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U.S. Citizenship  
and Immigration  
Services

Date:

DEC 20 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)

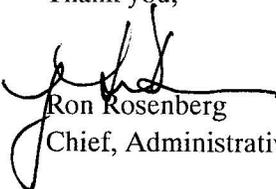
ON BEHALF OF PETITIONER:

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 Director (“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 and reconsider. 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 on the basis of his determination that the petitioner had failed to establish that he entered into his marriage in good faith, that he is a person of good moral character, and that he qualified for the bona fide marriage exception pursuant to section 245(e)(3) of the Act. On June 3, 2013, the AAO determined that the petitioner established his good moral character but found that the petitioner did not establish his good faith marital intention and did not meet the higher burden of proof for the bona fide marriage exemption. Additionally, the AAO found beyond the director’s decision that the petitioner failed to demonstrate the requisite battery or extreme cruelty and his eligibility for immediate relative classification and dismissed the appeal.

On motion, 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 his 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 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, 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 . . . .

\* \* \*

(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 or the self-petitioner’s child, 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 Brazil who entered the United States on March 20, 2005 without inspection, admission, or parole. On March 23, 2005, the petitioner was placed in removal proceedings and ordered removed the same day but he remained in the United States. The petitioner married M-B-<sup>1</sup>, a U.S. citizen, on March 22, 2008, in Massachusetts, thus subjecting himself to the bar on approval of immigrant petitions based on marriages entered into while the alien is in removal proceedings at section 204(g) of the Act.<sup>2</sup> He filed the instant Form I-360 on March 22, 2012. The director denied the petition and the petitioner for failure to establish his good moral character, entry into marriage with M-B- in good faith, and eligibility for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act. The AAO determined that the petitioner established his good moral character but concurred with the director's decision that he did not demonstrate his good faith intentions upon marrying M-B- nor the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Additionally, the AAO determined that the petitioner did not establish the requisite battery or extreme cruelty by his wife or eligibility for immediate relative classification based on his marriage to M-B-. For these reasons, the AAO dismissed the petitioner's appeal.

The AAO's prior decision is incorporated here. The petitioner, through counsel, timely filed a motion to reopen and reconsider. Counsel's brief and the additional evidence meet the requirements for a motion to reopen and reconsider. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon reopening and reconsideration, full review of the record fails to establish the petitioner's eligibility. Counsel's claims and the new evidence submitted on motion fail to overcome the grounds for denial. The appeal will remain dismissed for the following reasons.

### *Battery or Extreme Cruelty*

In its June 3, 2013 decision on appeal, the AAO determined beyond the director's decision that the petitioner failed to establish the requisite battery or extreme cruelty. On motion, counsel asserts that the AAO failed to apply the "any credible evidence" standard by disregarding the petitioner's affidavit, the affidavits from his friend [REDACTED] the psychological evaluation by clinical psychologist [REDACTED] and the letter from advocate [REDACTED]. She argues that the

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

<sup>2</sup> See 8 C.F.R. § 245.1(c)(8)(ii)(A) (Section 204(g) of the Act applies and proceedings remain pending until the removal order is executed and the alien departs the United States, is found not to be removable or the proceedings are otherwise terminated.).

record shows an “unmistakable pattern of verbal, emotional and psychological abuse” by M-B- and that the AAO has imposed a higher standard of evidence on the petitioner because of his gender. Counsel’s assertions are not supported by the evidence in the record. In her affidavits, [REDACTED] stated that she has known M-B- for approximately fifteen years and that M-B- cleaned her house. She stated that she met the petitioner through M-B- and had conversation with both of them about their marriage. She stated that the petitioner was depressed because of M-B-’s treatment of him and was suicidal at one point. She further recounted one telephone conversation with M-B- during which M-B- threatened to deport the petitioner. However, despite her familiarity with the petitioner and M-B-, [REDACTED] did not add any substantive information regarding this telephone conversations or any other specific incident of abuse. The psychological evaluation by [REDACTED] likewise failed to provide sufficient information regarding the claimed abuse. Ms. [REDACTED] described meeting the petitioner for one, two-and-a-half hour interview and summarized what the petitioner presented in her report. While we do not question [REDACTED] professional expertise, her assessment of the abuse was based on her interview of the petitioner, and provided no further, substantive information regarding the petitioner’s treatment by M-B-. The letter from [REDACTED] advocate at [REDACTED] stated only that the petitioner received services at their organization but did not disclose the nature of nor the reason for such services.

In his affidavit on motion, the petitioner repeats his earlier statements regarding M-B-’s behavior. He states that she accused him of infidelity, frequently called to check up on him, and humiliated him in front of other people. He does not add any probative details about specific incidents of abuse that demonstrate that his wife’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). A review of the record, including the petitioner’s affidavit on motion, does not contain sufficient, probative information to establish the claimed abuse. On motion, counsel further fails to address these deficiencies and demonstrate how the director and the AAO misapplied the law by holding the petitioner to a higher standard, as there was no gender bias in our prior decision. 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.

#### *Good-Faith Entry into the Marriage*

In its prior decision, the AAO determined that the petitioner had not established that he entered into marriage with M-B- in good faith because he failed to provide probative details regarding their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. On motion, the petitioner submits a third self-affidavit where he repeats his earlier statements describing how he met M-B- and how they started their relationship. He states that he did not marry M-B- for immigration benefits and briefly lists activities that they enjoyed doing such as eating out at restaurants, hosting barbecues, and going out as a couple with friends. The petitioner states that after a small wedding, the two continued to “live happily” as they did while they were dating. The petitioner does not add any probative information to the affidavits he submitted previously.

On motion, counsel argues that due to the petitioner’s gender, the AAO misapplied “relevant law, regulations, and USCIS policy.” She states that the petitioner provided ample evidence establishing his

good faith marital intentions and that he submitted a third affidavit explicitly stating his good faith intentions upon marrying M-B-. However, beyond asserting that he did not marry M-B- for immigration benefits, the petitioner did not provide sufficient detail to adequately address his good faith in marrying M-B-. Likewise, the letters from his friends submitted below failed to provide relevant, substantive information regarding the petitioner's and M-B-'s relationship. When viewed in the totality, the preponderance of the remaining, 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 Bars Approval*

In its June 3, 2013 decision, the AAO determined that as the petitioner did not demonstrate his good faith marital intention by a preponderance of the evidence, he also failed to establish the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. On motion, counsel submits a brief and an affidavit from the petitioner which further failed to establish that the petitioner married M-B- in good faith. Accordingly, the petitioner has not demonstrated the bona fides of his marriage by clear and convincing evidence. Section 204(g) of the Act consequently bars approval of this petition.

*Eligibility for Immediate Relative Classification*

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).

*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 his appeal. He has not demonstrated that he was battered or subjected to extreme cruelty by his wife, that he is exempt from the bar to approval of his petition under section 204(g) of the Act, and that he 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.

**ORDER:** The motion is granted. The June 3, 2013 decision of the Administrative Appeals Office is affirmed and the petition remains denied.