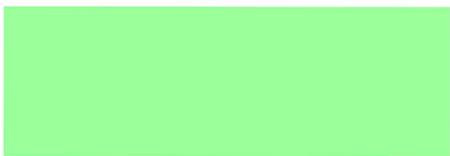


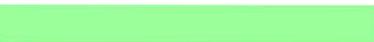
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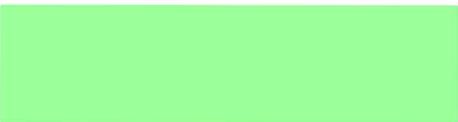


Date: **SEP 22 2014** Office: VERMONT SERVICE CENTER File: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 complied with the provisions of section 204(g) of the Act and that the petitioner entered into marriage with his wife in good faith.

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

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) 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 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 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 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 a 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:

- (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.

* * *

(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 Peru who last entered the United States on August 9, 1990 as B-2 nonimmigrant visitor. On March 4, 1999, the petitioner was issued a Notice to Appear in removal proceedings for remaining in the United States without authorization.¹ The petitioner married his wife, a U.S. citizen, on April [REDACTED] in [REDACTED] Maryland. The petitioner filed the instant Form I-360 on May 19, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and his eligibility for the bona fide marriage exemption from section 204(g) of the Act. The petitioner, through counsel, responded to the RFE 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 evidence submitted on appeal, 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

The relevant evidence submitted fails to demonstrate the petitioner's entry into his marriage in good faith. In his first affidavit, the petitioner briefly recounted that he met his wife in October 2008 at the celebration for his nephew's birthday. He indicated that she was good looking and friendly towards him. After the applicant was arrested by immigration authorities, they became closer and were a couple by June 2009. On weekends they spent time with his wife's daughter, going on walks or doing simple things. The petitioner indicated that he and his wife talked it over and both wanted to get married; he

¹ On September [REDACTED] the petitioner was ordered removed from the United States by an immigration judge of the [REDACTED] Immigration Court.

did not want people to think he had married her just to help his immigration situation. He recalled that his wife was very nice and patient with him. They decided to get married and planned to have his wife's daughter move in with them and buy a car. They decided to get married on his wife's birthday – April [REDACTED] and then she moved in with him. The remainder of the petitioner's affidavit focuses on the abuse in the marriage. The petitioner did not probatively describe how he met his wife, their courtship, wedding ceremony or any of their shared experiences, apart from the abuse.

The petitioner submitted the following relevant documents: his marriage certificate; a lease agreement and receipts for payment addressed only to the petitioner; utility bills addressed to the petitioner and his wife; bank statements listing the petitioner's wife as Payable on Death ("POD"); correspondence addressed to the petitioner's wife at their shared address; and cards, photographs, and form letters from friends and acquaintances. Although the petitioner's marriage certificate shows that he was legally married to his wife, it does not reflect his intentions in entering into the marriage. The lease agreement was not executed/signed, and the petitioner's wife's name appears to have been added onto the lease after the fact as it is written in different handwriting than the rest of the lease. The receipts for lease payment are addressed only to the petitioner, and cover dates in which the petitioner indicated he was no longer living with his wife. Similarly, the utility bills also include bills from dates in which the petitioner and his wife were no longer residing together. The bank statements indicate that the account is not a joint account, but rather is payable to the petitioner's wife upon his death, and does not indicate that both the petitioner and his wife used or had access to the account. Furthermore, the bank statements do not show sufficient daily activity to indicate that both the petitioner and his wife used the account. The correspondence and cards addressed to the petitioner's wife show that he and his wife lived together, but do not shed any light into the petitioner's intentions in entering into marriage with his wife. The photographs of the petitioner and his wife on one unspecified occasion are not accompanied by any explanation of their significance. The letters submitted on the petitioner's behalf generally state that they knew the petitioner and his wife were married, and then focus primarily on the abuse. These affidavits do not describe the affiants' observations in probative detail or provide any other substantive information regarding the petitioner's interactions and relationship with his spouse prior to and during their marriage. The affidavits and evidence submitted failed to provide any probative details into the petitioner's intentions in entering into his marriage with his wife. The director correctly determined that the preponderance of the evidence submitted did not establish the petitioner's good-faith entry into the marriage.

On appeal, the petitioner submits another affidavit, letters from friends, and copies of previously submitted evidence. In his affidavit on appeal, the petitioner indicates that he married his wife with love and witnesses and friends on both sides. He recalls that they got along well, went out for lunch every Saturday, and sometimes cooked at home. The petitioner's wife liked pizza, and he bought her roses and underwear. The petitioner recounts that his wife picked her daughter up on Fridays and they all spent the weekend together; sometimes his wife's brother joined them. The rest of the affidavit discusses how the petitioner's wife mistreated him. The affidavits from friends submitted on appeal state generally that the petitioner married his wife out of love or that they were a happy couple, but then focus on the petitioner's wife's abuse.

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(c)(2)(i). Rather, a self-

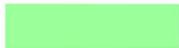
petitioner may submit “testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.” 8 C.F.R. § 204(c)(2)(vii). In this case, however, the testimonial and other evidence submitted does not demonstrate the petitioner’s entry into his marriage in good faith. In his affidavits, the petitioner briefly describes meeting his wife and states that they were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. Similarly, the affidavits from friends and acquaintances are general and do not discuss in probative detail their observations of the petitioner’s interactions with or feelings for his wife during their courtship or marriage. When viewed in the aggregate, the relevant evidence submitted below and on appeal does not demonstrate, by a preponderance of the evidence, that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

The director also correctly determined that section 204(g) of the Act bars approval of the petition. Because the petitioner married his wife while he was in removal proceedings and 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 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 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.²

² Counsel’s appellate brief only discusses the petitioner’s good faith entry into his marriage and does not contain any discussion of section 204(g) of the Act.



Conclusion

On appeal, the petitioner has not demonstrated that he entered into marriage with his wife in good faith or that he is exempt from the bar to approval of his petition under section 204(g) of the Act. He 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.