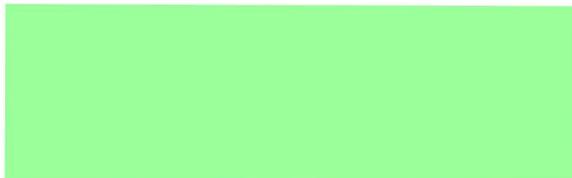


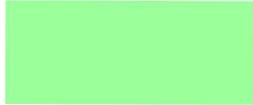


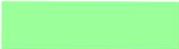
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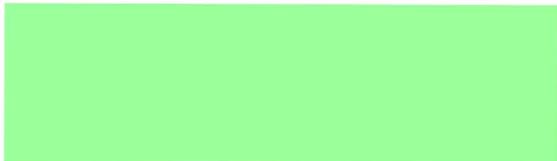
Date: **AUG 18 2014** Office: VERMONT SERVICE CENTER

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:

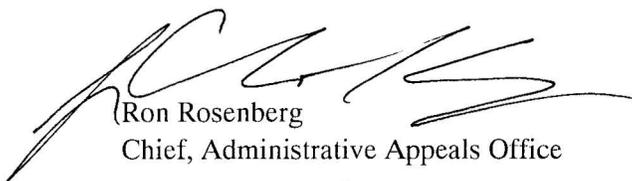


INSTRUCTIONS:

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 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 is eligible for immigrant classification because she 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. The director also determined that the petitioner failed to establish that she resided with her U.S. citizen spouse and entered into the marriage in good faith. On appeal, counsel submits a brief, additional evidence and copies of documents previously filed.

#### *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 third marriage (upon which this petition is based). 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 . . . .

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

\* \* \*

(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.

\* \* \*

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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 [REDACTED] as a business visitor. On September 3, 2009, the petitioner was served with a Notice to Appear in removal proceedings.<sup>1</sup> The petitioner married her third husband, K-D-, a U.S. citizen, on [REDACTED] Pennsylvania. The petitioner filed the instant Form I-360 on March 28, 2011. The director subsequently issued two requests for additional evidence (RFEs) that, among other things, the petitioner married her third husband in good faith, they resided together, and that she qualified for a bona fide marriage exemption from section 204(g) of the Act. The director also issued a Notice of Intent to Deny (NOID) based upon the petitioner's failure to meet these eligibility requirements. The petitioner responded to the RFEs and NOID with additional evidence, which the director found insufficient to establish 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). 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.

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<sup>1</sup> The petitioner remains in removal proceedings before the New York Immigration Court and her next hearing is scheduled for [REDACTED]

*Joint Residence*

On the Form I-360, the petitioner stated that she lived with K-D- from September 14, 2009 until March 2, 2011 and their last residential address was an apartment on [REDACTED] Pennsylvania. The petitioner clarified in her initial affidavit, submitted in response to the first RFE, that on January 29, 2011, she moved with K-D- to [REDACTED] and resided with him at this address until March 2011. The petitioner did not describe in any of her affidavits submitted below, her marital homes with K-D- or their shared residential routines in any probative detail.

The petitioner submitted the following relevant documentation: an automobile insurance card; bank account statements; IRS tax return transcript from 2009; and life insurance policies for the couple. The petitioner also submitted letters from her former landlord, her sister-in-law, [REDACTED] and her friends, [REDACTED]

[REDACTED] do not indicate that they ever visited the couple residence(s). [REDACTED] stated that they visited the couple at their residences, but neither of them described their visits in any probative detail. [REDACTED] stated that she resided in the same [REDACTED] apartment building as the petitioner and K-D-, but she does not describe ever having visited the couple at their apartment. The letter from the petitioner's former landlord is handwritten with an illegible signature and states that the petitioner had resided at the [REDACTED] address for one year (since May 2009), which conflicts with the petitioner's assertion that she began her residence at the [REDACTED] apartment building in September 2009. The petitioner also provided several photographs, which are not identified as having been taken at any specific residence that the petitioner and K-D- shared. The director correctly determined that the petitioner failed to establish by a preponderance of the evidence that she resided with K-D-.

On appeal, the petitioner submits another personal affidavit, additional documents, and affidavits from [REDACTED]. In the affidavit the petitioner submitted on appeal, she recounted that she moved into K-D-'s apartment on [REDACTED] on September 14, 2009. The petitioner did not further describe her shared marital residence with K-D- or their residential routines at the [REDACTED] residence. The petitioner stated that she first learned about her move from the [REDACTED] residence on January 29, 2011 when K-D- told her that he had moved their belongings to a new home. The petitioner recounted that she was very upset and angry that K-D- had not previously discussed the move with her. The petitioner's account of how she learned about the move to [REDACTED] is inconsistent with her statement issued below. In the petitioner's initial statement she recounted that on the morning of December 27, 2010, as she was leaving to visit her friend in [REDACTED] K-D- informed her that when she returned from her trip they would have a new home.

[REDACTED] stated that she had lunch with the petitioner and K-D- at their residence in 2009. She described her interactions with the couple during this lunch. However, the affidavits from [REDACTED] and [REDACTED] do not provide probative information of the couple's joint residence. [REDACTED] stated that in October 2010 he picked up the petitioner and K-D- from their home and in March 2011 he drove the petitioner to her apartment building during her separation from K-D-. Mr. [REDACTED] did not describe ever having entered either of the residences the petitioner claimed she shared with K-D-. [REDACTED] stated that she stayed with the petitioner and K-D- at their home in March 2010, but she did not describe this visit.

