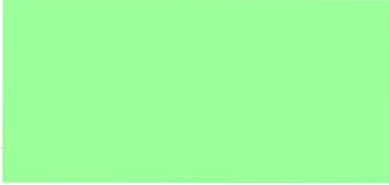


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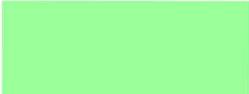
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

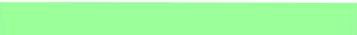


U.S. Citizenship
and Immigration
Services



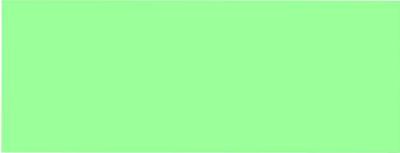
Date: **SEP 18 2014**

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:

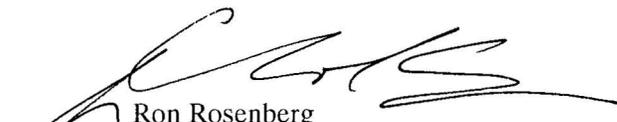


INSTRUCTIONS:

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 on all the eligibility criteria of section 204(a)(i)(A)(iii) of the Act¹ and because the petitioner did not comply with the provisions of section 204(g) of the Act.

On appeal, counsel submits a brief and copies of previously submitted 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

¹ Although the record shows the petitioner’s marriage was valid, the director nonetheless found that the petitioner did not have a qualifying relationship because she did not meet the requirements of section 204(g) of the Act.

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 the 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's 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:

(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.

(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.

(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 or the self-petitioner’s child, 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 are further explicated in the regulation at 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.

* * *

(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.

* * *

(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 Sri Lanka who last entered the United States on November 6, 1999 as B-2 nonimmigrant visitor. On July 4, 2004, the petitioner was issued a Notice to Appear in removal proceedings for remaining in the United States without authorization.² The petitioner married P-H, a U.S. citizen, on July 24, 2008, in [REDACTED] Virginia.³ The petitioner filed the instant Form I-360 self-petition on December 11, 2012. The director subsequently issued two Requests for Evidence (RFE) of: the petitioner's good-faith entry into the marriage; her eligibility for the bona fide marriage exemption from section 204(g) of the Act; her residence with her husband; that she entered into a qualifying relationship with her husband, that her husband subjected her to battery or extreme cruelty, and her good moral character. The petitioner, through counsel, responded to the RFEs with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

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, including the brief submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims 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

The relevant evidence submitted fails to demonstrate the petitioner's entry into her marriage in good faith. In her first affidavit, the petitioner briefly recounted that she met P-H in Maryland in 2005 through a friend. She stated that they dated for three years and then decided to get married. The petitioner recounted that after they wed on July 24, 2008, they got an apartment in Virginia but P-H kept his apartment in Maryland because of contractual obligations. Sometime in October, 2009, she stayed with him in Maryland. The remainder of her affidavit focuses on the abuse in the marriage. In her affidavit dated October 28, 2013, submitted in response to the second RFE, the petitioner repeated the information provided in her first affidavit without providing any additional information except for

² The petitioner remains in removal proceedings before the [REDACTED] Immigration Court and her next hearing is on [REDACTED] 2015.

³ Name withheld to protect the individual's identity.

generally stating that she entered into her marriage in good faith. The petitioner did not probatively describe how she met her husband, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

In response to the RFEs, the petitioner submitted the following relevant documents: her marriage certificate, a lease agreement and paperwork regarding the apartment in Virginia; [REDACTED] utility bills addressed to her husband; bank statements reflecting the couple's joint account; and letters from the Internal Revenue Service (IRS) addressed solely to the petitioner. The [REDACTED] bills and IRS letters were not addressed to the petitioner and her husband jointly, and the IRS letters do not indicate that the petitioner and her husband jointly filed their income tax returns. The bank statements show little activity indicating that both the petitioner and her ex-husband did not use the account. Although the petitioner's marriage certificate shows that she was legally married to P-H-, it does not reflect her intentions in entering into the marriage, and it lists her marriage to P-H- as her first marriage though the petitioner was previously married. The petitioner's affidavits and the other relevant evidence failed to provide any probative details of the petitioner's marital intentions. The director correctly determined that the preponderance of the evidence did not establish the petitioner's good-faith entry into the marriage. A full review of the relevant evidence fails to establish the petitioner's good-faith entry into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

