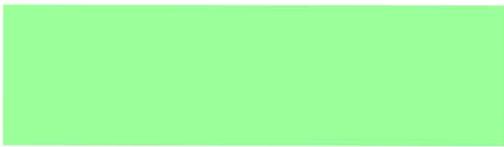




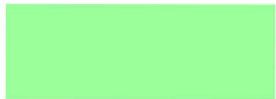
U.S. Citizenship  
and Immigration  
Services

(b)(6)

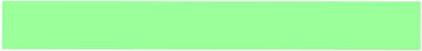


Date: **JUL 03 2014**

Office: VERMONT SERVICE CENTER

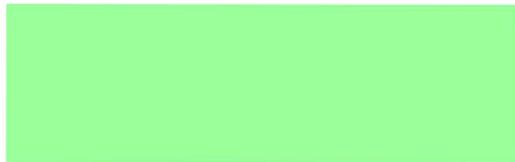
File: 

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. 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.

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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith and she jointly resided with her husband.

On appeal, counsel submits a brief and additional evidence.<sup>1</sup>

*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).

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 her marriage. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes, in pertinent part:

---

<sup>1</sup> Counsel also requests an oral argument because “the Applicant’s case is so strong and deserving of a visa.” The regulations provide that the requesting party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. Counsel set forth no specific reasons why oral argument should be held and the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

*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, 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.

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

\* \* \*

(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, 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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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 citizen of Mexico who claims that she last entered the United States on January 8, 2000 without inspection. On June 28, 2010, the petitioner was issued a Notice to Appear in removal proceedings as an alien present in the United States without being admitted or paroled.<sup>2</sup> The petitioner married M-R-, a U.S. citizen, on April 20, 2011 in North Carolina.<sup>3</sup> The petitioner filed the instant Form I-360 on August 13, 2012. The director subsequently issued a Request for Evidence (RFE) of: the petitioner's good-faith entry into the marriage; her eligibility for the bona fide marriage exemption from section 204(g) of the Act; her residence with her husband; and her good moral character. The petitioner, through counsel, responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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.

---

<sup>2</sup> The petitioner remains in removal proceedings before the [REDACTED] Immigration Court and her next hearing is on July 9, 2014.

<sup>3</sup> Name withheld to protect the individual's identity.

*Entry into the Marriage in Good Faith*

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her first affidavit, the petitioner briefly recounted that she met M-R- in 2009 while they were working at a hotel in [REDACTED] North Carolina. She stated that they started dating and M-R- proposed to her in November 2010. The petitioner recounted that after they wed on April 20, 2011, M-R- moved into the house she shared with her daughter. The remainder of her affidavit focuses on the abuse in the marriage. The petitioner did not probatively describe how she met her husband, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

In response to the RFE, the petitioner submitted supporting affidavits from her husband's brother, [REDACTED] her husband's cousin, [REDACTED] and her friend, [REDACTED]. [REDACTED] recounted that she "regularly" socialized with the couple and [REDACTED] stated that she spent time with the couple "as a family." [REDACTED] stated that the petitioner often came to his house for dinner. Although these individuals claim to have had frequent contact with the petitioner and M-R-, none of them describe any particular visit or social occasion with the couple. Nor do they discuss their interactions with the couple in any detail to establish their personal knowledge of the relationship.

The petitioner submitted the following relevant documents below and in response to the RFE: two lease renewal agreements signed by the couple; utility bills addressed to the couple; bank statements reflecting the couple's joint account; and automobile insurance policy statements dated after the couple separated. While these documents reflect that the petitioner and M-R- shared some joint finances, the affidavits submitted below failed to provide any probative information regarding the petitioner's marriage to M-R-. The director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith entry into the marriage.

