

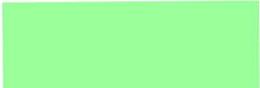


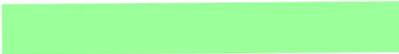
U.S. Citizenship
and Immigration
Services

(b)(6)



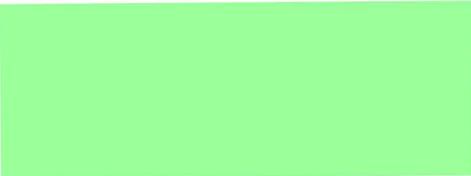
Date: **MAY 13 2013**

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:

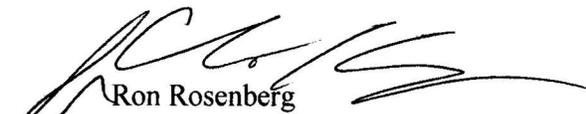


INSTRUCTIONS:

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 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 had failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. The director also denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith and for failure to demonstrate that he is exempt from the bar to approval of his petition under section 204(g) of the Act.

On appeal, the petitioner, through counsel, submits a statement on the Form I-290B Notice of Appeal.

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 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)(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:

(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.

Facts and Procedural History

The petitioner is a citizen of Cameroon who entered the United States as an F-1 nonimmigrant student on July 4, 2001. The petitioner did not maintain his student status and was placed in removal proceedings in 2002. He married K-A-¹, a U.S. citizen, on August 31, 2004 in Oklahoma City, Oklahoma. The petitioner filed the instant Form I-360 on September 3, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty, entry into marriage with K-A- in good faith, and eligibility for the bona fide marriage exemption. The petitioner 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 as supplemented, the petitioner has not overcome the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that he is eligible for immediate relative classification based on his marriage to K-A-². The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's wife did not subject him to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. The petitioner initially submitted a personal affidavit and statements from [REDACTED]

In his affidavit, the petitioner stated that despite his objections, K-A- frequently smoked cigarettes and marijuana. He stated that they experienced marital problems because they were sexually incompatible and this resulted in K-A-'s infidelity. The petitioner stated that K-A- became verbally abusive and described one incident when she yelled at him for adding salt to a dish that she had prepared, but he did not describe this incident in further probative detail. The petitioner stated that K-A- left him in December of 2007, had a child with another man in August of 2009, and forced him to support her and her child with threats of deportation. In his second affidavit submitted in response to the RFE, the petitioner repeated his earlier statements, but did not provide any probative details about K-A-'s treatment of him. The petitioner's statements do not demonstrate that his wife battered him, or that her 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).

The petitioner's friends and family attested to his troubled marriage, but their statements are all similar and also fail to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty.

[REDACTED] stated that she was a neighbor of the petitioner and his wife and that after a time, K-A- began spending a lot of money. She stated that K-A- was verbally abusive and cheated on the

¹ Name withheld to protect the individual's identity.

² 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).

petitioner. [REDACTED] stated that he was the petitioner's roommate and that the petitioner complained about feeling abandoned by K-A- because K-A- was frequently gone for days. [REDACTED] the petitioner's brother, stated that he had conversations with the petitioner about the petitioner's marital problems with K-A-. Ms. Cecile, Mr. [REDACTED] and Mr. [REDACTED] did not describe specific incidents of abuse that they witnessed or otherwise establish their knowledge of such abuse. In response to the RFE, the petitioner submitted a second statement from [REDACTED] and a letter from [REDACTED]. Mr. [REDACTED] stated that he has first-hand knowledge of the petitioner's "marital problems." He stated that the petitioner called him to complain about "the hard times he was going through with his wife" when she demanded money, called him names, and was unfaithful. Ms. [REDACTED] stated that the petitioner and K-A- spoke to her about their marital problems. She stated that on one occasion during dinner at her house, K-A- became angry and called the petitioner derogatory names. She did not give further probative details about this incident nor did she describe any other specific incidents of abuse.

