



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: FEB 14 2014

Office: VERMONT SERVICE CENTER

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)

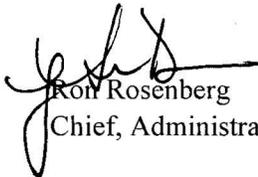
ON BEHALF OF PETITIONER:

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.

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 The director’s decision shall be withdrawn and the matter remanded for entry of a new decision.

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 was subjected to battery or extreme cruelty during his marriage, and is a person of good moral character.

Counsel provided a timely appeal and new evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(A)(iii) 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states the following:

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

\* \* \*

(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:

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which

the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

(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 native and citizen of Columbia who entered the United States on April 28, 2001 as a nonimmigrant visitor. The petitioner remained in the United States without authorization, and was placed in removal proceedings on March 24, 2003. On September 13, 2004, the petitioner married G-F<sup>1</sup>, a U.S. citizen. On April 8, 2010, the petitioner divorced G-F-. The petitioner filed the instant Form I-360 on May 24, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character, and evidence that G-F- subjected him to battery or extreme cruelty. The petitioner, through counsel, responded with further documentation. On April 15, 2011, the director denied the petition, finding the additional evidence was insufficient to establish the petitioner was a person of good moral character and that G-F- battered the petitioner or subjected him to extreme cruelty during their marriage. The petitioner filed an appeal, which the director treated as a motion to reopen and affirmed his previous denial.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner has shown that he is a person of good moral character and was battered or subjected to extreme cruelty by his former spouse. However, the petition may not be approved because the petitioner has not demonstrated that he was exempt from section 204(g) of the Act, which bars approval of petitions based on marriages entered into while the alien was in removal proceedings. The petitioner has also failed to demonstrate his eligibility for immediate relative classification based on his marriage.

#### *Battery or Extreme Cruelty*

The relevant evidence submitted on appeal demonstrates the petitioner's former wife subjected him to battery or extreme cruelty during their marriage.

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<sup>1</sup> Name withheld to protect individual's identity.

The petitioner stated in his first affidavit, dated April 19, 2010, that his former wife argued with him and out of anger sometimes threw objects at him. He asserted that his former wife criticized him when he was unemployed and argued about his immigration process. The petitioner indicated that sometimes his former wife changed the locks to their house and threatened to call the police if he tried to return. The petitioner stated that he argued with his former wife about the time she spent visiting her children and former partner in Delaware. He indicated that he briefly separated from G-F- and that she returned to her former partner and ended her relationship with the petitioner. The petitioner's second affidavit dated, February 7, 2011, is similar in content to the first affidavit and included the statements that G-F- once reacted aggressively to the petitioner, hitting him with her fists and throwing objects at him when the petitioner's former girlfriend called his cell phone; and that the petitioner's failed relationship with G-F- made him depressed. The third affidavit dated, May 14, 2011, is similar in content to the first two affidavits. In the third affidavit petitioner contended that G-F- subjected him to psychological abuse because she isolated him from others, ridiculed him, incurred debt that he was expected to pay, and threw objects. He indicated that his former wife was repeatedly physically aggressive to him, hitting him with her fists and throwing objects, and that his friends noticed his injuries. He recounted that his former wife was jealous, and controlled him through intimidation. He stated that G-F- had the father of her first child deported and was worried she would do the same to him. While the petitioner indicated in his affidavits that G-F- was verbally and physically aggressive during their marital disputes and that her behavior depressed him, he did not describe in detail any particular incident in which G-F- harmed him or threatened to do so, or establish that his former wife's actions were equivalent to psychological abuse, or that her behavior was part of an overall pattern of violence or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner's friends, [REDACTED] stated in their letters, dated January 31, 2011, that they were aware that the petitioner had marital problems, and [REDACTED] indicated that the petitioner said that G-F- was verbally aggressive to the petitioner because she often disparaged the petitioner. In her second affidavit, dated May 12, 2011, [REDACTED] asserted that the petitioner told her that his former wife was unfaithful and verbally and physically aggressive during marital disputes. She indicated that she once saw marks on the back of the petitioner's neck, but the petitioner denied they were caused by G-F-. [REDACTED] also indicated that the petitioner once told her of a marital dispute in which his former wife acted aggressively and threatened to call the police if the petitioner did not leave their house. Their brief statements are not probative in establishing that G-F- ever battered the petitioner, threatened him with violence, or otherwise subjected him to conduct or a course of conduct that was equivalent to psychological abuse, or otherwise constituted extreme cruelty.

On appeal, counsel asserts that the director erred in claiming that the petitioner escalated the severity of his claims of abuse and that [REDACTED] new assertion of seeing marks on the petitioner might not be credible. We withdraw the director's conclusion that the escalation of the abuse detracted from the credibility of the petitioner's claims and the credibility of [REDACTED]. Nevertheless, the determination of what evidence is credible and the weight accorded such evidence lies within the sole discretion of U.S. Immigration and Citizenship Services. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). The record shows that the director considered the credibility and weight of the petitioner and [REDACTED] statements, and concluded that they did not demonstrate that

the petitioner's former wife's conduct was equivalent to battery or extreme cruelty, and we find no error in his determination.