On appeal, counsel asserts that the supporting affidavits contain a consistent account of the petitioner's relationship with her husband. Counsel submits a second affidavit from the petitioner, a second affidavit from the petitioner's friend, [REDACTED] one additional utility bill and several photographs of the couple taken at unspecified locations. In the petitioner's second affidavit she stated that she met M-R- at a party in November 2009, they dated and became engaged in October 2010. This statement conflicts with the petitioner's first affidavit in which she claimed that she met M-R- at work and they became engaged in November 2010. The remainder of her second affidavit focuses on the abuse in the marriage. The petitioner's second affidavit again fails to provide probative information of her courtship with her husband, their wedding ceremony, joint residence and shared experiences. [REDACTED] in her second affidavit, reiterated that she regularly met the petitioner and M-R- during the couple's courtship, but she did not describe any such meeting or provide any additional, probative information regarding her personal knowledge of the petitioner's relationship with M-R-. A full review of the evidence submitted below and on appeal fails 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.

*Joint Residence*

On the Form I-360, the petitioner stated that she lived with her husband from April 2011 until April 2012 and that their last joint address was an apartment on [REDACTED] in [REDACTED] North Carolina. The petitioner submitted below several documents which contain this address, including the lease renewal agreements, utility bills and bank statements. The petitioner also submitted a letter from [REDACTED] the leasing agent in her apartment building, confirming that she and M-R- were both on the lease from 2010 until mid-2013. On appeal, counsel asserts that this evidence demonstrates the petitioner's shared residence with M-R-. However, in her affidavits, the petitioner does not describe her home with M-R- or their shared residential routines in any detail. [REDACTED] [REDACTED] also do not identify the former couple's marital address nor describe any visit to the couple's home. Although [REDACTED] stated that the petitioner and M-R- were both on the apartment lease, she did not indicate that she ever interacted with the couple or had personal knowledge of the couple's joint residence. The photographs the petitioner submits on appeal are not identified as having been taken at any specific residence that the petitioner shared with M-R-. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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

Beyond the decision of the director, the record reflects that section 204(g) of the Act bars approval of the petition.<sup>4</sup> 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. 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 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.

---

<sup>4</sup> 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).

§ 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*

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).

*Good Moral Character*

Beyond the decision of the director, the petitioner has also not established her good moral character.<sup>5</sup> The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in August 2009 and ending in August 2012). In her initial filing, the petitioner submitted a criminal record search from [REDACTED] North Carolina, which reflected that she had been arrested for public assistance fraud and food stamp fraud. In response to the RFE, the petitioner submitted her criminal records, which reflect that on [REDACTED] 2010, she was granted a deferral of the criminal charges filed against her contingent upon her entry into a Consent Agreement with the District Attorney. The Consent Agreement states that the petitioner understands that she was charged with knowingly obtaining food stamps and benefits under the Work First Program by making a false statement or failing to disclose a material fact and that she agreed to a twelve-month disqualification from the Food Stamp Program and Work First Program and agreed to repay \$5,927 to the [REDACTED] Department of Social Services. The record shows that the criminal charges against the petitioner were eventually dismissed upon her compliance with the terms of the Consent Agreement.

The petitioner's conduct evidences a lack of good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act states, in pertinent part, that “[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes, in pertinent part:

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

---

<sup>5</sup> *Id.*

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.

The petitioner fails to address her arrest for public assistance fraud and food stamp fraud in either of her affidavits. In her deferral agreement, the petitioner admitted to receiving an overpayment of public benefits totaling \$5,927. She provides no explanation of the underlying events and the record does not indicate that her conduct was under duress or otherwise influenced by any abusive relationship.

To establish her good moral character, the petitioner submitted copies of her prior tax returns and letters from her former household employer, [REDACTED] and her friend, [REDACTED]. Ms. [REDACTED] did not indicate that she knew of the petitioner's arrest. Ms. [REDACTED] briefly stated that the petitioner had "a problem with Food Stamp[s] due to her ignorance and a misunderstanding." However, the petitioner herself does not provide any such explanation. Without a probative statement from the petitioner regarding her arrest for public benefits fraud and her repayment of \$5,927 to the [REDACTED] Department of Social Services, the two brief supporting letters and the petitioner's tax returns do not establish her good moral character. She has consequently failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not demonstrated that she entered into marriage with her husband in good faith and that they resided together. Beyond the director's decision, the record also fails to demonstrate that: (1) the petitioner is exempt from the bar to approval of her petition under section 204(g) of the Act; (2) she is eligible for immediate relative classification; and (3) is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

**ORDER:** The appeal is dismissed.