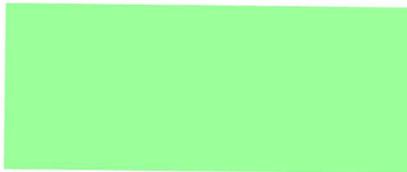




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 07 2014** 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:



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 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 she has a qualifying relationship with a U.S. citizen and entered into the marriage in good faith; and because the petitioner is subject to bar on approval of petitions based on marriages entered into while the alien was in removal proceedings at section 204(g) of the Act.

On appeal, counsel submits an affidavit and a brief.

Applicable Law and Regulations

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, 8 U.S.C. § 1154(a)(1)(J) 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.

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

(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 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:

(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 evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of... the self-petitioner

* * *

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of China who entered the United States on August 7, 2000 as a nonimmigrant visitor. On October 23, 2001, the petitioner was served with a Notice to Appear in removal proceedings.¹ The petitioner married her husband, P-E-, a U.S. citizen, on September 6, 2009 in Las Vegas, Nevada.² The petitioner filed the instant Form I-360 on June 25, 2012. The director subsequently issued a request for additional evidence (RFE) that, among other things, the petitioner married her husband in good faith and that she qualified for a bona fide marriage exemption from section 204(g) of the Act. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish eligibility. The director denied the petition and the petitioner timely appealed.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the additional evidence submitted on appeal fail to overcome the grounds for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

In the petitioner's initial statement, she briefly recounted that she was a piano teacher in San Francisco and met P-E- through the parent of one of her students. She stated that she visited P-E- several times at his residence in Los Angeles and they corresponded over the telephone and through electronic messages. The petitioner recounted that they decided to marry in Las Vegas in September 2009 and she then resided with P-E- in Los Angeles. She stated that in April 2010 she decided to

¹ The petitioner remains in removal proceedings before the [REDACTED] and her next hearing is scheduled for [REDACTED] 2015.

² Name withheld to protect the individual's identity.

separate from P-E- and move back to San Francisco because of financial reasons. The petitioner recounted that she frequently traveled to Los Angeles to visit P-E-. The petitioner failed to probatively describe how she first met P-E-, their courtship, wedding ceremony, shared experiences and joint residence together, apart from the abuse.

The petitioner submitted below letters from P-E-'s next door neighbors, [REDACTED] and her cousin, [REDACTED]. Mr. [REDACTED] recounted that on one occasion P-E- and the petitioner came to his home and the petitioner played the piano. Ms. [REDACTED] also discussed the couple's visit to her home and stated that she saw the couple together in their neighborhood. Mr. [REDACTED] stated that the petitioner told him about her relationship with P-E-, but he did not meet P-E- in person or attend the couple's wedding ceremony. His statement does not indicate that he ever interacted with the couple, or otherwise had personal observations of the couple's relationship.

The director accurately assessed the relevant documents submitted below. The petitioner submitted: a copy of the couple's joint tax return (Form 1040) for 2009; an automobile insurance policy; joint bank account statements; cellular telephone statements; and undated photographs of the couple. The couple's joint tax return is unsigned and the petitioner failed to provide a transcript from the Internal Revenue Service (IRS) to show that it was actually filed. The automobile insurance policy is dated near the end of the couple's relationship and the cellular telephone statements are in P-E-'s name only. The photographs show the couple at their wedding ceremony and on other, unidentified locations.

On appeal, counsel submits a personal declaration in which he stated that on December 13, 2013 he contacted P-E- in China through a telephone number provided by the petitioner. He stated that during their conversation, P-E- told him that his marriage to the petitioner was "real." This statement fails to provide any additional insight into the couple's relationship to demonstrate the petitioner's good-faith entry into the marriage.

On appeal, counsel asserts that the statements, photographs and documentary evidence demonstrate that the petitioner married her husband in good faith. A full review of the evidence submitted below fails to show that the petitioner married her husband in good faith. The relevant documentary evidence shows that the couple was photographed together and shared a bank account. However, the petitioner in her initial statement does not describe in probative detail how she first met P-E-, their courtship, wedding ceremony, shared experiences and joint residence together. In response to the RFE, the petitioner addressed the reason she lacked certain documentary evidence, but failed to further discuss her courtship and marriage with P-E-. The petitioner's cousin stated that he never interacted with the couple and her former neighbors stated that they socialized with the couple on one occasion. The preponderance of the evidence does not demonstrate the petitioner's good-faith entry into marriage with her husband, 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 her husband while she was in removal proceedings and 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 (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 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, she also has not demonstrated the bona fides of her marriage 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

Beyond the decision of the director, 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).³

Qualifying Relationship

The director stated in error that the petitioner does not have a qualifying marriage because she failed to comply with the provisions of section 204(g) of the Act. As discussed, a self-petitioner is required to comply with the provisions of section 204(g) of the Act to establish eligibility for immigrant classification. *See* 8 C.F.R. § 204.2(c)(1)(iv). The record contains the petitioner’s marriage certificate and evidence of her spouse’s U.S. citizenship to demonstrate that she has a qualifying relationship with a U.S. citizen, as explicated in the regulation at 8 C.F.R. § 204.2(c)(2)(ii). Accordingly, the petitioner has established that she has a qualifying relationship as the spouse of a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act.

³ 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Conclusion

On appeal, the petitioner has demonstrated that she has a qualifying relationship with a U.S. citizen. However, she has not established that she entered into marriage with her husband in good faith and is exempt from the bar to approval of her petition under section 204(g) of the Act. Beyond the decision of the director, the record does not establish that the petitioner is eligible for immediate relative classification. 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.