

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date: **OCT 16 2014**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:

SELF-REPRESENTED

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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motion will be granted and our previous decision will be affirmed. The petition remains denied.

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 a U.S. citizen.

On June 23, 2011, the director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith, his wife subjected him to battery or extreme cruelty during their marriage, and that he complied with the provisions of section 204(g) of the Act. On April 17, 2013, we affirmed the director’s decision and also determined that the petitioner failed to establish his eligibility for immediate relative classification. On motion, the petitioner submits an additional statement.

*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 his marriage. 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 second marriage (upon which this petition is based). 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.

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:

(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.

\* \* \*

(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 Jamaica who entered the United States on February 2, 2005 as a temporary agricultural worker. The petitioner married his first wife, A-S-, a U.S. citizen, on December 26, 2005 in ██████████ New York.<sup>1</sup> The petitioner was charged with remaining in the United States beyond his period of authorized stay and placed in removal proceedings on October 25, 2007.<sup>2</sup>

The petitioner's marriage to A-S- was terminated in a divorce on October 29, 2007. On April 1, 2008, the petitioner wed A-I-, a U.S. citizen, in New York City, New York. The petitioner filed the instant Form I-360 on April 26, 2010. The petitioner's marriage to A-I- was terminated in a divorce on August 16, 2011. The director denied the petition and we dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider our prior decision dismissing the appeal. The motion will be granted.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The appeal will remain dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

In our April 17, 2013 decision, we determined that the evidence submitted below and on appeal failed to demonstrate the petitioner's entry into his marriage in good faith. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, the petitioner submitted evidence of having a joint cable television account with A-I-, photographs of himself and A-I-, and evidence of having A-I- included on his cellular phone account. However, in his statement, he did not describe how he first met A-I-, their courtship, wedding, joint residence or any of their shared experiences. The statements from the petitioner's friends, ██████████ and ██████████ also failed to provide any probative information regarding the petitioner's good faith in entering the relationship.

On motion, the petitioner states that his friend, '█████████' introduced him to his former wife at a birthday dinner. He recounts that they started dating and he developed a good relationship with her three-year-old son. The petitioner states that he moved into his former wife's residence in the Bronx and he financially supported her. He states that they had a small wedding and planned to have a child together. The petitioner has given some details of how he first met his former wife and their courtship, but he has still failed to discuss their joint residence and shared experiences, apart from the alleged abuse. In addition, the petitioner in his statement refers to A-I- as '█████████'; however a different name appears on his Form I-360, in his prior statements, on A-I-'s naturalization certificate and the couple's marriage certificate. Accordingly, the petitioner has failed to establish that he married his former wife in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

---

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

<sup>2</sup> The New York Immigration Court administratively closed the petitioner's removal proceedings on September 9, 2013.

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

Because the petitioner married his second 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. *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. § 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 his good-faith entry into his second 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 second 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, 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).

*Battery or Extreme Cruelty*

In our April 17, 2013 decision, we also determined that the evidence submitted below and on appeal failed to demonstrate that the petitioner’s wife subjected him to battery or extreme cruelty. The relevant evidence was discussed in detail in our prior decision, incorporated here by reference. In summary, the petitioner claimed that A-I- physically assaulted him, but he failed to discuss the physical abuse in probative detail. The other incidents described by the petitioner do not constitute extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner’s friends, [REDACTED] and [REDACTED] attested to witnessing two incidents of physical abuse in the couple’s relationship that the petitioner did not mention either of his statements. The petitioner’s friend, [REDACTED] described behavior that did not demonstrate battery or extreme cruelty in the petitioner’s marriage. The petitioner submitted a copy of a hospital admission card and a photograph in which he appears to have a

small bump on his lip. The petitioner, however, did not further explain the significance of the photograph or the admission card and how these documents related to his claims.

On motion, the petitioner recounts that during their marriage his former wife called him names and she was jealous and tried to control his contact with other women. The petitioner states that they argued over finances and she opened credit card accounts in his name. The petitioner recounts that his former wife reminded him of his removal proceedings, insulted him, hit his lip with a pot and she hit him on other occasions. The non-physical behaviors described by the petitioner do not involve threatened violence, psychological or sexual abuse, or otherwise constitute extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner fails to describe the instances of physical abuse in any probative detail. He claims that it is emotionally difficult to remember the details of his former wife's physical abuse and he previously provided this evidence. While we understand the emotional difficulty of recounting marital abuse, probative and credible testimony is necessary to establish a self-petitioner's claim of battery or extreme cruelty and the record does not contain substantive information to satisfy this requirement. Accordingly, the petitioner has not established that his former 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.

#### *Conclusion*

On motion, the petitioner has not established that he entered into his second marriage in good faith and was subjected to battery or extreme cruelty by his second wife. Approval of the petition is further barred by section 204(g) of the Act. Consequently, the petitioner also has not established that he is eligible for immediate relative classification based on his second marriage. He is therefore 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The motion is granted. The AAO's decision, dated April 17, 2013, is affirmed. The petition remains denied.