



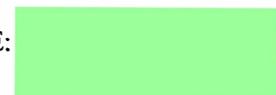
U.S. Citizenship
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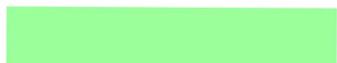


Date **DEC 08 2014** Office: VERMONT SERVICE CENTER

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 Director, Vermont Service Center, (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 and the petition will remain denied.

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 spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by her husband, that she entered into marriage with her husband in good faith and because the petitioner did not comply with the provisions of section 204(g) of the Act.

On appeal, counsel submits a brief and copies of previously submitted evidence.

Applicable Law

Section 204(a)(1)(A)(iii)(I) 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, 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 eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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, 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.

* * *

(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.

In addition, the regulations require that to remain eligible for immigrant classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

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 or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –

- (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 corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States on May 19, 2002, as a nonimmigrant visitor. On December 10, 2007, the petitioner was issued a Notice to Appear in

removal proceedings for remaining in the United States without authorization.¹ The petitioner married a U.S. citizen in [REDACTED] Virginia, on June [REDACTED]. The petitioner filed the instant Form I-360 self-petition on March 2, 2012. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and that her husband subjected her to battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief and copies of previously submitted evidence.

The AAO reviews these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry Into Marriage in Good Faith

The relevant evidence submitted fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavits, the petitioner briefly recounted that she met her husband in April, [REDACTED] when a friend who worked with her husband introduced them at a coffee shop. She indicated that she and her husband talked and laughed, showed each other where they lived, and made another date. She stated that they began spending time together and that she cooked and cleaned for him. She also noted that one time he brought a friend over and she cooked for the friend as well. She indicated that her husband proposed to her on June [REDACTED] at a bookstore and that she told him about her divorce and her immigration problems. She stated generally that she married him because she loved him and he seemed caring, responsible, and trustworthy. The petitioner indicated that a friend witnessed their marriage at the courthouse on June [REDACTED], and that they celebrated with a meal at a restaurant. She moved in with her husband the following month. The remainder of the petitioner's affidavit focuses on the alleged abuse in the marriage. The petitioner did not probatively describe how she met her husband, their courtship, engagement, wedding ceremony or any of their shared experiences.

The petitioner submitted affidavits from friends. [REDACTED] stated that the petitioner told him she was getting married. [REDACTED] indicated that they knew the petitioner was married and that she loved her husband, but that they never met him. They did not explain the basis for their beliefs and knowledge. [REDACTED] stated that he worked at the same place as the petitioner's husband and that he introduced them. He added generally that the petitioner and her husband fell in love with each other and then started dating, and then told him they were getting married. He stated that he visited them at their home and that they had lunch with him and came to his birthday party. He indicated that the petitioner and her husband had a loving relationship and were happy with each other. These affidavits do not indicate the basis for their professed knowledge of the petitioner's good

¹ On December 3, 2012, an Immigration Judge in the Arlington Immigration Court administratively closed, but did not terminate, the petitioner's removal proceedings. See *Matter of Bavakan Avetisyan*, 25 I&N Dec. 688, 695 (BIA 2012) (administrative closure does not result in a final order and is not equivalent to the termination of removal proceedings).

faith intentions in entering the marriage, and they do not describe the affiants' observations in probative detail or provide any other substantive information regarding the petitioner's interactions and relationship with her spouse prior to and during their marriage. The director correctly concluded that these affidavits were insufficient to demonstrate that the petitioner married her husband in good faith.

In her psychological evaluation, [REDACTED] a clinical psychologist, repeated the information provided by the petitioner in her affidavits, and added that after they were married the petitioner and her husband cooked for each other and sometimes went out with her son or their friends. The psychological evaluation did not provide any other information regarding the petitioner's intentions when entering into her marriage.

The petitioner also submitted a lease in both her and her husband's names, but the lease was not executed/signed, and does not provide any specific information regarding the petitioner's intentions in entering her marriage. The petitioner submitted joint checking account statements and life insurance information in which the petitioner's husband is listed as the beneficiary. The photographs of the petitioner and her husband on a few unspecified occasions are not accompanied by any explanation of their significance and do not shed light on the petitioner's intentions when entering into the marriage. This evidence, without probative testimony regarding the relationship, is insufficient to establish the petitioner's intentions upon entering into the marriage.

