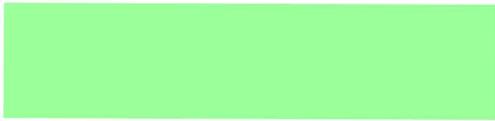




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: NOV 04 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I 290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“the director”) denied the immigrant visa petition 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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his United States citizen spouse in good faith, and that she subjected him to battery or extreme cruelty during their marriage.

The petitioner provided a timely 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 eligibility requirements for immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states the following:

(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 . . . 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:

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

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

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

Pertinent Facts and Procedural History

The petitioner is a citizen of Guinea who entered the United States as a visitor on December 29, 2000. The petitioner remained in the United States without authorization, and was placed in removal proceedings on October 18, 2002. The petitioner married S-B-, a U.S. citizen, on August

17, 2010.¹ The petitioner filed the instant Form I-360 on July 5, 2011. The director subsequently issued a Request for Evidence (RFE) of good-faith entry into the marriage. The petitioner responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director issued a second RFE of, among other things, good-faith entry into the marriage, and the requisite battery or extreme cruelty. The petitioner submitted additional evidence which the director determined was insufficient to establish eligibility. The director denied the petition, and the petitioner timely appealed.

On appeal, the petitioner contends that his wife married him in good faith, but verbally and physically abused him.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's grounds for denial. In addition, beyond the director's decision, the record also fails to establish that the petitioner was exempt from section 204(g) of the Act, which bars approval of petitions based on marriages entered into while the alien was in removal proceedings.² The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

De novo review of the relevant evidence fails to demonstrate that the petitioner married his spouse in good faith. The petitioner briefly stated in his August 12, 2011 letter that he was "excited and happy to get married," and wed his wife "in good faith because I was taking care of her and her daughter without asking anything in return." He asserted that his wife was unfaithful, and even though she had more "filling [sic] for him than me, I decided not to immediately ask for divorce because I was planning for us to stay together for life. I was willing to give the marriage a second chance because I married her in good faith," but the petitioner did not substantively describe his relationship with his former wife – how they met, their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

The record also contains an affidavit dated November 29, 2012 from [REDACTED] who is a friend of the petitioner. Mr. [REDACTED] briefly stated in his affidavit that he has known the petitioner and S-B- since 2009, and "witnessed many incidents between them since they get [sic] married," but he did not describe any social visit or interactions he had with the petitioner and his wife or otherwise demonstrate his personal knowledge of the relationship, apart from the alleged abuse.

The photographs submitted into the record show only that the petitioner and his wife were pictured together, and were pictured with an unknown individual on an unspecified date and occasion, and thus provide no probative information of the petitioner's intentions in marrying his wife.

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).

On appeal, the petitioner contends that his wife “never contested or claimed the marriage was not in good faith,” but the petitioner does not provide further substantive information to establish his own intentions in marrying S-B-.

The petitioner also asserts that they did not have a common bank account because “she wanted to keep her last name and her bank account,” and that he did not insist on having a joint account “because I didn’t want her to think that money is the reason I am marrying her.” The petitioner has established that he resided with his spouse, and traditional forms of joint documentation such as a joint bank account 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). All credible relevant evidence will be considered including evidence regarding courtship, wedding ceremony, shared experiences, and affidavits of persons with personal knowledge of the relationship. *See* 8 C.F.R. § 204.2(c)(2)(vii).

In the instant case, when viewed in the totality, the relevant evidence of the petitioner’s statement, and his friend’s affidavit and the photographs do 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.

Battery or Extreme Cruelty

The relevant evidence submitted below fails to demonstrate the petitioner’s wife subjected him to battery or extreme cruelty during their marriage. The police report stated that on September 14, 2010, the petitioner stated “that following a dispute [S-B-] did pick up [the petitioner’s] computer and did slam it to the ground destroying it.” The photographs show a printer, computer, and broken dishes on the floor of an unidentified location. The petitioner stated in his letter that soon after he married his wife her former boyfriend “came back to her life,” and that she had more “filling [sic] for him than me.” He recounted that she became very abusive and started to physically attack him, but he did not describe any particular incident in which she physically abused him or threatened to do so.

Mr. [REDACTED] briefly recounted in his letter that in August 2010, he tried to intervene in a marital dispute where S-B- was verbally and physically aggressive to both the petitioner and himself. He stated that in September 2010, he saw broken objects in the petitioner’s apartment after the police left. Mr. Lopez also briefly described once witnessing S-B- react aggressively when the petitioner did not give her as much money as she requested.

On appeal, the petitioner asserts that he had previously submitted an eyewitness account of his wife’s verbal and physical abuse. The police report, photographs, and statements of the petitioner and Mr. [REDACTED] indicate that the petitioner’s wife damaged his belongings and was aggressive during marital disputes. The preponderance of the relevant evidence does not, however, demonstrate that the actions of his wife constituted battery, psychological abuse, 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.

Section 204(g) of the Act further Bars Approval

The eligibility requirements for immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of

the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states the following:

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

In this case, the record reflects that the petitioner was in removal proceedings at the time of his marriage.³ In such a situation, 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 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, 8 U.S.C. § 1255(e), which states:

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

³ The petitioner was ordered removed on May 24, 2005, but failed to depart the United States in compliance with the order. Consequently, his removal proceedings remained pending at the time of his marriage in 2010. See 8 C.F.R. § 245.1(c)(8)(ii)(A) (removal proceedings terminate when the alien departs the United States under an outstanding removal order.)

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.

Because the petitioner married S-B- while he was in removal proceedings and 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. 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.

As the petitioner failed to establish his good-faith entry into marriage 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 to S-B- under the 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.

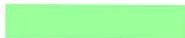
Eligibility for Immediate Relative Classification

Because the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate his eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

Conclusion

The petitioner has not overcome the director’s grounds for denial on appeal. He has not demonstrated that he entered into marriage with his United States citizen spouse in good faith and that she subjected him to battery or extreme cruelty during their marriage. Beyond the director’s decision, the petitioner failed to provide clear and convincing evidence of the bona fides of his marriage entered into while he was in removal proceedings. Section 204(g) of the Act consequently bars approval of this petition. The petitioner has also failed to demonstrate that he is eligible for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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NON-PRECEDENT DECISION

In these proceedings, the petitioner bears the burden of proof to establish his eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.