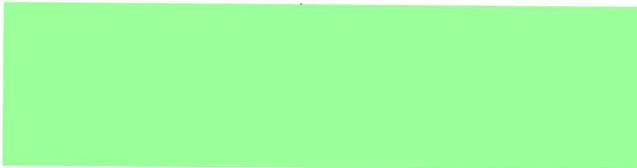
IN RE:

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 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 U.S. citizen wife in good faith and resided with her during their marriage. The director also determined that section 204(g) of the Act barred approval of the petition because the petitioner married his wife while he was in removal proceedings and he failed to demonstrate his good faith entry into marriage by clear and convincing evidence. On appeal, counsel submits a supporting brief and duplicates of evidence previously proffered.

#### *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 shows that the petitioner was in removal proceedings at the time of his marriage. In such instances, 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], 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 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 exclusion or deportation proceedings –*

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

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

\* \* \*

(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:

(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.

\* \* \*

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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 Tanzania who entered the United States on October 29, 1996 as a nonimmigrant visitor. The petitioner married his second wife, A-B-<sup>1</sup> a U.S. citizen, on May 9, 2003 in Virginia. The record discloses that the petitioner's wife, who had been previously married, did not obtain a divorce from her first husband, because she believed him to have already been deceased at the time she married the petitioner in 2003. As the petitioner's wife was unable to demonstrate that her first husband was in fact deceased, the record indicates she obtained a divorce judgment terminating her first marriage on May 29, 2008, and subsequently remarried the petitioner on June 20, 2008.

On May 2, 2008, a Notice to Appear was issued, placing the petitioner into removal proceedings before the immigration court, which remain pending. As indicated, on June 20, 2008, the petitioner remarried his second wife, after his removal proceedings had already commenced. The petitioner then filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on June 14, 2011. The director issued a Request for Evidence (RFE) of, among other things, the petitioner's good faith marriage, his eligibility for the *bona fide* marriage exemption from the statutory bar at section 204(g) of the Act, and his joint residence with his spouse. The petitioner timely responded to the RFE. After considering the evidence of record, the director denied the petition on January 24, 2013. The petitioner timely filed the instant appeal.

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. On appeal, the petitioner has failed to overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

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

*Good Faith Marriage*

The record fails to establish that the petitioner entered into his marriage with A-B- in good faith. The petitioner submitted joint lease agreements for 2003 and 2007, extensions of the lease agreement for 2008 and 2009, a 2003 joint tax return, and an Internal Revenue Service (IRS) Form W-2 for the petitioner's wife. He also provided an expired health insurance card from 2003 to 2004 addressed to his wife, showing the petitioner as the primary member. Additionally, a March 8, 2010 life insurance letter lists the petitioner's wife as a beneficiary. The petitioner also submitted a single residential cable bill from March 2010, but it is solely in the petitioner's name. A March 9, 2010 bank letter and five monthly bank statements provided (one for each year from 2006 through 2010) show that an account was opened for the petitioner and his wife jointly, but they do not show any substantial financial activity. Counsel notes the cancelled checks from this account. However, copies of five cancelled checks are found only on the January to February 2010 statement, and only one of those checks (dated February 4, 2010) was signed by the petitioner's wife. The documentary evidence reflects that the petitioner and his wife had a joint address, but it provides no probative information about the couple's shared life or the petitioner's intentions in entering the marriage. The photographs show the petitioner and his wife together getting married and on two other unspecified occasions, and are insufficient to establish the petitioner's marital intentions. On appeal, the petitioner resubmits some of the same evidence and asserts that his wife was so controlling that he was unable to obtain more documents of his good-faith marriage.

However, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii).

The petitioner, in his June 8, 2011 affidavit, stated that after entering the United States in 1996, he subsequently met his wife and married her on June 28, 2008.<sup>2</sup> The statement does not indicate when they met or refer to the couple's initial marriage in May 2003. The petitioner's second statement, dated November 26, 2012, touches briefly upon their various residences, and notes their 2003 marriage. The petitioner stated that he married his wife in good faith based on his love for her and not for other reasons. However, both statements make no reference to and provide no probative details of the couple's courtship, their wedding ceremony, or their shared residences and experiences.

The affidavits of the petitioner's friends contained in the record also do not provide sufficient probative information to establish his good-faith intentions upon marrying A-B-. [REDACTED] and [REDACTED] all indicated that they were aware of the petitioner's marriage, and all but Mr. [REDACTED] stated that they visited the petitioner at his marital residence. However, the petitioner's friends primarily discuss the petitioner's wife's abusive behavior and none of them describe any social visit in detail, discuss their observations of the petitioner's interactions with or feelings for his wife (apart from the abuse), or otherwise establish their personal knowledge of the relationship.

<sup>2</sup> The record indicates the couple was legally married on June 20, 2008.

Accordingly, when viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his wife 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*

The petitioner married his current wife while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage. As such, 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 (5<sup>th</sup> 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 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 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 here failed to establish his good-faith entry into his current 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 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*

As the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate 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).

*Joint Residence*

We find no error in the director’s determination that the petitioner failed to demonstrate that he resided with his wife. The evidence of joint residence in the record following the couple’s marriage in June 2008 includes the petitioner’s statements, affidavits of the petitioner’s friends, 2008 and 2009 lease extensions, a bank letter and statements relating to the petitioner’s joint account, a March

2010 cable bill, and a March 2010 life insurance letter.<sup>3</sup> On the Form I-360, the petitioner stated that he resided with his spouse from July 2003 until December 2010. This information is inconsistent with the petitioner's assertion on the Form G-325A, Biographic Information, dated June 29, 2008, that he resided at the same address as his wife since May 2003. The petitioner's first statement indicated that the couple resided together at their most recent address in [REDACTED] Maryland, but provided no details regarding that shared residence. His second statement contained more information and general timeframes for their various addresses, but did not set forth the specific addresses or specify the dates of residence at each address with his wife. The petitioner also did not offer any probative details of, for example, the couple's various homes, their daily routines, or their life together there. Although the petitioner's friends make brief references to visiting or attempting to visit the petitioner at the latter's home to the apparent displeasure of the petitioner's wife, they do not probatively describe any of the petitioner's marital residences. Finally, of the remaining evidence, only the 2008 and 2009 lease extension agreements, the 2010 joint bank letter, and corresponding bank statements show both the petitioner's and his wife's name listed jointly on the documents. While they provide some evidence of a shared address, but the documents do not demonstrate that the petitioner actually resided with his wife during their marriage. Accordingly, upon *de novo* review, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### *Conclusion*

Upon *de novo* review, the petitioner has failed to demonstrate by a preponderance of the evidence that he resided with his spouse and entered their marriage in good faith as required under section 204(a)(1)(A)(iii)(I)(aa) and (II)(dd) of the Act. Section 204(g) of the Act further bars approval of his petition. 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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> On appeal, counsel asserts that the evidence of joint residence in the record pre-dating the couple's marriage in June 2008 should have been considered by the director, because the petitioner qualifies for the instant petition as an "intended spouse" under section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act. However, at the time the petitioner filed the instant Form I-360, the petitioner was the actual spouse of a U.S. citizen under section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act, rather than the intended spouse. Thus, section 204(a)(1)(A)(iii)(II)(dd) of the Act requires the petitioner to demonstrate that he resided with his wife after their marital relationship was legally established in June 2008.