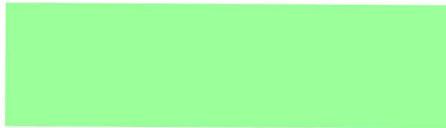




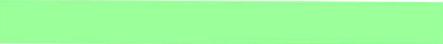
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUN 03 2013

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:

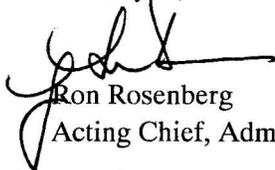
SELF-REPRESENTED

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 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 Vermont Service Center director (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 under 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.

The director denied the petition on the basis of his determination that the petitioner was subject to the provisions of section 204(c) of the Act, and that she failed to establish that she had a qualifying relationship with her husband, that she entered into marriage with her husband in good faith, resided with him, or that she was a person of good moral character.

On appeal, the petitioner submits a brief and copies of previously submitted evidence.

Applicable Law

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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 eligibility requirements 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.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. . . . A self-petitioner's claim of good

moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. . . .

* * *

(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 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, the following:

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.

* * *

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by . . . proof of the termination of all prior marriages, if any, of . . . the self-petitioner.

* * *

(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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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.

Section 204(c) of the Act, 8 U.S.C. § 1154(c), states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . , by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or
- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). United States Citizenship and Immigration Services (USCIS) may rely on any relevant evidence in the record, including evidence from prior USCIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Where there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws. *Matter of Phillis*, 15 I&N Dec. 385, 386 (BIA 1975). Evidence that a

marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner'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 together. *Id.* at 387.

Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States on August 28, 1999, as a nonimmigrant visitor. The petitioner was placed into removal proceedings on or about June 1, 2008 for remaining in the United States beyond her period of authorized stay. On December 24, 2009, the petitioner married R-A-, a U.S. citizen, in New York.¹ The petitioner filed the instant Form I-360 on June 7, 2011. The director subsequently issued a Notice of Intent to Deny (NOID) informing the petitioner that USCIS had concluded that the petitioner previously entered into a marriage for the purpose of evading immigration laws, and was subject to the provisions of section 204(c) of the Act. The director further noted that the petitioner had not demonstrated that she had a qualifying relationship with her husband, her good-faith entry into the marriage, that she and her spouse resided together, and that she was a person of good moral character. The petitioner timely responded with a brief which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on November 23, 2012. The petitioner timely appealed.

On appeal, the petitioner asserts that she married her husbands for love, that USCIS did not previously find that she was subject to section 204(c) of the Act, and that it is USCIS's burden to show that she married her second husband in order to receive an immigration benefit.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner has failed to overcome the director's grounds for denial and establish that she: is not subject to the provisions of section 204(c) of the Act; resided with and married her husband in good faith; and is a person of good moral character. A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Qualifying Relationship

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages, and evidence of the citizenship of the U.S. citizen spouse. In denying the petition, the director determined that the petitioner claimed to have been married three times, but had only submitted one divorce certificate showing she had divorced her second husband. The director concluded that the record did not contain satisfactory evidence to demonstrate that the petitioner had a qualifying relationship with a U.S. citizen and was eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i). However, the record contains a death certificate for the petitioner's first husband, and as such, the petitioner has established that she has a qualifying relationship as the spouse of a U.S.

¹ Name withheld to protect the individual's identity.

citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence fails to demonstrate the petitioner's entry into her marriage in good faith. In her declaration, the petitioner stated that she met her husband in 2005 at a friend's gathering. She recalled that they saw each other again when she was visiting a friend, and that her husband asked her out on a date. While she was visiting her friend, she and her husband saw each other often and had things in common. The petitioner noted that she was in love, and her husband moved in with her. She recalled that they saw movies and stayed in, and later got married. The petitioner did not describe in probative detail how she met her husband, their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse.

The petitioner submitted two letters from friends, [REDACTED] and [REDACTED]. [REDACTED] stated that he believed that the petitioner and her husband's marriage was genuine, that he saw them kissing, and that they appeared happy. [REDACTED] indicated that he saw the petitioner and her husband hold hands and kiss. Both affiants spoke predominately of the abuse and provided no probative information regarding the petitioner's good faith in entering the relationship, nor do they provide any substantive information or probative detail regarding the affiants' observations of the petitioner's interactions and relationship with her spouse prior to and during their marriage. The director correctly concluded that these affidavits provided no specific information demonstrating that the petitioner married her husband in good faith.

The petitioner also submitted photographs of herself with the petitioner and bills from [REDACTED]. The director correctly concluded that these are insufficient to meet her burden of showing she married her husband in good faith. Although the petitioner has submitted some documentary evidence, without any description of her intentions in marrying her husband, she has not shown by a preponderance of the evidence that she entered into her marriage in good faith. In her affidavit, the petitioner briefly states that she met her husband and that they dated and were married, but she does not describe their courtship, wedding, joint residence or any of their other shared experiences in probative detail, apart from the abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. Accordingly, 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.

