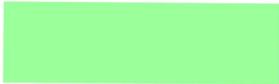


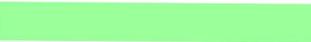
(b)(6)



U.S. Citizenship
and Immigration
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,


Ben Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting 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 pursuant to 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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith and that he was eligible for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act because he married while he was in removal proceedings.

On appeal, 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 record in this case indicates that the petitioner was in removal proceedings at the time of his marriage. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes, in pertinent part:

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 his marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(Emphasis added)

The eligibility requirements for a self-petition for immigrant classification 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:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Egypt who entered the United States on August 15, 2006, as a nonimmigrant visitor. On February 18, 2008, the petitioner was placed into removal proceedings, which remain pending.¹ The petitioner married B-H-², a U.S. citizen, in ██████████ Massachusetts on April ██████████, thus subjecting himself to the bar on approval of immigrant petitions based on marriages entered into while the alien is in removal proceedings at section 204(g) of the Act.³ He filed the instant Form I-360 self-petition on December 21, 2012. After considering the petitioner's response to a Request for Evidence (RFE), the director denied the petition for failure to establish that the petitioner entered into marriage with B-H- in good faith and that he met the requirements for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act. The petitioner, through counsel, timely filed an appeal.

We review 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 grounds for denial and the appeal will be dismissed for the following reasons. Beyond the director's decision, the petitioner has also failed to demonstrate his eligibility for immediate relative classification.⁴

¹ The petitioner remains in removal proceedings before the ██████████ Immigration Court and his next hearing is on March 10, 2015.

² Name withheld to protect the individual's identity.

³ See 8 C.F.R. § 245.1(c)(8)(ii)(A) (Section 204(g) of the Act applies and proceedings remain pending until the removal order is executed and the alien departs the United States, is found not to be removable or the proceedings are otherwise terminated.).

⁴ 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

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his first affidavit, the petitioner stated that he met B-H- for the first time in November of 2009 over the internet. At the time, the petitioner resided in Massachusetts and B-H- resided in New York. He stated that she and her family seemed traditional which pleased him and he asked B-H-'s family for permission to marry her. The petitioner recounted that their marriage plans almost ended because B-H-'s family asked him for money in case the marriage failed. The petitioner stated that the two were married after B-H- retracted the request and then they moved to New Jersey. The petitioner did not, however, provide further description of how he met his wife, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse. In his second affidavit, the petitioner stated that after meeting online, he became attracted to B-H- because of her religious values and that he received the blessing of his family to court her. He recounted that he and B-H- alternated visits between New York and Massachusetts and spoke on the telephone daily. The petitioner stated that he felt like she was the perfect match for him and at the end of January of 2010, they agreed to get married. The remainder of the petitioner's affidavit again focused on the abuse and he did not add any substantive information about his marital relationship. The statements from the petitioner's family and friends, including his twin brother with whom he resided during his courtship of B-H-, all claimed to have known the petitioner and B-H- as a married couple but none discussed their interactions with the couple in any probative detail or otherwise established their personal knowledge of the relationship apart from the abuse.

The director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith entry into the marriage. The photographs show that the petitioner and B-H- were pictured together on various occasions. The [REDACTED] Insurance identification card showing the petitioner and B-H- as the insured parties, was for the policy period October 19, 2012, to April 19, 2013, when the two were separated. The [REDACTED] Insurance identification card, for the policy period December 16, 2010, to December 16, 2011, solely lists the petitioner as the policy member. The lease, bank documents, vacation rental agreement, and Internal Revenue Service (IRS) income tax return transcripts reflect that the petitioner and B-H- shared some joint responsibilities, but without probative testimony from the petitioner, the evidence failed to establish the petitioner's good faith intent in marrying B-H-.

In addition, the petitioner stated on his Form I-360 self-petition that his marriage to B-H- was his second marriage. In a previously submitted Form G-325A Biographic Information, the petitioner listed information regarding his first marriage and stated that he was previously married to D-B-⁵ on February [REDACTED] and divorced from her on March [REDACTED]. The petitioner also submitted a copy of his divorce decree verifying this information. In his affidavits, the petitioner described meeting B-H- in November of 2009 and becoming engaged in January of 2010 during which time the record shows that he was still married to D-B-. The petitioner did not explain the circumstances surrounding his courtship of B-H-

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).

⁵ Name withheld to protect the individual's identity.

while still married to D-B-. The affidavits from his family and friends likewise did not discuss the fact that the petitioner was married at the time he began dating and became engaged to B-H-.

On appeal, counsel asserts that the petitioner established, by clear and convincing evidence, that he married B-H- in good faith. Counsel submits additional affidavits from the petitioner and his family and friends. In his affidavit, the petitioner provides more details regarding his conversations with B-H- during their courtship. He reiterates that he was looking for someone as religiously devout as he is and that he thought he found that in B-H-. He states that they spoke about their past dating experiences including his previous relationship with a Lebanese woman that ended because she is [REDACTED] and he is [REDACTED]. Although the petitioner provides details about his traditional views regarding marriage, he does not explain the circumstances surrounding his prior marriage and his relationship with B-H-. Likewise, the affidavits from his family and friends submitted on appeal, including a second affidavit from his twin brother, do not demonstrate that they were aware of the petitioner's marriage to D-B- while he was in a relationship with B-H- and can speak knowledgeably about the petitioner's good faith intentions in marrying B-H-. Accordingly, counsel's claims and the evidence on appeal do not provide substantive information sufficient to establish the petitioner's good-faith entry into the marriage, 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 his wife while he was in removal proceedings and did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his 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. *See 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. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *see also 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. *See* Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); *see also* 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *See Matter of Arthur*, at 478.

As the petitioner failed to establish his good-faith entry into his marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, the record reflects that because the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate his 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 he entered into marriage with his wife in good faith, that he is exempt from the bar to approval of his petition under section 204(g) of the Act, and that he is eligible for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the petition remains denied.

ORDER: The appeal is dismissed.