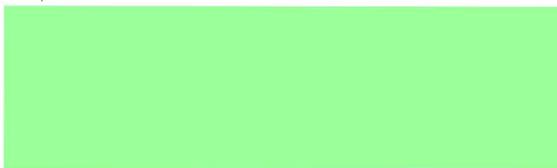


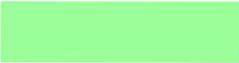


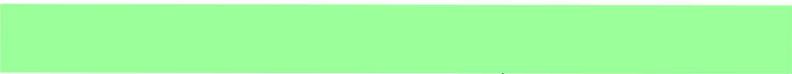
U.S. Citizenship  
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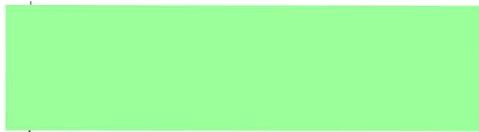
Date: **MAR 13 2013**

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:

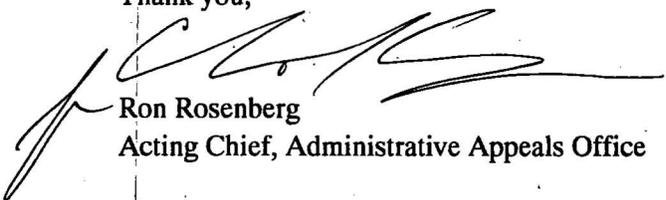


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 its 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 motion 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 any motion to 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, (“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 her U.S. citizen spouse.

The director denied the petition because the petitioner married her husband while she was in removal proceedings and did not establish by clear and convincing evidence that she entered into the marriage in good faith and was consequently subject to the bar to approval of her petition under section 204(g) of the Act.

On appeal, the petitioner, through counsel, submits a brief.

#### *Relevant Law and Regulations*

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The record in this case indicates that the petitioner was in removal proceedings at the time of her marriage. In such a situation, section 204(g) of the Act prescribes:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien’s right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after her marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, which states in pertinent part:

*Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –*

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien’s status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien’s right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien’s admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

8 U.S.C. § 1255(e) (emphasis added).

The eligibility requirements for an abused spousal 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)(1), which states, in pertinent part:

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

\* \* \*

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Fiji who entered the United States as a B-2 visitor on July 27, 1996. In 1997, the petitioner was placed in removal proceedings and ordered removed on September 9, 2005, but the petitioner did not depart the United States and her proceedings remain pending. The petitioner married D-J<sup>1</sup>, a U.S. citizen, in California on October 29, 2005, thus subjecting herself 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> She filed the instant Form I-360 on July 30, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into marriage with D-J-, as well as evidence that she met the bona fide marriage exemption from section 204(g) of the Act. The petitioner, through former counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has failed to overcome the director's ground for denial. Beyond the director's decision, the record also fails to establish that the petitioner is eligible for immediate relative classification based on her marriage to D-J-.<sup>3</sup>

<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.).

<sup>3</sup> An application or 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 Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

*Good-Faith Entry into the Marriage*

To the extent the director indicated that the petitioner had not established her good-faith entry into marriage under section 204(a)(1)(A)(iii)(I)(aa) of the Act, that portion of his decision shall be withdrawn. *De novo* review of the record shows that the petitioner married her husband in good faith under the preponderance of the evidence standard applicable to abused spousal self-petitions. The record contains the petitioner's affidavits, joint bank statements, a joint credit union statement, copies of 2005, 2006 and 2007 federal income tax returns showing the petitioner's filing status as married filing jointly with D-J-, copies of electronic mail messages, copies of greeting cards, photographs of the petitioner with D-J- at their wedding and on various other occasions, and affidavits from family. The joint bank statements, credit union statement, and tax returns demonstrate a shared residence but do not establish that the petitioner married D-J- in good faith. The majority of the statements are dated shortly before D-J- and the petitioner separated and therefore do not establish the petitioner's good-faith intent upon marrying him. The photographs show that the petitioner and D-J- were photographed together at their wedding and on several other occasions but are also insufficient to establish that the petitioner married D-J- in good faith. The electronic mail messages are all dated within a few days in 2005 and do not contain identifying information showing that the addresses belong to the petitioner and D-J-. Even if the messages were properly identified, they are brief, the text is only partially printed and the messages are consequently insufficient to establish the petitioner's intentions upon marrying D-J-.

