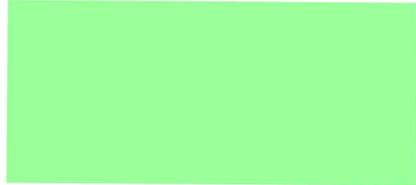


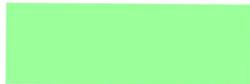
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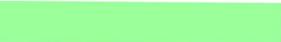


U.S. Citizenship  
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Services



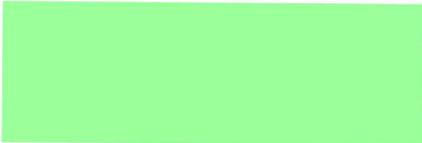
Date: **DEC 10 2014** Office: VERMONT SERVICE CENTER

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 had a qualifying relationship with her spouse and is eligible for immigrant classification based on said relationship, because she did not establish the bona fides of her marriage by clear and convincing evidence pursuant to section 204(g) of the Act, 8 U.S.C. § 1154(g).

On appeal, counsel submits a brief and additional 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:

(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.

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 Mexico who entered the United States in December, 2000, without inspection, admission, or parole. On June 6, 2007, the petitioner was placed into removal proceedings for her presence in the United States without admission or parole. On August 28, 2008, an Immigration Judge in the [REDACTED] Immigration Court granted the petitioner voluntary departure, with an alternate order of removal if the petitioner failed to depart. There is no evidence that the petitioner has departed since her initial arrival. The petitioner married a U.S. citizen in Arkansas on or about September [REDACTED]. The petitioner filed the instant Form I-360 self-petition on September 17, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. The director stated that because the petitioner married her husband after she was placed 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. The petitioner, through counsel, timely responded with additional evidence. The director determined that the petitioner submitted evidence that established by a preponderance of the evidence her good faith marriage to her husband, but the evidence was not sufficient to meet the heightened clear and convincing evidentiary standard. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief, additional affidavits and photographs.

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

*Section 204(g) of the Act*

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. 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 (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, 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.

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. In the petitioner’s initial statement, she indicated that she met her husband in 2009 while she was working as a waitress in a restaurant. She stated that they became friends, and then her husband asked her on a date and she accepted because he behaved like a good person. The petitioner recalled that they went out for the first time on October 9, 2009, and they started living together in December. She indicated that in July, 2011, he proposed and they were married in August.<sup>1</sup>

In response to the RFE, the petitioner submitted another affidavit in which she added that on their first date they walked around, and the next day they talked on the telephone. She indicated that a week later they decided to be boyfriend and girlfriend. She stated that they went out on weekends, talked on the telephone, and that he visited her during the week. She also reported that her husband introduced her to his family and friends and that she was happy. The petitioner indicated that when her husband proposed, she was happy and excited to be in love. They had rings and he gave her a commitment ring. She recalled that she made him coffee every morning with too much sugar. As a caption on one of the pictures she submitted, the petitioner described her wedding and indicated that they had a meal of rice, beans, and chicken with friends and family. She stated that her friends decorated the cake, she tossed her bouquet, and that they made toasts, took pictures, ate cake, and danced. The petitioner did not probatively describe her courtship, shared residence and experiences with her husband, apart from the abuse. More importantly, in the petitioner’s first affidavit, she did not provide the correct date of her wedding ceremony or explain the error in her second affidavit.

The petitioner also submitted letters from friends. [REDACTED] stated that the petitioner met her husband in 2009, they dated one year, and they were married in August, 2010 in a civil ceremony. [REDACTED] indicated that the petitioner was married to her husband but did not provide any additional information. None of the affiants provided any probative information regarding the petitioner’s good faith intentions in marrying her spouse, nor do they explain how they acquired their knowledge of the marriage as required under 8 C.F.R. § 204(a)(1)(iii)(B)(5). Additionally, [REDACTED] provides an incorrect date for the petitioner’s marriage.

On appeal, Ms. [REDACTED] adds that she attended the petitioner and her husband’s wedding after one year of dating, and that the wedding was small but beautiful with family and friends in attendance. April

<sup>1</sup> Although the petitioner claims she and her husband were married in August, their marriage certificate shows they were married on September [REDACTED]

state that the petitioner and her husband were married in August, and that they attended family gatherings or other functions with the couple, but they do not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing their personal knowledge of the relationship. Their statements also provide an incorrect date of the petitioner's marriage. indicates that the petitioner met her husband in 2009 and introduced him to her as her boyfriend. She adds that they went on double dates together and went dancing and out to eat. She also indicates that the petitioner and her husband seemed happy together. Although they offer some information about the petitioner and her husband's relationship, these statements are of little probative value because the affiants fail to discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. Furthermore, none of the affidavits provided 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, as required by the regulation at 8 C.F.R. § 204(a)(1)(iii)(B)(5).

The petitioner also submitted leases and a receipt showing that she and her husband resided together, photographs of them throughout their relationship, and a few cards they exchanged that have some probative weight as evidence of the petitioner's good-faith entry into the marriage. However, the remaining evidence is of little probative value. The petitioner submitted proof of automobile insurance but her husband is listed as an excluded driver, and the policy is dated after the petitioner and her husband separated. Similarly, the rent receipts listing both the petitioner and her husband are dated after their separation. The petitioner also submitted a child support letter, the assault record from when the petitioner called the police to report her husband, and copies of her temporary and final protection orders against her husband. Though each of these documents lists the petitioner and her husband as spouses they are insufficient to establish the bona fides of the petitioner's marriage.

On appeal, counsel contends that the petitioner has submitted clear and convincing evidence of her good faith marriage and that the director did not give proper weight to the evidence under the "any credible evidence standard" for battered spouse petitions. Counsel asserts that the petitioner's good-faith entry into the marriage is established by the evidence submitted and by the fact that she and her husband had a large wedding with family and friends in attendance, and that the petitioner's husband never submitted an immigration petition on her behalf. For self-petitioning abused spouses and children, the Act prescribes an evidentiary standard, which mandates that United States Citizenship and Immigration Services (USCIS) "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). However, this evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. Although the petitioner has submitted sufficient evidence to establish by a preponderance of the evidence her entry into the marriage in good faith, she has not demonstrated the

bona fides of her marriage under the heightened clear and convincing evidence standard. The petitioner submitted letters from friends indicating that the petitioner married her husband and that they attended gatherings together, but none of these individuals discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage, and some of these letters are inaccurate regarding when the petitioner married. In her statements, the petitioner discussed when she met her husband and their wedding ceremony, but she incorrectly stated the date of their marriage, and she failed to describe their courtship, shared residence and experiences, apart from the abuse. The petitioner also submitted photographs of herself and her husband, cards, and evidence of their shared residence. Although the totality of the petitioner's documents demonstrate by a preponderance of the evidence that the petitioner entered into marriage with her former husband in good faith, without a probative description of the petitioner and her husband's courtship and relationship, and because of the above noted deficiencies, they do not establish the bona fides of her 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 and has not complied with section 204(g) of the Act, she has not established that she had a qualifying relationship with her spouse, and is therefore ineligible for immediate relative classification, as required by sections 204(a)(1)(A)(iii)(II)(aa) and (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 with her husband in good faith, but 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 qualifying relationship or eligibility for immigrant classification as required by sections 204(a)(1)(A)(iii)(II)(aa) and (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.