On appeal, the petitioner submits new affidavits from [REDACTED] states in his new affidavit dated, October 4, 2013, that G-F- treated him and the petitioner in a disparaging manner when he visited the petitioner and that she belittled the petitioner at a New Year's celebration. He asserts that he once saw the petitioner with a scratched hand and a swollen face. [REDACTED] describes in her new affidavit dated, October 5, 2013, witnessing G-F- react with verbal and physical hostility towards the petitioner while at a club because the petitioner followed G-F- after an argument. She states that in 2007 the petitioner told her that G-F- was physically aggressive towards him and threatened to call the police if he did not leave the house. [REDACTED] briefly states that at a gathering at her house she witnessed G-F- react with physical and verbal aggression towards the petitioner when the petitioner told G-F- to calm down during a marital dispute. [REDACTED] also states that she once noticed marks on the petitioner that she believed were made by G-F-, and that on another occasion the petitioner claimed that the marks that she noticed on him were work related. In this case, the statements by [REDACTED] are detailed and credible and offer probative information regarding the battery that the petitioner was subjected to by his former wife, and demonstrate that the petitioner's former wife subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Moral Character*

The director determined that the petitioner failed to demonstrate that he is a person of good moral character. On appeal, counsel asserts that the submitted document from the [REDACTED] Police Department reflects that the petitioner has no criminal record in [REDACTED] based on a name and date of birth search, and the clearance letter from the Criminal Justice Information Services Division of the Federal Bureau of Investigation also shows no arrest record for the petitioner. Counsel also submits copies of tax returns and an affidavit from the petitioner's pastor to demonstrate the petitioner's good moral character.

To establish good moral character, the regulation requires a "local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition." 8 C.F.R. § 204.2(c)(2)(v). The petitioner filed the instant Form I-360 on May 24, 2010. The submitted letter from the Federal Bureau of Investigation states that the petitioner has no arrest record. Accordingly, the petitioner has established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

#### *Section 204(g) of the Act Bars Approval*

Beyond the director's decision, the petitioner has failed to establish by clear and convincing evidence that he married his former wife in good faith. The eligibility requirements for immigrant classification as an abused spouse under 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(1), which states the following:

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

In this case, the record reflects that the petitioner was in removal proceedings at the time of his marriage.<sup>2</sup> 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 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

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<sup>2</sup> The petitioner has been in removal proceedings since March 24, 2003. Consequently, his removal proceedings remained pending at the time of his marriage in 2004. See 8 C.F.R. § 245.1(c)(8)(ii)(A) (removal proceedings terminate when the alien departs the United States under an outstanding removal order.)

accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

Because the petitioner married G-F- 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. *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 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 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.

In this case, the relevant evidence in the record consists of the petitioner’s affidavits, affidavits from his friends, income tax returns, and joint bank statements from [REDACTED]. The [REDACTED] account statements and the [REDACTED] account statements are in the name of the petitioner and his former wife. The income tax return for 2004 and 2007 show the petitioner’s filing status as “married filing separately,” while the 2008 and 2009 income tax records show “single” as his filing status. The petitioner explains in the letter dated February 7, 2011 that his former wife did not want to file income tax records with him in 2008 and 2009 because she wanted the same reimbursement as when filing as “single” or “head of household,” and because his tax preparer advised him that he could file as single because he did not live with his former wife for the full year in 2008 and 2009. The petitioner indicated that they lived in a basement and their rent included utilities, but they did not have a written contract with their landlord. 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). All credible relevant evidence will be considered including evidence regarding courtship, wedding ceremony, shared experiences, and affidavits of persons with personal knowledge of the relationship. *See* 8 C.F.R. § 204.2(c)(2)(vii). In his affidavits the petitioner does not mention how he met his former wife; his courtship or wedding ceremony; and only briefly recounted shared experiences with his former wife, apart from the claimed abuse. The affidavits from the petitioner’s friends also do not discuss their interactions with the petitioner and G-F- or the interactions between the petitioner and G-F-, apart from the alleged abuse. Without any probative account from the petitioner or his friends regarding the petitioner’s entry into the marriage, documents that reflect a joint bank account are not sufficient to establish by clear and convincing evidence the bona fides of the petitioner’s marriage to G-F-. U.S. Citizenship and Immigration Services has the sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). As previously discussed, the evidence submitted below and on appeal does not provide

clear and convincing evidence of the petitioners' entry into the marriage in good faith. Accordingly, he has not established his eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act and 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, he has 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*

The petitioner has demonstrated that he is a person of good moral character and that G-F- subjected him to battery or extreme cruelty during his marriage. However, he has not demonstrated 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 based on his marriage. As the director did not deny the petition, in part, on the bar to approval of the petition under section 204(g) of the Act, the AAO must remand the matter to the director for issuance of a new decision.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

**ORDER:** The director's decision to deny the petition is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.