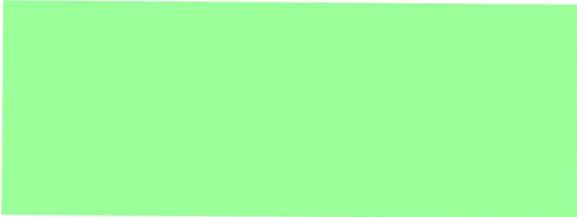




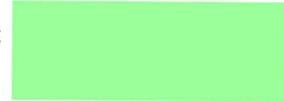
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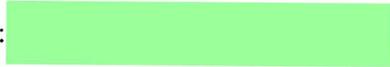


Date: JUN 26 2014 Office: VERMONT SERVICE CENTER

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,

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 and the petition will remain denied.

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 for failure to establish that the petitioner entered into marriage with her husband in good faith pursuant to 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 the alien was in removal proceedings.

On appeal, counsel submits additional evidence.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) 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 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:

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.

In addition, the regulations require that to remain eligible for immigration classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

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 or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –

- (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.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

Facts and Procedural History

The petitioner is a citizen of Russia who entered the United States on June 8, 2005, as a J1 nonimmigrant exchange visitor. On August 10, 2006, the petitioner was placed into removal proceedings for remaining in the United States beyond her period of authorized stay and failing to maintain or comply with her nonimmigrant status. The petitioner remains in proceedings before the Immigration Court. The petitioner married a U.S. citizen in Florida on March 12, 2008. The petitioner filed the instant Form I-360 on March 22, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits additional affidavits and a bank statement.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has established that she entered into her marriage in good faith by a preponderance of the evidence, as required for a self-petitioner under section 204(a)(1)(A)(iii) of the Act. However, she has not demonstrated her eligibility for the bona fide marriage exemption from section 204(g) of the Act.

Good-Faith Entry Into Marriage

The director determined that the petitioner's testimony and the testimony submitted on her behalf were insufficient to support a finding of her good-faith entry into the marriage. In her affidavit, the petitioner indicated that she met her husband at a fitness center, and that they went to different places together including the beach, night clubs, dancing and to visit her husband's friends in [REDACTED]. The petitioner met her husband's father and step-mother, and began staying overnight at their house on occasion. The petitioner and her husband moved into a house together and she was very happy. She indicated that in March, 2008 she and her husband married.

The petitioner also submitted letters from friends. The director correctly determined that the letters contained no probative information regarding the petitioner's intentions in marrying her spouse as they did not describe the petitioner's intentions or interactions with her husband in probative detail, and primarily discussed the abuse. The petitioner submitted photographs of herself and her husband on a few unspecified occasions that are not accompanied by any explanation of their significance. The petitioner submitted documents and bills addressed to her husband that were dated during the time she claimed to be living with him, but the address was in [REDACTED] and not their last claimed address as listed on the petitioner's Form I-360. The petitioner also submitted copies of mail sent to her at the [REDACTED] address, but they are dated after the petitioner claimed she stopped living with her husband. Similarly, the petitioner submitted bills addressed to her husband at their claimed shared address in [REDACTED] but they are dated after the petitioner claims she stopped living with her husband. The director found that these documents were insufficient to establish that the petitioner married her husband in good faith.

On appeal, the petitioner submits affidavits from friends that provide more information about her relationship with her husband. The petitioner's father in law, [REDACTED] indicated that the petitioner spent time at their house, and although he only speaks Spanish so did not communicate with the petitioner very much, he believes she married his son in good faith. The petitioner's sister in law, [REDACTED] states that the petitioner lived with her husband in the same house as her and that they shared some great moments together. [REDACTED] describes how she visited the petitioner and her husband and that the petitioner and her husband had nicknames for each other and were affectionate, even in public. [REDACTED] indicated that the petitioner was very happy to be married to her husband, and that she visited them at their home in Florida. The petitioner's friends provide some probative details about the petitioner and her husband's interactions.

De novo review of the record establishes that the petitioner married her spouse in good faith, by a preponderance of the relevant evidence submitted below and on appeal, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Nonetheless, the appeal cannot be sustained because the petitioner has not established her eligibility for the bona fide marriage exemption from section 204(g) of the Act. At the time the petitioner married her husband, she was in removal proceedings and had not departed the United States under an order of removal, nor had she resided outside of the United States for the requisite two-year period; thus, she remains subject to the bar at section 204(g) of the Act. 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A). The present record does not establish the bona fides of her marriage by clear and convincing evidence.

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

(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 the [abused spouse];
- (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.

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 exemption 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, 375 (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.

While the petitioner established 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 has not provided 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. The testimony of the petitioner and her friends and relatives fails to provide clear and convincing evidence of the bona fides of the petitioner's marriage, as prescribed by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B)(5), particularly in the absence of probative testimony from the petitioner about her relationship with her husband. Although the petitioner submitted additional affidavits on appeal, she did not submit any further, secondary evidence from third parties other than one joint bank account statement that shows very little activity and a low balance. The present record does not establish her eligibility for the bona fide marriage exemption from the bar to approval of this petition under section 204(g) of the Act.

Eligibility for Immediate Relative Classification

Because the petitioner is not exempt from and has not complied with section 204(g) of the Act, she is also ineligible 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 established by a preponderance of the evidence that she entered into her marriage with her husband in good faith, but remains ineligible pursuant to section 204(g) of the Act. The petitioner has not demonstrated her eligibility for the exemption from that bar at section 245(e)(3) of the Act. The petitioner has also not established her eligibility for immigrant 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).

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed.