

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date:

**JUL 16 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)

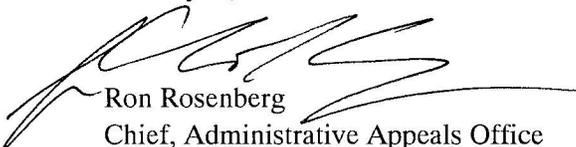
ON BEHALF OF PETITIONER:

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 that she was eligible for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act because she married while she was in removal proceedings.

On appeal, counsel submits a brief and additional 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).

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:

*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.

\* \* \*

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

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Honduras who entered the United States on or around November 12, 2007. On December 3, 2007, the petitioner was placed into removal proceedings, which remain pending.<sup>1</sup> The petitioner married R-G-<sup>2</sup>, a U.S. citizen, in [REDACTED] Texas on April 7, 2008, thus subjecting herself 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.<sup>3</sup> She filed the instant Form I-360 on September 20, 2011. 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 R-G- in good faith and that she 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*. 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.

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<sup>1</sup> The petitioner remains in removal proceedings before the [REDACTED] Immigration Court and her next hearing is on § [REDACTED]

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> 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.).

*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. Initially, the petitioner submitted a personal statement and her marriage certificate as evidence of her good faith marital intentions. In her personal statement, the petitioner only recounted the incidents of abuse and did not describe how she met R-G- or otherwise provide details of their courtship and relationship. In response to the RFE requesting, among other things, evidence of her good faith marriage to R-G-, the petitioner provided a brief, untranslated statement in Spanish, a copy of her previously submitted affidavit, and correspondence including two utility statements and a prescription document that were addressed solely to the petitioner. The petitioner also submitted a copy of the identification page of her Honduran passport demonstrating that she changed her last name to her husband's last name, a copy of her medical card listing her son and R-G's children as dependents, and a copy of her contract with her former immigration attorney and other documents related to the immigrant visa petitions R-G- filed for her and her son.

The regulation at The petitioner's statement was not accompanied by a certified English translation as required by 8 C.F.R. § 103.2(b)(3) and consequently it cannot be considered on appeal. *De novo* review of the remaining documents reflect that the petitioner and R-G- resided together and shared some financial responsibilities, such as health insurance, but without a substantive statement from the petitioner, the documents alone do not establish the petitioner's good-faith entry into the marriage with her husband. The petitioner's initial statement did not probatively describe how she met R-G-, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

On appeal, counsel asserts that the petitioner was unable to talk about the loving relationship that she originally had with R-G- because it was too painful to discuss. On appeal, the petitioner submits a second statement and various photographs of her and R-G- together. In the petitioner's second statement, she recounts meeting R-G- through her mother who was friends with him. She briefly describes R-G- as being sweet when they first met and that her mother encouraged her to date him and marry him after he proposed, but that she was hesitant because they had just met. The petitioner then states that she visited R-G- at his home in Louisiana and later moved in with him after her mother told her she had to move out. The petitioner states that initially R-G- was kind to her and her son and that after four months of residing together, she agreed to marriage and the two were wed in [REDACTED] Texas on April 7, 2008. The petitioner then states that they honeymooned for two days at [REDACTED] Texas and that they had a good relationship for a couple of months. The remainder of her statement focuses on the abuse in the marriage.

On appeal, the petitioner again fails to provide probative information of her courtship with her husband, their wedding ceremony, honeymoon, joint residence and shared experiences apart from the abuse. The photographs submitted on appeal show that the two were pictured together on various different, unspecified occasions, but do not establish the petitioner's good faith in marrying R-G-. Accordingly, 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.

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

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. *See 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. *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 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*

Beyond the decision of the director, the record reflects that 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).<sup>4</sup>

*Conclusion*

On appeal, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, that she is exempt from the bar to approval of her petition under section 204(g) of the

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<sup>4</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 we review appeals on a *de novo* basis).

Act, and that she is eligible for immediate relative classification. 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.