Although the submitted documents fail to establish the petitioner's good-faith intent on marrying D-J-, they still lend some support to the petitioner's testimony regarding her relationship with her husband. In her first affidavit, the petitioner stated that she met D-J- through an Internet dating service in April of 2005. She stated that they hit it off and maintained constant contact through electronic mail exchanges. The petitioner stated that D-J-, who lived in Florida at the time, came to visit her in California in July of 2005. She stated that they went out to movies, romantic dinners, and that D-J- professed his love for her. She further stated that after he returned to Florida, they resumed their long-distance relationship and D-J- proposed marriage. The petitioner explained that she had a bad experience in a previous marriage and was hesitant to get married again but reconsidered because D-J- was a "loving, considerate, and sincere man." The petitioner stated that after she accepted D-J-'s proposal, he relocated to California, and the two were married in October of 2005. In response to the RFE, the petitioner submitted a second affidavit where she repeated much of her earlier statements and added that she discussed with her family her intentions to marry D-J-. These statements, supported by the documents submitted, offer probative information regarding the petitioner's good-faith intentions in marrying D-J-.

The affidavits from the petitioner's family members submitted below attest to knowing the petitioner and D-J- as a couple and provide some insight into the petitioner's intentions in marrying D-J-. [REDACTED], the petitioner's mother, [REDACTED], her maternal uncle, and [REDACTED], her cousin, all echoed much of what the petitioner recounted in her own affidavit of how she met and started dating D-J-. They recounted attending the wedding and spending time with the petitioner and D-J- after the wedding. Ms. [REDACTED] stated that the petitioner told her about her feelings for D-J- during their courtship and that she met him when he visited the petitioner in July of 2005. Mr. [REDACTED] stated that he visited the petitioner and D-J- at their home many times and saw that they were

happy and content with each other. Mr. [REDACTED] also stated that he visited the petitioner and D-J- at their home and also saw them spending time together in public places. On appeal, counsel asserts that the statements of the petitioner and her family sufficiently show that the petitioner married D-J- in good faith.

The preponderance of the relevant evidence demonstrates that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director did not make an explicit determination regarding the petitioner's eligibility under this criterion. However, to the extent that the director's decision may be read as making a negative finding under this requirement, that portion of his decision is hereby withdrawn.

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

The petitioner has not, however, met the higher burden of proof for the bona fide marriage exemption from the bar against the approval of petitions based on marriages entered into while the alien spouse is in removal proceedings. Because the petitioner married D-J- while she was in removal proceedings and she did not remain outside of the United States for two years after their 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. 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 exemption 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 her good-faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, 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 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.

Although the petitioner established her good-faith entry into her marriage with D-J- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has not demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. The relevant documents are insufficient to establish by clear and convincing evidence that the petitioner married D-J- in good faith. As previously discussed, many of the documents are dated shortly before the petitioner and D-J- separated. The electronic mail messages are unidentified, incomplete and do not show an ongoing correspondence throughout the claimed courtship. The photographs depict only a few moments during the relationship and the petitioner did not provide any substantive explanation of their significance. The copies of the joint tax returns were not accompanied by any evidence that they were actually filed with the Internal Revenue Service (IRS). Apart from these documentary deficiencies, the relevant statements and affidavits are also insufficient to establish the petitioner's good-faith in entering the marriage by clear and convincing evidence. The petitioner's affidavits briefly recounted how she met her husband and their courtship, but her statements lack sufficiently detailed and probative

information regarding her early relationship with D-J-, their wedding, shared residence and experiences, apart from the abuse. Although they attested to the petitioner's relationship with D-J-, the petitioner's family members also failed to provide probative and substantive information regarding the petitioner's marital intentions. 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, she has also failed to demonstrate her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

*Conclusion*

Although the petitioner has shown that she married her husband in good faith by a preponderance of the evidence, as required under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has not established her good-faith entry into the marriage under the heightened standard of proof required by section 245(e) of the Act to exempt her from the bar to approval of this petition under section 204(g) of the Act because she was married while in removal proceedings. Beyond the director's decision, the petitioner also has not shown that she is eligible for immediate relative classification based on her marriage to D-J-. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.