



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **OCT 31 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:

[REDACTED]

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 Vermont Service Center 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 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 based on the petitioner's failure to establish that she entered into marriage with her U.S. citizen spouse in good faith and 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 an alien is in removal proceedings. The director further found that the petitioner failed to establish a qualifying spousal relationship and corresponding eligibility for immediate relative classification based on her marriage.

On appeal, counsel submits a brief.

*Applicable Law*

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, 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:

(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].

\* \* \*

(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.

(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 . . . .

\* \* \*

(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, a citizen of Georgia, entered the United States on August 27, 2004 as a B-2 nonimmigrant visitor. The petitioner's administrative record indicates that her first husband divorced her on March 31, 2006. The record reflects that the petitioner married her second husband, L-W<sup>1</sup>, a U.S. citizen, on October [REDACTED] L-W- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which he subsequently withdrew at the immigration interview.<sup>2</sup>

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

<sup>2</sup> The petitioner's administrative record contains a sworn statement from L-W-, dated March 3, 2010, indicating that he "married the petitioner to help her get citizenship" and that the "purpose of the[ir] relationship was for a greencard." The record also contains the officer's notes from the joint I-130 interview

The petitioner was placed in removal proceedings on March 9, 2010.<sup>3</sup> The petitioner and L-W- subsequently divorced in November 2010. The petitioner married A-K-<sup>4</sup>, also a U.S. citizen, on October 28, 2011 in [REDACTED] Maryland, and filed the instant Form I-360 self-petition on February 12, 2013 based on that marriage. The director issued Requests for Evidence (RFE) of good-faith entry into the marriage, among other issues. The director notified the petitioner that because she married A-K- while she was in removal proceedings, section 204(g) of the Act barred approval of her self-petition. The director provided guidance on requesting a bona fide marriage exemption from that bar. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility, and denied the petition.

The petitioner, through counsel, subsequently appealed the director's decision. The appeal consists of a Form 1-290B, Notice of Appeal, and a statement from counsel.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record reveals that the petitioner has established that she entered into her marriage with A-K- in good faith under section 204(a)(1)(A)(iii)(I)(aa) of the Act by a preponderance of the evidence. However, approval of the petition is barred by section 204(g) of the Act as the petitioner has not demonstrated her eligibility for the bona fide marriage exemption pursuant to section 245(e) of the Act.

#### *Good-Faith Entry Into Marriage*

The petitioner has established by the preponderance of the evidence that she entered into her marriage with A-K- in good faith. In her initial affidavit, dated February 8, 2013, the petitioner briefly stated that she first met A-K- in Georgia in 1995, and reconnected with him in the U.S. in October 2010. The petitioner indicated that A-K- liked her and wanted to get married and live with her, and so they married in the fall of 2011. The petitioner submitted a letter from four clergy of her church stating that they knew the petitioner prior to her marriage and that they recall her being "deeply in love" with A-K-, but did not attest to first-hand knowledge of her relationship. The petitioner also submitted a two-year lease commencing on January 1, 2012 in her and A-K-'s names for a residence on [REDACTED]. The lease is not signed by either the tenants or the landlord. In addition, the petitioner provided statements for a checking account ending in 7085. The petitioner submitted a statement for the period of November 24, 2011 to December 22, 2011 in A-K-'s name only. The statements for the same account starting with the period commencing on December 23, 2011 are in both the petitioner's and A-K-'s names. Thus it appears that A-K- added the petitioner to his preexisting account in November or December 2011. The petitioner submitted the account statements for selected months in 2012. The statements showed some activity, but did not demonstrate that the account was used to pay regular household expenses. The petitioner also submitted checking and credit card account statements from other banks in her name only, indicating that she maintained separate accounts. In addition, the

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and a memo discussing the inconsistencies and discrepancies in their documentation and statements. However, as the director did not make a finding of ineligibility pursuant to section 204(c) of the Act, and the petition is not otherwise approvable, we do not reach this issue on appeal.

<sup>3</sup> The petitioner's Notice to Appear was filed at the Philadelphia Immigration Court on March 9, 2010.

<sup>4</sup> Name withheld to protect the individual's identity.

petitioner submitted utility and cable television bills addressed to either her or A-K- at the [REDACTED] apartment, and copies of three receipts showing that some of the bills had been paid in cash. The petitioner also provided numerous labeled photographs of her and A-K- on various occasions, including their marriage in October 2011, and several events in 2012.

In the RFE, the director correctly indicated that further evidence was required to establish the petitioner's good-faith entry into her marriage. In response to the RFE, the petitioner submitted a second affidavit, dated October 29, 2013, in which she stated that she married A-K- for love and not for other benefits. She recounted that she saw A-K- at a friend's house in 2005, and they spoke on the phone, but did not have a relationship at that time. She discussed encountering A-K- again at a friend's home in October 2010. She described the evening in detail, and provided additional probative information regarding the couple's courtship. She recounted portions of their life together after marriage, describing her domestic duties, and A-K-'s work as a truck driver.

Regarding their finances, the petitioner stated that A-K- controlled the couple's finances and paid for the rent and utilities with cash. The petitioner submitted several original receipts for utilities paid by cash transactions. The petitioner stated that she worked sporadically performing jobs such as babysitting and house cleaning, but did not have steady employment. She stated that as a truck driver, A-K- was often gone from the home for extended periods. In a third personal affidavit, also dated October 29, 2013, regarding her and A-K-'s joint checking account, the petitioner described the purchases of home goods and gifts that the couple made with the account. The petitioner additionally stated that A-K- controlled all the checking and credit card accounts and that she did not have access to them. The petitioner did not mention the credit cards or bank account in her sole name.