On appeal, counsel contends that the director focused on minor inconsistencies and the petitioner's joint residence has been demonstrated by affidavits and documentary evidence in the record. The petitioner, however, has not provided probative evidence of her shared residence with K-D-. While the petitioner attributes inconsistencies in her claimed marital addresses to K-D- and her former counsel, she herself does not provide a detailed description of her shared residences with K-D- and she has inconsistent accounts of their move to [REDACTED]. The preponderance of the evidence does not demonstrate that the petitioner resided with K-D-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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

In the petitioner's initial affidavit, she recounted that she first met K-D- in May 2008 through her friend who resided in K-D-'s apartment building. She stated that in August 2008, K-D- gave her a gift and they became good friends. She recounted that they began dating in September 2008, were engaged on September 14, 2009, and wed on October 31, 2009. The petitioner stated that she and K-D- visited his family during Thanksgiving. In response to the second RFE, the petitioner stated that she fell in love with K-D- and intended to share the rest of her life with him. In response to the NOID, the petitioner stated that she and K-D- once loved each other and lived together as husband and wife. The petitioner submitted below an affidavit from K-D-, dated August 24, 2010, in which he stated that he first met the petitioner in early 2008 through the petitioner's friend, [REDACTED]. He recounted that he proposed to her in August 2009 and they wed at a park. None of these statements probatively describe the couple's courtship, their shared experiences and joint residence together.

The petitioner's friend, [REDACTED] stated that K-D- was her neighbor and she introduced him to the petitioner. She briefly described the couple's courtship and wedding ceremony. The affidavits submitted below from the petitioner's sister-in-law, her pastor and her friends, failed to provide any probative information of the petitioner's good-faith entry into the marriage. [REDACTED] briefly stated that K-D- and the petitioner seem to be in love, but she did not provide any other information on her knowledge of the relationship. [REDACTED] focused only on their knowledge of the abuse in the marriage. [REDACTED] stated that she frequently spent time with the couple at their residence and they attended church events together. However, she did not describe these visits or events in any probative detail.

The petitioner also submitted below the couple's life and car insurance policies, joint bank statements, 2009 IRS tax return transcript, and photographs. The director reviewed the relevant documentation and determined that the petitioner failed to establish by a preponderance of the evidence that she resided with her third husband.

On appeal, the petitioner submits a personal affidavit, additional documentary evidence and letters from her pastor and friends. In the affidavit submitted on appeal, the petitioner discussed how she met K-D-, their courtship, engagement, wedding, and shared experiences. The petitioner's statements, however, conflict with other documentation in the record. As discussed, the petitioner's initial affidavit and her appeal affidavit contain inconsistent accounts of her move from the [REDACTED] residence to the [REDACTED] residence. The petitioner also stated in her affidavit submitted

on appeal that K-D's family members were not notified of their engagement or wedding and the first time she visited K-D's parents was during Thanksgiving of 2009. However, the letter the petitioner submitted from [REDACTED] a domestic violence counselor with the social services organization, [REDACTED] provides that the petitioner recounted that K-D- proposed to her at his parents' home when she visited them in June 2009. The petitioner's discussion on appeal of her visit to her in-laws residence during Christmas of 2010 also conflicts with statements contained in her initial affidavit. The petitioner recounted in her initial affidavit that during the Christmas holidays in 2010, she and K-D- visited his parents and returned home on Christmas Eve because she had plans to attend church service. However, in the statement submitted on appeal, the petitioner discussed how she and K-D- stayed at his parents' home until Christmas Day and she did not want to leave, but K-D- insisted that they return home.

In their supporting letters, [REDACTED] briefly discussed sharing meals with the petitioner and K-D- and the couple's church attendance. [REDACTED] stated that she was the manager of a restaurant on [REDACTED] and the petitioner and K-D- had meals at the restaurant. She did not further describe her interactions with the couple. [REDACTED] stated that she visited the petitioner and K-D- at their home in March 2010. She did not describe this visit, or her interactions with the couple when she stayed at their home. Ms. [REDACTED] recounted that in December 2010 the petitioner visited her in Louisiana and K-D- immediately took the petitioner back home to Pennsylvania. However, the petitioner stated in her initial affidavit that K-D- did not object to her December 2010 travel to Louisiana to visit Ms. [REDACTED] and she remained there for over one month.

In denying the petition, the director determined that the petitioner failed to provide probative information to establish her intentions in entering the marriage. The director also determined that the petitioner failed to show that she and K-D- commingled finances and shared joint financial responsibilities. However, 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." 8 C.F.R. § 204.2(c)(2)(vii). On appeal, counsel contends that the petitioner's good-faith entry into the marriage is demonstrated by the petitioner's affidavit, third-party statements and joint documentation.

While the supporting letters and documentary evidence in this case show that the petitioner and K-D- were seen together and shared finances, the petitioner in her own affidavits does not provide credible and probative information to establish her intentions in marrying K-D-. The petitioner's statements on appeal regarding her shared experiences with K-D- are inconsistent with the information contained in her initial affidavit. Her statements on appeal of her engagement with K-D- are also inconsistent with the account that she gave the domestic violence counselor at [REDACTED]. Consequently, the preponderance of the evidence does not demonstrate the petitioner's good-faith entry into marriage with K-D-, 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 third 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 (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.

As the petitioner failed to establish her good-faith entry into her third 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 third 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*

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 not demonstrated that she: (1) entered into marriage with her third husband in good faith; (2) resided with her third husband; (3) is eligible for immediate relative classification; and (4) is exempt from the bar to approval of her petition under section 204(g) of the Act. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden to establish her 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.