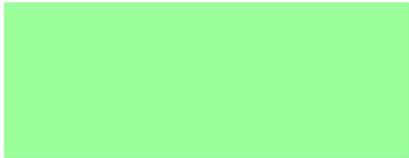




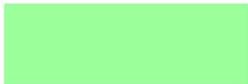
U.S. Citizenship
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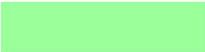
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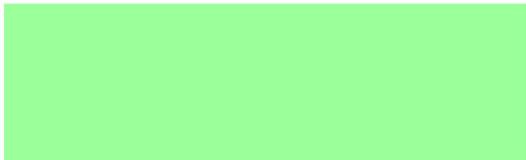
Office: VERMONT SERVICE CENTER

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.

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 former wife in good faith, and was eligible for a bona fide marriage exemption from the provisions of section 204(g) of the Act and corresponding eligibility for immediate relative classification. On appeal, counsel submits a brief.

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 . . . preference 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 regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(Emphasis added).

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) . . . (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(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

* * *

(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 explained in 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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 . . . abuser. . . .

* * *

(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 Turkey who entered the United States in 2001 as a nonimmigrant student. The petitioner married J-M-¹, a U.S. citizen, on [REDACTED] 2010, in Monterey, California. His marriage to J-M- was terminated in a divorce on [REDACTED] 2012. The petitioner filed the instant Form I-360 on April 6, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's entry into the marriage in good faith and his eligibility for the bona fide marriage exemption from section 204(g) of the Act. The petitioner, through counsel, responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. 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. 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.

Entry into the Marriage in Good Faith

In response to the RFE, the petitioner stated he did not have any joint documentation with J-M- because she refused to have joint accounts as a way to control him. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good

¹ Name withheld to protect the individual's identity.

faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). A self-petitioner may submit “testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.” See 8 C.F.R. § 204.2(c)(2)(vii).

In this case, the petitioner initially stated that he met J-M- through a friend. The petitioner described their first six months of dating as happy and relaxed, going out together and traveling, but that their relationship subsequently changed. He described the abuse he suffered and explained how they would separate for a while, but then get back together. According to the petitioner, on [REDACTED], 2009, he was arrested for overstaying his visa and after he was released on bond, he and J-M- discussed their relationship and his immigration situation. He explained that they both realized they wanted to be together and decided to get married. The petitioner recounted his proposal to J-M- in New York City, that she yelled at him all that night despite their engagement, and that she postponed their wedding several times. He also described a conversation with his brother who told him that J-M- expressed fear that the petitioner would leave her as soon as his immigration problems were over. The petitioner stated that he and J-M- finally got married on [REDACTED], 2010, did not go on a honeymoon, but went to the U.S. Open together. According to the petitioner, on [REDACTED] 2010, J-M- filed a petition to annul their marriage without his knowledge. In response to the RFE, the petitioner submitted a declaration contending he and J-M- “didn’t decide to get married so that [he] could get a green card, [but] because being apart wasn’t an option.”

The petitioner’s statements did not describe in probative details his and his ex-wife’s courtship, wedding ceremony, shared residence and experiences. The petitioner himself described that it was only after he was arrested for overstaying his visa that he and J-M- began discussing marriage. A declaration from the petitioner’s brother also indicated that after the petitioner “was released on bond, [he] made the decision to propose” to J-M-. The petitioner’s brother briefly noted that early in their relationship, the petitioner and J-M- were in love, but he did not otherwise discuss the petitioner’s marital intentions. Declarations from others in the record, including the petitioner’s sister-in-law and friend [REDACTED] do not establish that they had any personal knowledge of the couple’s relationship. Copies of four photographs in the record are undated and picture the former couple on only one unidentified occasion. The director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner entered the marriage in good faith.

On appeal, counsel contends that the Superior Court of California found that the petitioner and J-M- entered into a bona fide marriage. The Court Order from the Superior Court of the State of California, County of Monterey, denied J-M-’s petition for nullity of marriage by concluding that J-M- did not prove by a preponderance of the evidence that she was of unsound mind at the time of the marriage, that she was deceived into marrying the petitioner, or that she was forced into marriage. The Court did not evaluate the petitioner’s marital intentions, which is at issue here. The declaration by the petitioner’s friend [REDACTED], and a credit card statement reportedly showing the petitioner bought J-M- an engagement ring, submitted on appeal do not provide further probative information regarding the former couple’s relationship or the petitioner’s marital intentions. Mr. [REDACTED] does not describe any particular visit or social occasion with the petitioner and J-M-, or any other interactions with the couple, in sufficient detail to establish his personal knowledge of their relationship.

Counsel contends that the petitioner's case is irrevocably tainted by USCIS's reliance on J-M-'s communication with Immigration and Customs Enforcement (ICE) in connection with the petitioner's removal proceedings in violation of the confidentiality provisions in 8 U.S.C. § 1367(a)(1). The record contains no indication that the director relied on any evidence from J-M- or ICE in determining that the petitioner failed to establish he married J-M- in good faith. The preponderance of the evidence, including the additional evidence submitted on appeal, does not show the petitioner entered the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

The record reflects that section 204(g) of the Act also bars approval of the petition. Because the petitioner married his former wife while he was in removal proceedings and he 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 (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 (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 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.

Eligibility for Immediate Relative Classification

The petitioner is also not eligible for immediate relative classification based on his marriage to J-M-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explained in the regulation at 8 C.F.R. § 204.2(c)(1)(iv), because he has not complied with, nor is he exempt from, section 204(g) of the Act.

Conclusion

After a careful review of the entire record, the petitioner has not demonstrated that he married his ex-wife in good faith, is exempt from the bar to approval of his petition under section 204(g) of the

Act, or is eligible for immediate relative classification based on his marriage to J-M-. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.