



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **DEC 10 2014**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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 Acting Vermont Service Center Director (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, determining that the petitioner did not establish that she married her spouse in good faith and that her self-petition complies with the section 204(g) of the Act, 8 U.S.C. § 1154(g), bar against the approval of immigrant visa petitions based on marriages contracted while an alien is in removal proceedings.

On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant Law and Regulations

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 further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements 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)(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:

(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.

The record in this case indicates that the petitioner was in removal proceedings when she married her U.S. citizen husband.¹ The instant petition is thus subject to the requirements of section 204(g) of the Act:

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, which states in pertinent part:

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).

¹ The petitioner's Notice to Appear was issued on March 16, 2010 and she is currently in removal proceedings before the Immigration Court in [REDACTED] California. The petitioner's next hearing is scheduled for September [REDACTED]

- (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.

8 U.S.C. § 1255(e) (emphasis added).

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

Marriage during proceedings – general prohibition against approval of visa petition. A visa petition filed on behalf of an alien by a United States citizen . . . shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . deportation . . . proceedings, or judicial proceedings relating thereto. . . . [T]he burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

- (A) Request for exemption. . . . The request must be made in writing The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.
- (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 beneficiary;
 - (5) Affidavits of third parties having knowledge of the bona fides of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital

relationship. Each affidavit must contain the full name and address, date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or

- (6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

The instant self-petition cannot be approved pursuant to section 204(g) of the Act unless the petitioner 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.

Facts and Procedural History

The petitioner, a citizen of the Philippines, entered the United States as a nonimmigrant visitor on October 14, 2000. The petitioner was placed in removal proceedings on March 16, 2010 for remaining in the United States beyond her authorized period of stay. On February [REDACTED] the petitioner married J-K², a U.S. citizen, and filed the instant Form I-360 self-petition on June 29, 2012. The director issued a Request for Evidence (RFE) of good-faith entry into marriage, among other issues. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought and denied the petition.

The petitioner, through counsel, subsequently appealed the director's decision and submitted a brief and additional evidence.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

² Name withheld to protect individual's identity.

Good-Faith Entry into the Marriage and Restriction on Petitions Based on Marriages Entered into while in Proceedings

The director correctly determined that the petitioner did not establish that she married J-K- in good faith either by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, or by providing clear and convincing evidence that her marriage is bona fide under the heightened standard of proof required by section 245(e)(3) of the Act. In her initial Form I-360 submission, the petitioner provided a personal affidavit dated June 4, 2012, in which she stated that she met J-K- at a barbeque at her friend's home in September 2010 in [REDACTED] California. The petitioner indicated that although the two exchanged phone numbers, she did not expect to hear from J-K- because he told her that he was going out of town to take care of some business. The petitioner stated that she reconnected with J-K- at a party in January 2011, and the couple began a courtship. The petitioner briefly stated that J-K- spent time with her at her now deceased grandmother's home and they discussed their lives and their plans for the future. The petitioner asserted that on February [REDACTED] J-K- "took [her] to the [REDACTED]" and suggested that they get married. The petitioner stated that she decided to marry him because of her age, and because she was lonely. The petitioner recounted that they married at the [REDACTED] on February [REDACTED] and had a brief honeymoon in Malibu. The petitioner indicated that the couple moved in together on March [REDACTED]. The petitioner submitted an affidavit from the [REDACTED] "Owner," attesting that the petitioner and J-K- rented an apartment on [REDACTED] from March [REDACTED] until April [REDACTED]. However, the petitioner submitted a lease for the unit in her name only, commencing on March [REDACTED]. On the lease, the landlord is identified as [REDACTED] and the lease indicates that payment must be made to "Ms. [REDACTED]". The petitioner also provided copies of rent checks drawn on her personal bank account made out to [REDACTED]. Therefore, it is not apparent from the record that [REDACTED] has any relationship to the [REDACTED] apartment. The petitioner also submitted the closing utility bill for the [REDACTED] apartment in the names of her and J-K-. In addition, the petitioner submitted electronic mail correspondence dated April 20 and 21, [REDACTED] discussing the termination of the relationship, photos of the couple at their wedding ceremony and reception and on three other occasions.

