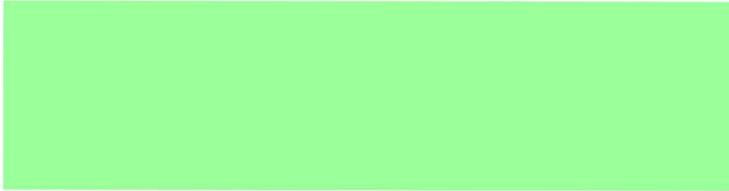


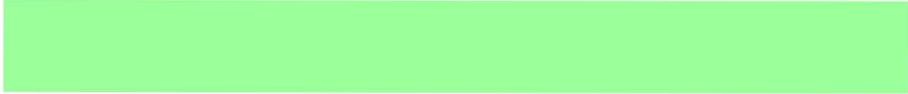


U.S. Citizenship
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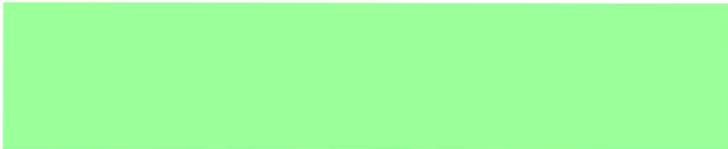


Date: **SEP 22 2014** Office: VERMONT SERVICE CENTER File: 

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:

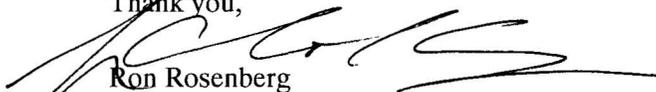


INSTRUCTIONS:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The 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.

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 for failure to establish that the petitioner entered into the marriage with her spouse, a United States citizen, in good faith, and that the petitioner complied with the provisions of section 204(g) of the Act and was therefore eligible for immediate relative classification. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant Law and Regulations

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

The eligibility requirements 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.

* * *

(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:

(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.

The director determined that the petitioner failed to establish by a preponderance of the evidence that she married her husband in good faith and failed to establish the bona fides of her marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. The regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B) provides that the types of documents an alien may submit to establish

eligibility for the bona fide marriage exemption 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 beneficiary; (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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Cameroon who last entered the United States on April 27, 2002 as a B2 nonimmigrant visitor. On September 23, 2002, the petitioner filed an application for asylum (Form I-589). The [REDACTED] found the petitioner ineligible and referred her application to the Miami Immigration Court. She was consequently placed into removal proceedings on December 11, 2002. On January 27, 2009, the immigration judge denied the applications for asylum and withholding of removal under the Act and the Convention Against Torture and ordered the petitioner removed to Cameroon. The petitioner appealed and on March 12, 2010, the Board of Immigration Appeals dismissed the petitioner's appeal. On April 12, 2010, the petitioner filed a petition for review and a motion for a stay of removal with the United States Eleventh Circuit Court of Appeals. On May 20, 2010, the Court denied the petitioner's motion and the January 27, 2009 order of the immigration judge became a final order of removal.

The petitioner married G-J¹, a U.S. citizen, on July 8, 2011 in Florida. She filed the instant Form I-360 self-petition on April 2, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into marriage and her eligibility for the bona fide marriage exemption from section 204(g) of the Act. The petitioner timely responded with further evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, and counsel timely appealed. We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has not overcome the director's grounds for denial as follows.

Section 204(g) of the Act

Because the petitioner married her husband while she was in removal proceedings² and did not remain outside of the United States for two years after their marriage, her self-petition cannot be

¹ Name withheld to protect the individual's identity.

² An alien subject to a removal order who has not departed the United States in compliance with the order remains in removal proceedings and subject to section 204(g) of the Act. 8 C.F.R. § 245.1(c)(8)(ii)(A).

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.

Good-Faith Entry Into the Marriage

In the petitioner’s first affidavit, dated August 1, 2013, she stated that she met G-J- in November 2010 through a mutual friend and that throughout their courtship, he was the kindest and loveliest human being. The petitioner recounted how she moved in with G-J- in April 2011, he helped her with household chores, and in July 2011 they married. The petitioner explained that G-J- changed dramatically after their wedding and she recounted his abuse. She did not describe in detail their first meeting, courtship, wedding ceremony, marital residence or shared experiences apart from the abuse.

The letters of the petitioner’s neighbors, [REDACTED] and her friend, [REDACTED] affirm that she and G-J- resided together during their marriage. However, they provide little probative information concerning the petitioner’s marital intent. In their first affidavit dated July 30, 2013, [REDACTED] relatives of G-J-, focused primarily on the abuse in the petitioner’s marriage. While they affirmed that the petitioner sought family intervention and reconciliation, they did not further discuss the petitioner’s marital intent.

The petitioner submitted a joint residential lease dated June 1, 2011, a joint utility bill dated August 30, 2011, and a joint bank account statement dated September 30, 2011. In her second affidavit, dated August 2, 2013, the petitioner credibly explained that she attempted to procure additional joint billing statements from her husband but he refused, and due to his violent behavior and the restraining order issued against him she was unable to secure these documents. The petitioner also submitted nine photographs of herself and her husband on their wedding day and another occasion. Without a probative account of the petitioner’s relationship with G-J-, the joint documents and photographs are insufficient to demonstrate the petitioner’s marital intent.

On appeal, the petitioner submits a third personal affidavit, dated December 4, 2013, in which she repeats that she met G-J- in November 2010 and adds that they enjoyed spending time together, particularly on Sundays. She explains that she and G-J- began living together in April 2011, decided to marry in July 2011, and that during their marriage G-J- managed their finances. The

petitioner repeats that within a few weeks of marrying, G-J- he began drinking heavily and she recounts his abuse. She states for the first time that Mr. and Mrs. [REDACTED] are G-J-'s- relatives, and they tried to intervene. The petitioner does not describe in detail her first meeting with G-J-, their courtship, wedding ceremony, marital residence or shared experiences apart from the abuse. The petitioner also has not, in any of her affidavits, acknowledged that she was still married to her first husband when she met G-J- or explained her divorce from her first husband less than two months before she married G-J-.

In their second affidavit submitted on appeal, Mr. and Mrs. [REDACTED] explain their familial connection to G-J- and recall that he told them in March 2011 that he had met a wonderful woman from Cameroon. Mr. and Mrs. [REDACTED] state that they first met the petitioner in April 2011 when she and G-J- came to their home, and that in July 2011, the couple told them they had married quietly and invited them over to their home. The Dunlops repeat that G-J- became abusive and they tried on multiple occasions to intervene. The affiants identify only two occasions on which they saw the former couple but do not discuss either event in probative detail.

Upon a full review of the record as supplemented on appeal, the petitioner has not demonstrated by a preponderance of the evidence her good-faith entry into marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The petitioner also has not complied with section 204(g) of the Act by remaining outside of the United States for at least two years after the marriage; nor has she established the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Consequently, the petitioner remains subject to section 204(g) of the Act, which bars approval of this petition.

Eligibility for Immediate Relative Classification

Since the petitioner has not complied with section 204(g) of the Act, she is not eligible 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 not overcome the director's grounds for denial. She has not demonstrated that she married her husband in good faith and she has not complied with section 204(g) of the Act, which bars approval of this petition and renders her ineligible for immediate relative classification based on her marriage. Accordingly, the petitioner is not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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 and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.