



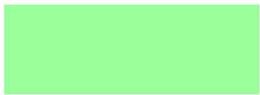
U.S. Citizenship
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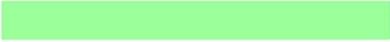
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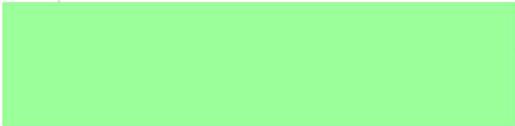
Office: VERMONT SERVICE CENTER

File: 

IN RE: Self-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:

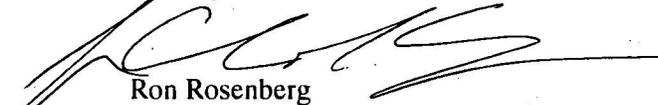


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 our 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 request 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 that any motion must 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, 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 United States citizen spouse.

Applicable Law

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 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].

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 or preference 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.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

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 corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

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

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the

Act are explained further 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.

Facts and Procedural History

The petitioner is a citizen of Thailand who entered the United States as a nonimmigrant student on September 6, 2004. On November 16, 2009, the petitioner was placed into removal proceedings. On January 12, 2010, she married a U.S. citizen in Illinois. The petitioner filed the instant Form I-360 on November 8, 2010. The director denied the petition for failure to establish that the petitioner resided with her husband and married him in good faith, and the AAO dismissed the petitioner's subsequent appeal. In its July 5, 2012 decision, the AAO summarily dismissed the appeal and upheld the director's decision regarding the failure to show the petitioner entered into marriage in good faith and resided with her husband. The AAO further found that the petitioner failed to qualify for the bona fide marriage exemption from section 204(g) of the Act under the heightened standard of proof required by section 245(e)(3) of the Act.

Counsel asserts that an erroneous assessment was made in weighing the evidence provided. However, counsel's brief fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *See* 8 C.F.R. § 103.5(a)(3) (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

Counsel's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Counsel asserts that the petitioner has submitted sufficient documentation to establish

by clear and convincing evidence that she married her husband in good faith and that the AAO did not properly assess the evidence provided. Counsel submits new evidence; a letter from the petitioner's landlord and a new declaration from the petitioner, as well as copies of previously submitted evidence. Accordingly, the motion to reopen is granted.

Analysis

Joint Residence

The record fails to demonstrate that the petitioner resided with her husband. The petitioner and her husband's licenses list separate addresses and do not support the claim that they resided together. On the Form I-360, the petitioner stated that she lived with her husband from January 12, 2010 through July 3, 2010 and that their last joint address was on [REDACTED] Avenue in Illinois. In her statements, however, the petitioner claims that her husband moved in with her in September, 2009. Although counsel acknowledges this discrepancy in her Memorandum of Law in Support of the Appeal,¹ there is no explanation provided for the inconsistency. In her statements, the petitioner does not describe their home or shared residential routines in any detail, apart from the alleged abuse. In fact, the petitioner herself admits that her husband kept a separate apartment, and that he only stayed with her at her apartment two or three times each week. In her first affidavit, the petitioner noted that her husband did not help her pay for rent on her apartment or for their food. Throughout her statements, the petitioner repeatedly referred to the address on [REDACTED] Avenue as "my apartment". When the petitioner described looking for her husband after she saw him in a bar with another woman, she stated that she "went to *his* apartment the next morning." (Emphasis added). Similarly, in her affidavit, the petitioner's friend [REDACTED] stated that many times she went to the petitioner's apartment to stay and chat with her "as she is alone because [her husband] is in his apartment." The petitioner submitted a lease signed by both herself and her husband, but the lease is dated July 31, 2009, which contradicts both the dates provided by the petitioner in her affidavits and her Form I-360. Where United States Citizenship and Immigration Services (USCIS) can articulate a material doubt regarding the petitioner's eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The inconsistencies described above greatly diminish the petitioner's credibility. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Section 101(a)(33) of the Act prescribes that, as used in the Act: "The term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. § 1101(a)(33). The preamble to the interim rule regarding the self-petitioning provisions cited section 101(a)(33) of the Act as the binding definition of residence and further clarified that "[a] self-petitioner cannot meet the residency requirements by

¹ Counsel claims to have previously submitted a supplemental brief in support of the prior appeal on January 3, 2012. However, the AAO never received a supplemental brief, and counsel has not provided any evidence that the brief was previously submitted, as stated in the brief on motion.

merely . . . visiting the abuser's home . . . while continuing to maintain a general place of abode or principal dwelling place elsewhere.” 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996). In this case, the record shows that the petitioner maintained her own principal dwelling place apart from her husband's apartment during their marriage, and that her husband came to visit her at her apartment two to three times each week.