Also in response to the RFE, the petitioner submitted several affidavits from friends. In his affidavit, [REDACTED] recalled the petitioner and A-K- attending a July 4, 2011 social event. Mr. [REDACTED] knew A-K- as the petitioner's boyfriend at that time, and subsequently became good friends with A-K- after he married the petitioner. The petitioner also submitted an affidavit from [REDACTED] a longtime friend of A-K-, who attested that A-K- introduced her to the petitioner in late 2010. Ms. [REDACTED] noted that A-K- and the petitioner were affectionate toward each other. The petitioner's friend [REDACTED] attested to meeting A-K- while he and the petitioner were dating, and indicated that she attended various social events with the couple. In an affidavit dated October 10, 2013, [REDACTED] stated that they attended the petitioner's and A-K-'s wedding ceremony and celebration, but did not describe the event. They briefly stated that they visited the petitioner and A-K- often in their home, and complimented the petitioner's cooking; however, they did not provide probative information regarding these occasions. [REDACTED] also attested that she and her family witnessed the petitioner's and A-K-'s wedding and dinner, but also failed to describe the event. The petitioner submitted an additional affidavit from her church clergy indicating that A-K- and the petitioner had visited the church together, but were ultimately unable to have a church wedding due to scheduling conflicts.

The director found the evidence insufficient to establish the petitioner's good-faith entry into the marriage and denied the petition. On appeal, counsel asserts that the preponderance of the relevant evidence establishes that the petitioner entered into her marriage with A-K- in good faith. Subsequent to the director's decision, counsel added copies of the petitioner's and A-K- 2012 joint federal income

tax return to the administrative record. The tax return states the petitioner and A-K-'s filing status as "Married filing jointly." The tax return indicates that A-K- was sole proprietor of a transportation business, and is accompanied by copies of Internal Revenue Service (IRS) Forms 1099-MISC in A-K-'s name from various trucking and transportation companies.

The preponderance of the relevant evidence, including the income tax form filed after the director issued his decision, demonstrates that it is more likely than not that the petitioner married A-K- in good faith. The petitioner credibly described her courtship and some of her shared experiences with A-K-. Her statements are supported by several bills addressed to the petitioner and A-K- at the Summerdale Avenue apartment and evidence of cash payments; joint bank statements and supplemental explanations and photographs describing joint purchases made for their home; affidavits from friends who visited them at their home and knew them before marriage; several labeled photographs of A-K- and the petitioner together on various occasions; and a 2012 joint income tax return. *De novo* review of the record establishes by a preponderance of the evidence that the petitioner married A-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Section 204(g) of the Act*

Although the petitioner has established by a preponderance of the evidence that she married A-K- in good faith, the petitioner has not established eligibility for the bona fide marriage exemption from section 204(g) of the Act.

At the time the petitioner married A-K-, 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 petitioner requested an exemption from section 204(g) of the Act in writing, as required by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(A); however, 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 (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, 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.

Although the petitioner has established her good-faith entry into her marriage with A-K- 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) of the Act. In her affidavits, the petitioner indicated that A-K- controlled the household finances, and the record supports the petitioner's claim that the household bills were paid with cash. However, the record also shows that the petitioner maintained separate checking and credit card accounts. She has not acknowledged the existence of these separate accounts in her statements. Although the petitioner provided several bills in her and A-K-'s names addressed to them at the Summerdale Avenue apartment, the lease for the [REDACTED] apartment is unsigned. Further, the petitioner's statements and the third party affidavits do not 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). For example, neither the petitioner nor the third party affiants have described the petitioner's wedding ceremony. The brief third-party affidavits provide minimal information regarding the petitioner's intent in marriage and do not

provide probative testimony regarding the petitioner's courtship, wedding, and other shared experiences with A-K-. Several of the affiants indicated that they were present for the petitioner's wedding, courtship, and other events the couple shared, but did not provide probative information regarding these occasions.

On appeal, counsel indicates that the director should have applied only the preponderance of the evidence standard of proof. *De novo* review of the record reveals that the director correctly applied the clear-and-convincing standard to the instant matter. As the petitioner is subject to the bar at section 204(g) of the Act, she must prove by clear and convincing evidence that she is eligible for a bona fide marriage exemption under section 245(e)(3) of the Act. The relevant evidence, described above, does not so establish. Section 204(g) of the Act thus bars approval of the instant self-petition.

#### *Qualifying Relationship and Immediate Relative Classification*

The portion of the director's decision denying the self-petition on the basis of a lack of qualifying relationship will be withdrawn. The petitioner provided her and A-K-'s marriage certificate and A-K-'s naturalization certificate, which indicate that the petitioner is the spouse of a U.S. citizen. She has therefore established that she has a qualifying spousal relationship as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(ii).

However, the director was correct in finding that because the petitioner is not exempt from and has not complied with section 204(g) of the Act, she is 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 U.S. citizen spouse, A-K-, 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 under section 245(e)(3) of the Act. The petitioner has also not established 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).

The petitioner bears the burden of proof to establish eligibility. 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.