Restriction on Petitions Based on Marriages Entered while in Proceedings and the Bona Fide Marriage Exception

Beyond the director's decision,² because the petitioner married her husband after she was placed into removal proceedings and she did not remain outside of the United States for two years after their

² 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*

marriage, her self-petition cannot be approved pursuant to section 204(g) of the Act unless she establishes the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. 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 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, 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 corresponding regulation at 8 C.F.R. § 245.1(c)(9)(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.

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.

Upon a full review of the relevant evidence, as stated above, the petitioner failed to establish her good-faith entry into her marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act; thus, she has necessarily not provided clear and convincing evidence that her marriage is bona fide under the heightened standard of proof required by section 245(e)(3) of the Act.

Section 204(c) of the Act

The record contains evidence that the petitioner married her second husband in order to evade immigration laws. In the NOID, the director noted that the petitioner was subject to section 204(c) of the Act because USCIS records and the prior Form I-130 petition filed on the petitioner’s behalf indicated that her second marriage was entered into for the purpose of evading the immigration laws. Accordingly, the director specifically requested documentation that the petitioner married her second husband in good faith. The petitioner submitted no relevant evidence in response to the NOID.

On appeal, the petitioner contends that because USCIS did not deny her second husband’s Form I-130 based on a finding that the couple sought to evade the immigration laws and enter into a fraudulent marriage, the director cannot determine that the approval of the instant petition is barred by section 204(c) of the Act. While the Form I-130 filed by the petitioner’s second husband was denied for failure to respond to a request for evidence, that determination does not preclude the director from finding that section 204(c) of the Act bars approval of the petitioner’s Form I-360, as a decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538 at 539. During the petitioner and her second husband’s immigration interview on March 18, 2008, an immigration officer noted many discrepancies between their answers. For example:

- the petitioner stated that her ex-husband knew who she lived with prior to their marriage and visited her at that residence; her ex-husband stated that he never visited her and did not know who the people she lived with were.
- the petitioner claimed they did laundry at the Laundromat and that they did not have a garage at their house; the petitioner's ex-husband claimed they did laundry at home in a laundry room located off the garage.

- the petitioner did not know her ex-husband's daughter's name, and claimed to have met her, but her ex-husband stated that the petitioner had never met his daughter.

- the petitioner and her ex-husband provided different house telephone numbers.

In addition, public records reflected that the petitioner was living in New York and her ex-husband was living in Ohio. The petitioner states that she married her second husband in good faith, but offers no evidence to support this assertion. The petitioner has provided no documentation of her good-faith entry into marriage with her second husband that would rebut USCIS's determination that she is subject to the provisions of section 204(c) of the Act, and no such materials were submitted with her second husband's Form I-130 petition.

The petitioner also contends that it is USCIS's burden to show that the 204(c) bar applies. The petitioner is mistaken. It is the petitioner's burden to show that her marriage was bona fide. *Matter of Phillis*, 15 I&N Dec. 385 at 386 (Where there is reason to doubt the validity of a marital relationship, the petitioner must present evidence to show that the marriage was not entered into for the primary purpose of evading the immigration laws). Although presented with various opportunities to present such evidence, the petitioner has not provided any evidence that her marriage to her second husband was not entered into in order to evade immigration laws. Approval of the instant petition is consequently barred pursuant to section 204(c) of the Act.

Joint Residence

The relevant evidence also fails to demonstrate that the petitioner resided with her husband. On the Form I-360, the petitioner claimed that she lived with her husband from December 2008 to January 2011, and that their last joint address was on [REDACTED] in the Bronx, New York. In her declaration, the petitioner does not specify the dates or addresses of her residence with her husband and she does not describe their home(s) or shared residential routines in any detail, apart from the abuse. In her declaration, the petitioner simply stated that her husband moved in with her before they were married, and that she was only at their home on weekends because she worked as a live-in aide.

Other than the [REDACTED] bills, the petitioner has not submitted any evidence to establish that she resided with her husband, nor does she address this issue on appeal. 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.

Good Moral Character

The record also fails to demonstrate that the petitioner is a person of good moral character. The petitioner has not provided any evidence of her good moral character. Although she briefly mentioned in her declaration that she is a person of good moral character and that she has never been arrested, the petitioner failed to provide a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition as required under 8 C.F.R. § 204.2(c)(2)(v). She also failed to provide an explanation of why said background checks were not provided. *Id.* As such, the petitioner has failed to demonstrate that she is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that she did not establish the requisite entry into the marriage in good faith, that she resided with her husband, that she is a person of good moral character, and that approval of her petition is barred by section 204(c) of the Act. Beyond the director's decision, the petitioner is also subject to the bar at section 204(g) of the Act.

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, 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, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.