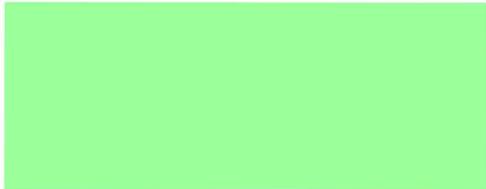


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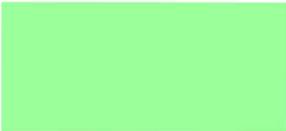
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

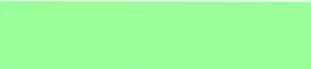


U.S. Citizenship  
and Immigration  
Services



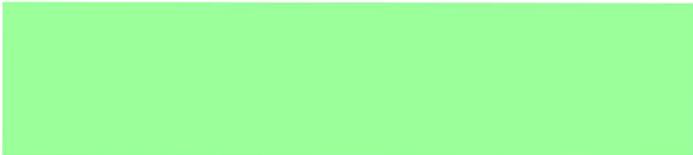
Date: **APR 24 2014**

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 (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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. 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 for failure to establish that: (1) the petitioner is eligible for immigrant classification based on a qualifying relationship with a U.S. citizen; (2) she entered into marriage with her husband in good faith; and (3) that she complied with the provisions of section 204(g) of the Act.

On appeal, counsel submits a brief and additional evidence.

*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, 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 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 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.

(Emphasis added)

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

(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 Mexico who entered the United States without inspection on or about October 17, 1993. On January 5, 1994, the petitioner was ordered deported to Honduras for failure to appear at a master calendar hearing. The Houston, Texas District Director issued a warrant for the petitioner's deportation. The record reflects that the warrant of deportation was never executed and the petitioner remained in the United States. The petitioner married R-A-, a U.S. citizen, on June 2, 2006 in Miami, Florida.<sup>1</sup> The petitioner filed the instant Form I-360 on December 1, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. Counsel filed a timely appeal.

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

In the petitioner's initial affidavit, she recounted that she met her husband while they were both working at a construction site. The petitioner stated that they started dating and two months later she and her three children from another relationship moved in with her husband and his mother. She stated that six months later she, her husband and children moved into an apartment. The petitioner recounted that after two years she and her husband moved to a house and decided to get married. She stated that they wed in their kitchen with only her daughter and son present. In response to the RFE, the petitioner submitted a second affidavit in which she focused on the abuse and did not further discuss her good-faith entry into the marriage. In denying the petition, the director correctly determined that the petitioner's

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<sup>1</sup> Name withheld to protect the individual's identity.

affidavits failed to provide sufficient details to establish that she entered the marriage with her husband in good faith.

The petitioner submitted below and in response to the RFE letters from fifteen friends who briefly discussed the petitioner's marriage, but spoke predominately of the abuse. The petitioner's friends attested to knowing the petitioner and her husband as a married couple, but they did not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing their personal knowledge of the relationship. The director properly reviewed and addressed the deficiencies of the statements and concluded that they fail to offer probative details of the petitioner's good faith intentions in entering the marriage.

The petitioner initially submitted a psychological evaluation from [REDACTED] Ph.D., a licensed mental health counselor who diagnosed the petitioner with depressive disorder and anxiety disorder. Dr. [REDACTED] evaluation focused solely on the abuse in the petitioner's marriage and provided no information on the petitioner's good-faith entry into her marriage. In response to the RFE, the petitioner submitted a psychological evaluation from [REDACTED] Ph.D. who administered psychological testing and found that the petitioner suffers from Post-Traumatic Stress Disorder. Dr. [REDACTED] indicated that he would not provide the petitioner's background information because it was in the previous report. The director correctly concluded that since these evaluations focus on the abuse they are of little probative value in establishing the petitioner's good-faith entry into the marriage.

The petitioner submitted the following documentary evidence: an electric bill in her name only, dated May 6, 2011; a sales receipt addressed to the couple, dated December 31, 2004; a copy of a greeting card to the petitioner from her husband; a stamped envelope addressed to the couple; her husband's earnings statements from September 2005 and April 2007; an order suspending her husband's driving privileges, dated July 19, 2011; her 2010 tax return; and undated photographs of the couple taken at unspecified locations. Although the sales receipt, photographs and the greeting card indicate that the petitioner had a relationship with her husband, the other documents are of no probative value. The electric bill and driving suspension order are dated approximately two years after the petitioner separated from her husband and the stamped envelope is undated. The petitioner's husband's earning statement from April 2007 shows his federal filing status as "married," but the petitioner did not provide evidence of joint tax returns. Her tax return from 2010 reflects that she filed it as "single."

On appeal, counsel refers to the additional evidence submitted on appeal and asserts that the petitioner entered her marriage in good faith. The petitioner, through counsel, submits another self-affidavit and affidavits from her husband, mother-in-law and daughter. These additional affidavits offer a credible, probative account of the petitioner's good-faith entry into the marriage. The petitioner in her third affidavit explained how she first met her husband and their courtship. The petitioner's husband also provided a detail account how he first met the petitioner and their courtship. The petitioner's mother-in-law discussed her personal knowledge of the petitioner's relationship with her son and her interactions with the petitioner's children. The petitioner's daughter discussed some of her shared experiences with her mother and her stepfather when they resided together.

*De novo* review of the record establishes that the petitioner married her husband in good faith. When viewed in the totality - the petitioner's documentary evidence and the affidavits from the petitioner and

her husband, daughter and mother-in-law - demonstrate by a preponderance of the evidence that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Section 204(g) of the Act*

As noted by the director, section 204(g) of the Act also bars the approval of this petition. The record shows that the petitioner married her husband while she remained in administrative proceedings under an order of deportation. Because the petitioner 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 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 (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 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 evidence, we find that the petitioner 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 regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B) provides that the types of documents a petitioner may submit to establish eligibility for the bona fide marriage exemption include, but are not limited to: (1) Documentation showing joint ownership of property; (2) Lease showing joint tenancy of a common residence; (3) Documentation showing commingling of financial resources; (4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary; (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

The petitioner submitted numerous third-party statements from her friends and family members. However, only the affidavits from her mother-in-law and daughter discuss her good-faith entry into

the marriage. The regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B) provides that affidavits from third parties should be supported, if possible, by one or more types of documentary evidence to demonstrate a bona fide marriage, such as a lease showing joint tenancy of a common residence, documentation showing joint ownership of property and documentation showing commingling of financial resources. The petitioner, who claims that she resided with her husband for eight years, only provided some photographs, a single greeting card and a single sales receipt as evidence of their relationship during that period. She has not shown that she and her husband had a lease for joint tenancy, had joint ownership of a car or any other property, maintained any type of joint insurance policy, filed joint tax returns, or had joint bank accounts. Although the petitioner has established that by a preponderance of the evidence that she entered into marriage with her husband in good faith, she has not established her good-faith entry into the marriage under the heightened clear and convincing evidence standard. 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*

On appeal, the petitioner has established by a preponderance of the evidence that she entered into her marriage in good faith. However, she has not overcome the director's determination that she did not establish that she complied with the provisions of section 204(g) of the Act and is eligible for immediate relative classification based on her marriage to a U.S. citizen. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

**ORDER:** The appeal is dismissed.