On appeal, counsel asserts that the petitioner provided detailed and specific information regarding the extreme cruelty he suffered at the hands of K-A- and that the director failed to take into consideration the pattern of K-A-'s abusive behavior. However, the petitioner's affidavits and the statements provided by his family and friends failed to provide probative information to establish the claimed abuse. When viewed in the aggregate, the relevant evidence submitted below and counsel's statements on appeal are insufficient to establish that K-A- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner failed to establish that he married K-A- in good faith. The record contains the petitioner's affidavits, photographs of the petitioner and K-A- on several, unidentified occasions, copies of leases, joint bank statements, joint car insurance letter with the attached policy, a check from their joint bank account made out to K-A-, holiday cards, letters from the petitioner's father, and letters from other family and friends. The submitted bank statements cover a period from April of 2005, over seven months after the two were married, to August of 2010, over two and a half years after they separated. In addition to being dated well after the petitioner and K-A- were married, the account statements show minimal activity that would indicate its use for shared marital expenses and have little probative value in demonstrating that the petitioner entered into his marriage in good faith. The car insurance letter, dated years after the petitioner and K-A- separated, indicated that the petitioner and K-A- have been policy holders since August 20, 2007, just several months before their separation. As such, the letter also holds little evidentiary value in establishing the petitioner's good-faith marital intent. The check, signed by K-A- and made out to her, did not speak to the petitioner's marital intent. The letters from the petitioner's father described visiting the petitioner and K-A- at their home in Oklahoma but provided no specific information demonstrating that the petitioner married K-A- in good faith. The photographs show only that the petitioner and K-A- were photographed together on several occasions and the holiday cards alone are insufficient to establish that the petitioner married K-A- in good faith.

Regardless of the deficiencies of the record, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). In his first affidavit, the petitioner stated that he and K-A- met in 2003 and had long conversations about their careers in the nursing profession. He stated that they started dating, attended many functions together and went to each other's churches. He further stated that he fell in love and proposed to her on August 1, 2003. He did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse. In his second affidavit submitted in response to the RFE, the petitioner repeated his earlier statements and did not further describe in detail their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse. The affidavits from his family and friends submitted below also did not contain probative details regarding the petitioner's intentions in marrying K-A-. His family and friends described knowing the petitioner and K-A- as a loving couple but they did not describe any visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

On appeal, counsel claims that there is no evidence that calls into question the validity of the petitioner's marriage with K-A-. Counsel argues that the fact that petitioner and K-A- were married and lived together for over three years sufficiently establishes the petitioner's good-faith intent upon marrying K-A-. However, the petitioner's affidavits did not provide sufficient detail to adequately address his good-faith intent and the letters from his family and friends also failed to provide relevant, substantive information regarding their relationship. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

Because the petitioner married K-A- while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. On appeal, counsel asserts that section 204(g) of the Act does not apply to the instant case because the Immigration Judge administratively closed the petitioner's case in removal proceedings. Counsel is mistaken. Section 204(g) of the Act applies until proceedings are terminated. 8 C.F.R. § 245.1(c)(8)(ii)(D). Administrative closure does not result in a final order and is not equivalent to the termination of removal proceedings. *Matter of Bavakan Avetisyan*, 25 I&N Dec. 688, 695 (BIA 2012). Although the petitioner's removal proceedings were administratively closed in 2003, the proceedings were not terminated and none of the other exemptions at 8 C.F.R. § 245.1(c)(8)(iii) apply. The petitioner remains subject to section 204(g) of the Act unless he establishes that his marriage to K-A- was bona fide through clear and convincing evidence.

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 good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. As the petitioner failed to establish his good-faith entry into his marriage with K-A- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the applicable heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Beyond the director’s decision, the petitioner is also not eligible for immediate relative classification based on his marriage to K-A-, 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) because he has not complied with, nor is he exempt from section 204(g) of the Act.

Conclusion

The petitioner has not overcome the director’s grounds for denial on appeal. He has not established that K-A- subjected him to battery or extreme cruelty during their marriage. Further, he has not demonstrated that he entered into marriage with his wife in good faith and that he is exempt from the bar to approval of his petition under section 204(g) of the Act. Beyond the director’s decision, the record also fails to demonstrate that the petitioner 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 on these four grounds.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N 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, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.