

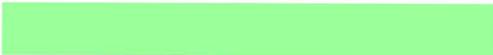


U.S. Citizenship  
and Immigration  
Services

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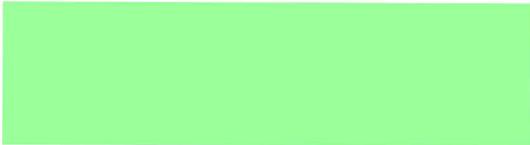


Date: **SEP 11 2014** Office: VERMONT SERVICE CENTER File: 

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 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner is a person of good moral character, entered into a good-faith marriage, and was eligible for a bona fide marriage exemption from the provisions of section 204(g) of the Act. 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).

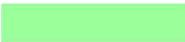
Section 204(a)(1)(J) of the Act further states, in pertinent part:

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 her 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 her 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 for an abused spouse 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)(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.

\* \* \*

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that

could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

\* \* \*

(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.

\* \* \*

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

(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 in 1996 as a nonimmigrant visitor. On [REDACTED], 2008, the petitioner was placed in removal proceedings before the New York City Immigration Court.<sup>1</sup> The petitioner married J-F-<sup>2</sup>, a U.S. citizen, on [REDACTED] 2008, in Broward County, Florida.<sup>3</sup> The petitioner filed the instant Form I-360 self-petition on October 21, 2011. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the petitioner's good moral character, her entry into the marriage in good faith, and her eligibility for the bona fide marriage exemption from the prohibition on approval of immigrant petitions based on marriages entered into while the alien is in removal proceedings (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 overcome one, but not all, of the director's grounds for denial and the appeal will be dismissed for the following reasons.

*Good Moral Character*

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in October 2008 and ending in October 2011). In this case, the director determined that although the petitioner submitted a fingerprint-based Certificate of Conduct from New York City, she also resided in Florida during the three-year period prior to the filing of her petition. Because she had not submitted a local police clearance or criminal background check from Florida,

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<sup>1</sup> On November 8, 2011, the immigration judge administratively closed, but did not terminate, the petitioner's proceedings. See 8 C.F.R. § 245.1(c)(8)(ii).

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> On appeal, counsel states that the petitioner's marriage ended in a divorce in 2000, but the record does not contain a copy of the divorce decree. *Appeal of [REDACTED]* at 1, dated November 22, 2013. If the petitioner was divorced in 2000, she would also be ineligible to self-petition for lack of a qualifying spousal relationship because her Form I-360 was filed more than two years after the divorce. See section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc) (preserving eligibility only when divorce occurs within two years of filing the self-petition and was connected to the former spouse's battery or extreme cruelty).

the director found the petitioner had not established her good-moral character.

On appeal, counsel submits a local police clearance from the Broward County, Florida, Sheriff's Office indicating the petitioner has no arrest record. In addition, counsel explains that although the petitioner and J-F- had a joint lease for an apartment in Florida, the petitioner was finishing her studies in New York and did not actually live in Florida for six months or more. Therefore, counsel contends the petitioner was not required to provide a background check from Florida. In support of this contention, counsel submits affidavits and documentation showing the petitioner attended college in New York in 2011 and 2012.

On appeal, the petitioner has established her good moral character. As stated by 8 C.F.R. § 204.2(c)(1)(vii), a self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. The record does not show that the petitioner has been arrested, convicted of any crimes, or engaged in any actions that fall within any of the enumerated bars to a finding of good moral character under section 101(f) of the Act. Nor does it show that she has engaged in actions that fall below the standards of the average citizen in the community. In her own affidavit, the petitioner affirmed her good character and lack of any adverse involvement with law enforcement. Probative letters of support from her friends, family, and church also attest to her good moral character. Accordingly, the petitioner has established her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The director's contrary determination is withdrawn.

*Entry into the Marriage in Good Faith*

The appeal cannot be sustained, however, because the petitioner has not overcome the remaining grounds for denial. In regards to her marital intentions, the petitioner stated she met J-F- at an alumni event in Florida. She explained that they took turns visiting each other and that he proposed marriage even though he knew she would continue going to school in New York. According to the petitioner, she loved her husband and enjoyed his company. The rest of her affidavit described the abuse she experienced. The petitioner's affidavit failed to provide specific information regarding her relationship with J-F- and her intentions for marrying him. Apart from the abuse, her affidavit did not provide detailed information regarding the couple's courtship, wedding ceremony, or shared residence and experiences.

Statements from [REDACTED], [REDACTED], [REDACTED], and [REDACTED] briefly discussed the petitioner's marriage, but provided no substantive information regarding the couple's relationship or the petitioner's marital intentions. They did not describe in detail, for example, any specific contact with the petitioner and J-F-, any particular visit or social occasion with the couple, or any other interactions with the couple that would establish their personal knowledge of the relationship. The joint bank account statement in the record shows the account was opened more than two months after the couple married, but shows no account activity, and, therefore, is not probative of the petitioner's marital intentions. 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 asserts that the director incorrectly deemed the petitioner's evidence "insufficient" because a domestic violence victim may not have access to documentation of the marriage. It is true that traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good 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 submitted documents with little probative value and affidavits that failed to establish her claim. On appeal, counsel cites the petitioner's joint lease, psychological evaluation and bank statement as evidence of her good-faith marriage. Counsel also submits a copy of the petitioner's credit card statement from December 2008 to show that she paid for her husband to travel from Florida to spend Thanksgiving with her. The psychological evaluation is probative of the battery or extreme cruelty, but does not provide additional evidence of the petitioner's marital intentions. The remaining documents show that the petitioner resided with her spouse, once paid for him to visit her and opened a bank account in both their names, but for which no activity is reflected. Without a more detailed, substantive description from the petitioner herself about her marital intentions, the preponderance of the relevant evidence does not show the petitioner entered the marriage in good faith.

On appeal, counsel further asserts the director failed to show the petitioner entered into the marriage for an immigration benefit or for other unacceptable reasons, however, such burden does not lie with the director. The petitioner bears the burden to establish her eligibility for immigrant classification under all the criteria at section 204(a)(1)(A)(iii) of the Act, including her good-faith entry into the marriage. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

#### *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 her husband while she was in removal proceedings and she did not remain outside of the United States for two years after their marriage, her self-petition cannot be approved pursuant to section 204(g) of the Act unless she establishes the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act.<sup>4</sup> 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

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<sup>4</sup> Although the petitioner's removal proceedings were administratively closed, she remains subject to section 204(g) of the Act. Section 204(g) of the Act applies until proceedings are terminated. 8 C.F.R. § 245.1(c)(8)(ii)(D). Administrative closure does not result in a final order and is not equivalent to the termination of removal proceedings. *Matter of Bavakan Avetisyan*, 25 I&N Dec. 688, 695 (BIA 2012).

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 her good-faith entry into her marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she also has not demonstrated the bona fides of her 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*

Beyond the decision of the director, the petitioner is also not eligible for immediate relative classification based on her marriage to J-F-, 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 she has not complied with, nor is she exempt from, section 204(g) of the Act.<sup>5</sup>

#### *Conclusion*

On appeal, the petitioner has established her good moral character. However, she has not established that she married her husband in good faith, is exempt from the bar to approval of her petition under section 204(g) of the Act, or is eligible for immediate relative classification based on her marriage to J-F-. She is consequently 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). Here, that burden has not been met and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>5</sup> 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).