In the RFE, the director advised the petitioner that she was subject to section 204(g) of the Act, and provided instructions on how to request a bona fide marriage exemption from that bar to approval of this petition. The director indicated that the petitioner should request an exemption in writing, and submit clear and convincing evidence to establish that the marriage was entered into in good faith.

The petitioner responded to the RFE with another copy of the statement from [REDACTED] a utility bill in the petitioner's name only for the [REDACTED] apartment; a statement from the petitioner's aunt, [REDACTED] attesting to details of the abuse; photocopies of receipts for wedding-related expenses; and an annotated credit card statement in the petitioner's name. Although counsel indicated that the petitioner sought the bona fide marriage exemption, there is no written statement from the petitioner requesting the same.

In her decision, the director concluded that the relevant evidence submitted below did not establish either by a preponderance of the evidence or by clear and convincing evidence that the petitioner

entered into her marriage with J-K- in good faith. On appeal, the petitioner provides an additional affidavit from her aunt, [REDACTED]. In the affidavit, Ms. [REDACTED] states that the petitioner mentioned to her that she was dating J-K- and stated that Ms. [REDACTED] met him at her mother's home, but did not indicate when this meeting occurred or provide probative information regarding the occasion. She further asserted that she helped the petitioner plan the wedding, and that she attended the ceremony and the reception, but did not provide a description of any of these events. The petitioner also submitted an affidavit from her aunt, [REDACTED]. In her affidavit, Ms. [REDACTED] claims to have met J-K- in 2010 at her mother's home while he was dating the petitioner. However, this statement is inconsistent with the petitioner's representation that she did not begin dating J-K- until January 2011. Ms. [REDACTED] does not provide any probative information about the meeting, nor does she substantively describe the petitioner's wedding and reception which she attests to attending.

De novo review of the relevant evidence submitted below and on appeal does not establish by either a preponderance of the evidence or the heightened clear-and-convincing standard that the petitioner married J-K- in good faith. The petitioner's personal statement contains minimal probative information regarding her and J-K-'s courtship, marriage and reception, honeymoon, shared residence and experiences beyond the details of the abuse. In her statement, the petitioner indicated that J-K- took her to the wedding chapel on [REDACTED] in [REDACTED] and suggested that they marry. However, despite the petitioner's claimed initial reluctance, receipts submitted by the petitioner indicate that she began making arrangements for the wedding two days later, paying for all of the expenses herself. The petitioner asserted that she was unaware that J-K- was not employed until after they were married, although she claimed that the couple's courtship mostly consisted of them spending time together talking about their lives at her deceased grandmother's home. The lease is in the petitioner's name only, and the notarized statement from [REDACTED] does not establish that he is the petitioner's landlord. The petitioner's utility bill in her and J-K-'s names, along with the photographs, are relevant evidence, but not sufficient to establish the petitioner's intent in marriage given the lack of probative testimony regarding the courtship and shared experiences. Ms. [REDACTED] affidavit lacks credibility due to her assertion that she met J-K- before the date that the petitioner claims that the couple started dating. Further, neither Ms. [REDACTED] nor Ms. [REDACTED] affidavits contain probative information regarding the petitioner's and J-K-'s courtship, wedding ceremony, shared residence and experiences.

On appeal, counsel asserts that the director failed to consider certain documents, including evidence of a joint savings account, and an e-mail from J-K- taking responsibility for the demise of the relationship; however, neither of these documents appears in the record. The other documentation noted by counsel, including the utility bill and the other e-mail correspondence, has been fully considered on appeal. However, the director's decision is not overcome by *de novo* review of the evidence submitted below, or the entire record as supplemented on appeal. The petitioner has not established good-faith entry into her marriage with J-K- by either a preponderance of the evidence or by the higher clear-and-convincing standard.

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

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with J-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The record also does not show by clear and convincing evidence that the petitioner entered into the marriage in good faith as required to establish eligibility for the bona fide marriage exemption of section 245(e) of the Act from the bar at section 204(g) of the Act, and is therefore ineligible for immediate relative classification. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.

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).