On her Form I-360 self-petition, the petitioner stated that she lived with her husband from July 2008 until May 2010 and that their last joint address was on [REDACTED] Maryland. In her affidavits, the petitioner indicated that on August 8, 2008, P-H- moved to [REDACTED] Virginia, with her, but because of contractual obligations, they also had to keep the house in Maryland. In October 2009, she began staying with her husband in the [REDACTED] home. The petitioner submitted documents addressed to her at the [REDACTED] address, and documents addressed to her husband at the [REDACTED] address. The petitioner also submitted a lease for the Virginia address and letters addressed to her husband regarding the rental of the Virginia apartment. On appeal, counsel asserts that this evidence demonstrates the petitioner's shared residence with P-H-. However, in her affidavits, the petitioner does not describe her home with P-H- or their shared residences in any detail. Although both the petitioner and her husband's names are listed on the Virginia lease, the lease was signed only by P-H-, and all of the correspondence regarding that residence is addressed to him alone. Additionally, although the applicant indicated that they moved to Virginia together on August 8, 2008, the lease term did not begin until August 25, 2008. The only documents addressed to the petitioner and her husband jointly are the letters from [REDACTED] bank, which as stated previously, do not indicate that both the petitioner and her husband used the account. [REDACTED] the petitioner's friend, indicated that she lived in the same building as the petitioner in Arlington and frequently visited the petitioner, yet she made no mention of the petitioner's husband or that they resided together. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Section 204(g) of the Act further Bars Approval

The director also correctly determined that section 204(g) of the Act bars approval of the petition. Because the petitioner married her husband while she was in removal proceedings and 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. 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.

On appeal, counsel asserts that the petitioner clearly satisfied the exemption under section 204(g) of the Act. However, in his brief counsel repeats the facts, but offers no new evidence or argument to support that contention. 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

Because the petitioner is not exempt from section 204(g) of the Act, she has also failed to demonstrate 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).

Battery or Extreme Cruelty

We find no error in the director’s determination that the petitioner’s husband did not subject her to battery or extreme cruelty and the applicant did not submit any new evidence on appeal to overcome this ground for denial. In her initial affidavit, the petitioner stated that her husband was an alcoholic, lost his job, and had extra-marital affairs, causing her to occasionally stay at her church. She recalled that on some occasions she spent nights out of the home. She also indicated that on one occasion she visited him in their Maryland house and caught him in bed with another woman. Her husband was drunk, insulted her and excluded her from that residence. In her affidavit in response to the second RFE, the petitioner repeated these claims and added that her husband subjected her to unspecified “physical and psychological abuse.” Apart from her two affidavits, the petitioner did not submit any other relevant evidence. The petitioner did not describe any specific incidents of battery or

psychological abuse or otherwise establish that her husband's actions constituted extreme cruelty under 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel contends that the petitioner's affidavit "overwhelmingly demonstrates" that the petitioner suffered from extreme cruelty at the hands of her husband and that United States Citizenship and Immigration Services (USCIS) erred in finding otherwise. Counsel has not provided any evidence that the director failed to accord proper weight to the applicant's statements. The director considered and addressed the petitioner's affidavits in the denial decision, but as explained above, the petitioner's affidavits did not describe any specific incidents of battery or extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, that they resided together, that her husband subjected her to battery or extreme cruelty or that the petitioner is exempt from the bar to approval of her petition under section 204(g) of the Act; and is eligible for immediate relative classification. 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.

ORDER: The appeal is dismissed.