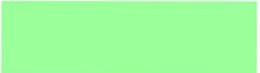




U.S. Citizenship
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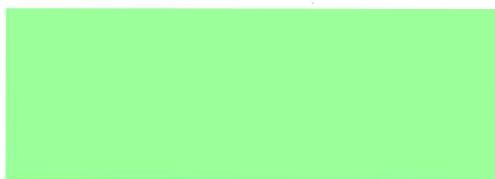


Date: **NOV 19 2014** Office: VERMONT SERVICE CENTER File: 

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 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. The director also denied the petition for failure to establish that the petitioner resided with his wife and that she subjected him to battery or extreme cruelty during their marriage.

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.

(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.

(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.

* * *

(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.

(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.

* * *

(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 Niger who entered the United States on August 28, 2003, as a nonimmigrant student. On December 6, 2006, the petitioner was placed into removal proceedings, which remain pending.¹ The petitioner married A-E-², a U.S. citizen, in [REDACTED] Pennsylvania on May [REDACTED], 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 6, 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 A-E- 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 director further determined that the petitioner did not establish that he resided with A-E- during their marriage or the requisite abuse. 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

Joint Residence

¹ The petitioner remains in removal proceedings before the [REDACTED] Immigration Court and his next hearing is on [REDACTED].

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 *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).

The director correctly determined that the petitioner failed to establish that he resided with A-E- during their marriage. The petitioner stated on his Form I-360 self-petition that he resided with A-E- from February of 2007 to 2011 in Pennsylvania. As evidence of his residence with A-E-, the petitioner submitted a letter from [REDACTED]. In her letter, Ms. [REDACTED] stated that the petitioner and A-E- both resided with her during "some of the time" that the petitioner and A-E- were married. Ms. [REDACTED] did not provide specific dates of when the petitioner and A-E- resided with her nor did she state an address of the claimed shared residence. Ms. [REDACTED] also did not describe the petitioner and A-E-'s residential routines or provided any other substantive information sufficient to demonstrate that the petitioner resided with A-E- during their marriage.

On appeal, counsel asserts that the letter from Ms. [REDACTED] is evidence that the petitioner resided with A-E-. Counsel also asserts that the petitioner submitted an affidavit from A-E- discussing the fact that she resided with the petitioner. However, in her letter submitted below, A-E- stated only that her marriage to the petitioner was difficult because the petitioner was unable to financially support her and that they decided to end the relationship. She did not reference her residence with the petitioner. On appeal, counsel submits a second letter from Ms. [REDACTED] and another letter from A-E-. In her letter, Ms. [REDACTED] again states that the petitioner and A-E- lived with her "at a point in time" but does not state when or where they resided together. A-E-'s letter confirms only that the letters submitted by her below were in fact from her. She did not provide any information relating to her residence with the petitioner and the petitioner did not submit any other evidence on appeal. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal also fails to demonstrate the petitioner's entry into his marriage in good faith. In his first personal letter, the petitioner spoke only of the claimed abuse and did not provide any details regarding his relationship with A-E-. In his second personal letter, the petitioner stated that he married A-E- in good faith and showed her love and respect during their marriage. He recounted that he tried very hard to save their marriage because he loved her but that A-E- decided she did not want to be with him anymore. The petitioner did not describe their courtship, engagement, wedding, joint residence or any of their shared experiences.

The petitioner also submitted letters from A-E- and [REDACTED] as evidence of his good faith marriage to A-E-. In her letter, A-E- stated that she was married to the petitioner and that it has been devastating for her to love someone who is unable to financially provide for her. She stated that she and the petitioner have decided that it was best to end their marriage. A-E- did not further describe her relationship with the petitioner. In her letter, Ms. [REDACTED] stated that she used to live with the petitioner and A-E- and observed that the couple was deeply in love. Ms. [REDACTED] did not describe any interaction with the petitioner and A-E- in probative detail or otherwise provide information establishing her personal knowledge of the relationship.

On appeal, counsel states that the petitioner was unable to get joint documents but that the submitted affidavits from the petitioner, A-E-, and the petitioner's friends demonstrate the petitioner's good faith marital intentions. Counsel also points out that the Form I-130 family petition filed by A-E- on the petitioner's behalf was pending for over a year and suggests that this is further evidence that the petitioner married A-E- in good faith. Although similar, the parties, statutory provisions and benefits procured through sections 201(b)(2)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner's wife was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which she was required to establish her citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also his own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Additionally on appeal, counsel submits a letter from A-E- and [REDACTED]. In her letter, A-E- only confirms her identity as the writer of her previously submitted letters. In her letter, Ms. [REDACTED] writes that the petitioner and A-E- seemed very much in love together. Neither A-E- nor Ms. [REDACTED] provided any substantive information to establish the petitioner's good faith in marrying A-E-. Accordingly, a full review of the evidence submitted below and on appeal fails to establish the petitioner's good-faith entry into his 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.

Battery or Extreme Cruelty

The director correctly determined that the petitioner failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. In his first letter, the petitioner stated that he was under stress and was depressed because of the fights he was having with A-E-. He further stated that she abused him, traumatized him, and went out with other men. He did not, however, provide probative details about any specific incidents of abuse. In his second letter, the petitioner stated that he loved A-E- but that “for some reasons,” A-E- decided not to be with him anymore. He stated that A-E- said she did not believe in marriage and that he respected her choice. The petitioner did not provide any additional details regarding the claimed abuse.

On appeal, counsel contends that the petitioner submitted an affidavit clearly stating that his wife abused him and that a self-petitioner’s testimony can be enough to demonstrate the requisite abuse. However, the petitioner’s brief statements submitted below did not discuss A-E-’s behavior in probative detail and did not show that she ever battered or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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 resided with and 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 also failed to demonstrate the requisite abuse. 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.