On appeal, counsel asserts that the documents submitted demonstrate by clear and convincing evidence that the petitioner married her husband in good faith, but offers no legal argument to support this contention. In this case, the testimonial and other evidence submitted does not demonstrate the petitioner's entry into her marriage in good faith. In her affidavits, the petitioner briefly describes meeting her husband and states that they were engaged and married, but does not describe their courtship, wedding, or any of their shared experiences in meaningful detail. Similarly, the affidavits from friends and acquaintances are general and do not discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. When viewed in the aggregate, the relevant evidence submitted below does not demonstrate, by a preponderance of the evidence, that the petitioner 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 further Bars Approval

The director also correctly determined that section 204(g) of the Act bars approval of the petition. At the time the petitioner married her husband, she was in removal proceedings and had not departed the United States under an order of removal, nor had she resided outside of the United States for the requisite two-year period; thus, she remains subject to the bar at section 204(g) of the Act. 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A). The petitioner did not request an exemption from section 204(g) of the Act in writing, as required by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(A) and the present record does not establish the bona fides of her marriage by clear and convincing evidence.

The regulation at 8 C.F.R. § 204.2(a)(1)(iii), states, in pertinent part:

(B) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit 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 the [abused spouse];
- (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.

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 exemption 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, 375 (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 director's decision,² because the petitioner is not exempt from and has not complied with section 204(g) of the Act, she is also ineligible 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).

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty. In her initial affidavit, the petitioner stated that her husband threw glasses, chairs, and the remote control and screamed and swore at her. She also indicated that her husband demanded she cook meals for him and not leave the house. She stated that she was frightened that he might hit her because he was a security guard, but did not describe any behavior by her husband that led her to believe he might hit her. She indicated that they argued about money. She reported that he threatened to skip her immigration interview or to attend but sabotage the matter. In his affidavit in response to the RFE, the petitioner added that she and her husband's sex life decreased and that he insulted her. She stated that he swore at her and called her names. The petitioner's brief and vague description of the alleged abusive behavior is insufficient to demonstrate that her husband battered her, and she does not probatively describe behavior that 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 also submitted statements from friends and a psychological evaluation. Mr. [REDACTED] and Mr. and Ms. [REDACTED] stated that the petitioner told them that her husband was aggressive and verbally abusive, and that he threw things and screamed at her or called her names. None of the affiants described the claimed battery or aggression and "verbal abuse" in probative detail.

In her psychological evaluation, Dr. [REDACTED] indicated that the petitioner's husband called her names while throwing things, threatened her immigration status, and that the petitioner thought her husband would hit her. She did not describe any particular incident in detail, nor did she describe any behavior that constitutes battery or extreme cruelty. Dr. [REDACTED] indicated that the petitioner was a victim of emotional/psychological abuse, examples of which include name calling, cursing, controlling finances, berating her in front of others, and threatening her immigration status. However, neither the petitioner

² A 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).

nor Dr. [REDACTED] ever describes the petitioner's husband controlling her finances or berating her in front of others. More importantly, as none of the behaviors the petitioner or Dr. [REDACTED] described contained probative details, the petitioner has not established that they 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). Dr. [REDACTED] also found that the petitioner was a victim of physical abuse because she was subjected to intimidation including physical threats and smashing of objects. Again, neither the petitioner nor Dr. [REDACTED] described any instance in which the petitioner's husband threatened her physically, and the smashing of objects is only vaguely described.

On appeal, counsel does not submit any new evidence relevant to any claimed battery or extreme cruelty, and claims that because Dr. [REDACTED] found that the petitioner was a victim of verbal/emotional abuse and physical abuse, the petitioner has established that she was subjected to battery and extreme cruelty. However, as explained above, the relevant evidence does not establish that the petitioner's husband battered her or subjected her to threats of violence, psychological or sexual abuse, or other actions constituting extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner stated generally that her husband threw things, but she failed to provide a probative description of these events or show that any incident resulted or threatened to result in physical or mental injury. *See* 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also did not establish that any other acts were part of an overall pattern of violence. *Id.* Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has not established by a preponderance of the evidence that her husband subjected her to battery or extreme cruelty, or that she entered into her marriage with her husband in good faith by either the preponderance or clear and convincing evidentiary standard of proof, and remains ineligible pursuant to section 204(g) of the Act. The petitioner has not demonstrated her eligibility for the exemption from that bar at section 245(e)(3) of the Act. The petitioner has also not established her eligibility for immigrant 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).

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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.