

(b)(6)

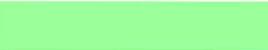


U.S. Citizenship
and Immigration
Services



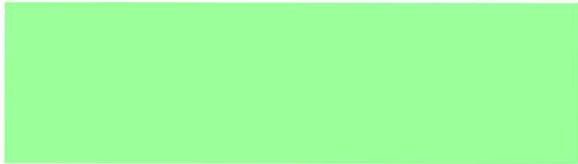
Date: **OCT 30 2014**

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 Acting 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 a U.S. citizen.

The director denied the petition finding that the petitioner failed to establish a qualifying relationship with his spouse and his corresponding eligibility for immediate relative classification. The director also denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith, resided with his wife, and met the requirement for the bona fide marriage exemption.

Applicable 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, states, in pertinent part, the following:

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 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 eligibility requirements for immigrant classification as an abused spouse are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) 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.

* * *

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

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(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.

* * *

(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 Iran who entered the United States on April 30, 2008 as a B-2 nonimmigrant visitor. On February 10, 2009, the Anaheim Asylum Office referred the petitioner's Form I-589, Request for Asylum, to the Los Angeles Immigration Court and served the petitioner with a Notice to Appear for removal proceedings. The petitioner claims to have married D-S¹, a United States citizen², on August 10, 2011, thus subjecting himself to the bar on approval of immigrant petitions based on marriages entered into while in removal proceedings at section 204(g) of the Act. The petitioner filed the instant Form I-360 on July 30, 2013. On August 28, 2013, the immigration judge terminated the petitioner's removal proceedings. On October 16, 2013, the director issued a Request for Evidence (RFE) of, among other things, the petitioner's qualifying spousal relationship, joint residency, and good-faith entry into the marriage. The petitioner responded with additional evidence that the director found insufficient, and the director denied the petition.

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

Entry into the Marriage in Good Faith

The petitioner failed to establish that he married D-S- in good faith. In his declaration, the petitioner indicated that he met D-S- in his beauty supply store. He stated that she visited the store a few times before they dated on September 23, 2010. The petitioner recounted that after three days they developed a strong bond and D-S- moved from Orange County to his downtown Los Angeles loft in [REDACTED], and they began residing together. The petitioner indicated that he found his "true love" and had many things in common with D-S- even though they came from different backgrounds. He stated that they wanted to settle down and start a family and were together almost eleven months before they married on August [REDACTED]. The petitioner does not further describe how he met his wife, his courtship, decision to marry, engagement, joint residence, and shared experiences, apart from the abuse.

In response to the director's RFE, the petitioner submitted a copy of an approval notice for an Immediate Relative Petition (Form I-130) filed on the petitioner's behalf by D-S- and asserted that the approved Form I-130 is evidence of his good-faith entry into the marriage. The Form I-130, however, and the documents submitted therein, are not contained in the current record of proceeding. Moreover, the fact that a visa petition based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigration status. See *INS v.*

¹ Name withheld to protect the individual's identity.

² As will be discussed later in this decision, the petitioner provided no primary evidence of his marital relationship with D-S- and the termination of his prior marriage.

Chadha, 462 U.S. 919, 937 (1983); *Agyeman v. INS*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, “the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws.”). Further, USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. *Matter of Church Scientology Intl.*, 19 I&N Dec. 593, 597 (BIA 1988).

Additionally, 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. With a Form I-130 petition, the petitioning spouse has the burden of proof to establish citizenship and the validity of the marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, with the Form I-360 self-petition, the petitioner bears the burden of proof to establish not only the validity of the marriage, but also his own good-faith entry into the marriage. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions further explain the statutory requirement of the self-petitioner’s good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). In making a decision on a self-petition, U.S. Citizenship and Immigration Services (USCIS) has sole discretion to determine what evidence is relevant and credible and the weight to be given that evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

On appeal, the petitioner again argues that the bona fides of his marriage are demonstrated by approval of the Form I-130 and the director erred by not giving “full faith and credit” to the prior determination. In the instant case, the petitioner’s declaration provided only a general description of his courtship and marital relationship and is not sufficient to meet his burden of proof. When viewed in the totality, evidence of the approved Form I-130 and the petitioner’s declaration do not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act Bars Approval

In his decision, the director found that the petitioner married D-S- while he was in removal proceedings, was subject to section 204(g) of the Act, and failed to establish the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act.

On appeal, the petitioner asserts that as removal proceedings against the petitioner were terminated on August 28, 2013, a marriage exemption is not required. The record supports counsel’s assertion. The regulation at 8 C.F.R. § 245.1(c)(8)(iii)(C) states that the 204(g) prohibition no longer applies if proceedings are terminated by an immigration judge. Accordingly, we withdraw the finding of the director that section 204(g) of the Act bars approval of this petition.

Joint Residence

The petitioner stated on his Form I-360 that he resided with D-S- from January 2011 until May 2013 and that their home in [REDACTED] California, was the last residence they shared. In his declaration, the petitioner stated that D-S- moved from Orange County to his downtown Los Angeles loft. He

indicated that his lease ended three months later on December 31, 2010 and that they moved in together in January 2011. He recounted that D-S-'s parents visited them, and that he and D-S- lived in a one-bedroom apartment. The petitioner's statements provide no detailed and probative information to demonstrate that he resided with D-S- during their marriage. The petitioner does not provide a detailed description of their apartment, shared belongings, and common residential routines.

On appeal, the petitioner again asserts that the approved Form I-130 is evidence of joint residence. As previously discussed, in the absence of evidence of joint residence or a detailed, probative statement from the petitioner describing his marital residence, shared belongings, and residential routines with D-S-, an approved Form I-130 is not sufficient to establish a joint residence, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship. In his RFE, the director specifically requested evidence of the petitioner's prior divorce as well as his marriage certificate for his marriage to D-S-. The petitioner failed to provide the requested documentation and the director concluded that the record did not contain satisfactory evidence to demonstrate that the petitioner had a qualifying spousal relationship with a citizen of the United States and his eligibility for immediate relative classification based on such a relationship.

On appeal, the petitioner points to the approved Form I-130 to demonstrate his marital relationship. As previously indicated, the record of proceeding does not contain the Form I-130 or its corresponding documentation. Without primary evidence of the petitioner's marital relationship and evidence that he was free to enter into the marriage with D-S-, the petitioner has failed to establish a qualifying spousal relationship, and corresponding eligibility for immediate relative classification.

Conclusion

The petitioner has not overcome all of the director's grounds for denial. The petitioner has not demonstrated that he entered into marriage with D-S- in good faith, resided with D-S-, has a qualifying spousal relationship with a U.S. citizen, and is eligible for immediate relative classification based on his marriage to D-S-. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these grounds and the appeal will remain dismissed.

The burden of proof in these proceedings rests solely with the petitioner. 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). The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.