On motion, counsel submits a letter from the petitioner's landlord, [REDACTED]. Although [REDACTED] states that the petitioner and her husband have been living together since August 2009 and dating since summer 2008, he does not provide any information as to the basis of that knowledge. Additionally, the date he provides for when the petitioner began living with her husband does not match either of the dates provided by the petitioner – September 2009 or January 2010. As such, the letter from the landlord is insufficient to overcome the above-noted discrepancies. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavits, the petitioner stated that she first met her husband when she went to fix his computer in 2006, and they began dating in the summer of 2008. The petitioner recalled that her husband called every day and treated her well. The petitioner claimed that her husband moved in with her in September, 2009, and asked her to marry him a few months later, but she refused. She stated that in December, 2009, they opened a joint bank account together and that on New Year's Eve her husband proposed again and she said yes. The petitioner recalled that on January 12, 2010, they got married at the court and had lunch with friends. The petitioner did not further describe their courtship, engagement, wedding, or any of their shared experiences, apart from the abuse.

The petitioner submitted 16 letters from various friends. These letters provided no specific information demonstrating that the petitioner married her husband in good faith. Many of the letters stated that the petitioner loved her husband and married him in good faith, but did not provide any basis for that opinion. Some friends noted that they went to dinner with the petitioner and her husband but do not describe their observations of the petitioner's interactions and relationship with her husband aside from the abuse.

The director also accurately assessed the other relevant documents submitted below. As noted by the petitioner, although the petitioner included her husband on her car insurance, he did not include her on his. The photographs of the petitioner with her ex-husband on a few unspecified occasions are not accompanied by any explanation of their significance. The joint bank statements submitted are alone insufficient to establish that the petitioner married her husband in good faith. Regardless of the deficiencies noted by the director, 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(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.” 8 C.F.R. § 204(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the petitioner’s entry into her marriage in good faith. In her affidavit, the petitioner does not describe their courtship, wedding, joint residence or any of their other shared experiences, apart from the abuse, in probative detail. The affidavits from the petitioner’s friends, many of which are worded similarly, do not discuss in probative detail the authors’ observations of the petitioner’s interactions with or feelings for her husband during their courtship or marriage.

On motion, the petitioner provided a third affidavit in which she stated that she could get more evidence from friends abroad, but that she did not. The petitioner stated that her husband hurt her greatly and that things remind her of him, and asked that her petition be granted. The petitioner did not provide any new facts or detailed information to show that she married her husband in good faith. The only other new evidence submitted, the letter from her landlord, is not sufficiently detailed and as noted in the preceding section, is inconsistent with the petitioner’s assertions. The evidence submitted on motion is insufficient to overcome the deficiencies noted above. The petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Furthermore, the appeal cannot be sustained because the petitioner is subject to the bar on approval of petitions based on marriages contracted while the alien spouse was in removal proceedings at section 204(g) of the Act and she has not established her eligibility for the exemption from section 204(g) of the Act at section 245(e)(3) of the Act. At the time the petitioner married her husband, she was in removal proceedings, which have not terminated, and she has not since resided outside of the United States for the requisite two year period; thus, she was subject to the bar at section 204(g) of the Act.

The evidentiary requirements for an exemption are explained in the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B), which states, in pertinent part:

(B) Evidence to establish eligibility for the bona fide marriage exemption. The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien’s entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

- (1) Documentation showing joint ownership of property;
- (2) Lease showing joint tenancy of a common residence;
- (3) Documentation showing commingling of financial resources;
- (4) Birth certificate(s) of child(ren) born to the petitioner and the [abused

spouse];

- (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or
- (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

While identical or similar evidence may be submitted to establish a good-faith entry into 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 at 375. 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.

The present record does not demonstrate the bona fides of the petitioner’s marriage under the heightened standard of proof required by section 245(e)(3) of the Act. The documentation provided does not demonstrate by a preponderance of the evidence that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. As she failed to demonstrate her good-faith entry into her marriage by a preponderance of the evidence, she necessarily has not established her good-faith entry into the marriage under the heightened standard of clear and convincing evidence required by section 245(e)(3) of the Act.

Eligibility for Immediate Relative Classification

Since the petitioner has not complied with section 204(g) of the Act, she also has not demonstrated her eligibility for immediate relative classification as required by subsection 204(a)(1)(A)(iii)(II)(cc) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

(b)(6)

Conclusion

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 Dec. 369 at 375. Here, that burden has not been met. Upon reopening, the prior decision of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

ORDER: The appeal remains dismissed and the petition remains denied.