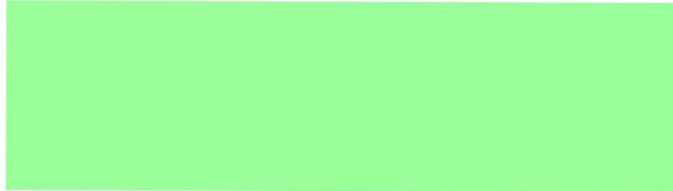




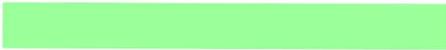
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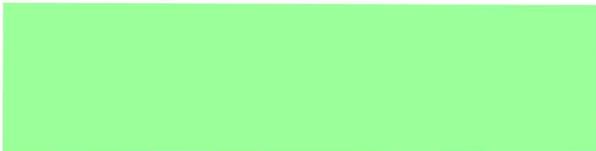
Date: **SEP 22 2014**

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 Acting 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 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 a United States citizen.

The director denied the petition for failure to establish by a preponderance of the evidence that the petitioner entered into a qualifying relationship with his U.S. citizen wife in good faith and for failure to establish that he complied with the provisions of section 204(g) of the Act.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

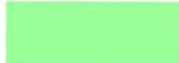
Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, 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 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 this classification are explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

Pertinent Facts and Procedural History

The petitioner was born in [REDACTED]. He entered the United States on September 11, 2006 as a B-2 nonimmigrant visitor. On October 24, 2008, the petitioner was issued a Notice to Appear in removal proceedings as an alien present in the United States without authorization. The petitioner was ordered removed on February 24, 2009. He married his second spouse, T-M¹, a U.S. citizen, on April 9, 2009, in [REDACTED] New York, thus subjecting himself to the bar on approval of immigrant petitions based on marriages entered into while the alien is in removal proceedings at section 204(g) of the Act.² The petitioner filed the instant Form I-360 self-petition on June 4, 2012. The director subsequently issued a Request for Evidence (RFE) that, among other things, the petitioner entered into his marriage in good faith and was eligible for the bona fide marriage exemption from section 204(g) of the Act. The petitioner

¹ Name withheld to protect the individual's identity.

² See 8 C.F.R. § 245.1(c)(8)(ii)(A) (section 204(g) of the Act applies and proceedings remain pending until the removal order is executed and the alien departs the United States, is found not to be removable or the proceedings are otherwise terminated).

responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these grounds. The director denied the petition and the petitioner filed a timely appeal.

We review 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, and we will dismiss the appeal for the following reasons.

Good-Faith Entry into Marriage

The relevant evidence the petitioner submitted below and on appeal fails to demonstrate that his marriage to T-M- was in good faith. On his Form I-360 self-petition, the petitioner indicated that he lived with T-M- from January of 2009 until November of 2011, and that they last resided together on [REDACTED] New York. In his initial affidavit, the petitioner stated that he met T-M- in 2000 "when she came to visit my country" of St. Vincent, and met her again in New York in September of 2007 through his sister. He did not explain how his sister knew T-M- or describe what he and his sister were doing or where they were when she reintroduced him to T-M-. He stated that he and T-M- initially went on numerous outings with her sister before they began to date. Aside from briefly describing one night when he and T-M- watched television at his house and another dinner date with her mother at Junior's restaurant during which T-M- proposed to him, he did not discuss any specific dates or shared experiences during the 16-month period prior to their marriage. The petitioner asserted that he gave T-M- money to file an application for a "union job," but that she kept the money and he later discovered that she did not file anything with respect to the "union job" or his immigration status. He stated that after this, their relationship took a turn for the worse, that T-M- lost her job and began to party and stay away from home. He asserted that T-M- left him and went to Virginia, but that they reconciled and began to go to church together. The day he finally found employment, he alleged that he returned home to find T-M- with another man and that she left him that day. Apart from describing T-M-'s abuse toward him, the petitioner did not provide any probative information regarding his intentions and good-faith entry into the marriage.

The petitioner provided a copy of a Certificate of Marriage Registration, a copy of the judgment of divorce for his first marriage, and undated, unlabeled photographs of him with T-M-. He also provided a lease agreement for an apartment on [REDACTED] for a two-year term beginning on January 1, 2009. The petitioner submitted a psycho-social report from a therapist, who discussed the abuse that the petitioner recounted to him. While the therapist concluded that the petitioner "married in good faith to commit himself to a life-long marriage based on love and trust, commitment and companionship," he did not claim to have personal knowledge of the petitioner's relationship with T-M-, nor did he describe or provide insight into the petitioner's intent to marry in good faith.

With his petition, the petitioner also included letters from his pastor and friends. Archbishop [REDACTED] stated that the petitioner intended to be an architect and found out that T-M- had taken all of his money when he went to register for school. This claim conflicts with the petitioner's assertion that he found out T-M- took all his money after finding out that she did not file an

application for “a union job” or to help him seek lawful immigration status. His sister, [REDACTED] stated that T-M- mistreated the petitioner, took his money, and would never cook or wash for the petitioner. Ms. [REDACTED] repeatedly indicated that her brother took care of T-M-’s children; however, this does not comport with the petitioner’s claim that T-M- had only one daughter. Ms. [REDACTED] Archbishop [REDACTED] and the petitioner’s other friends described various episodes of T-M-’s abuse against the petitioner, but did not indicate that they had personal insight into the petitioner’s intentions at the time of his marriage for purposes of establishing the petitioner’s good-faith entry into the marriage with T-M-.

In response to the RFE, the petitioner submitted a second affidavit in which he described his relationship with T-M- in more detail, focusing on incidents of abuse. He asserted that he was waiting in the United States for his divorce from his first wife to finalize on May 30, 2008, and “[i]t is during this time that I met [T-M-]”. The petitioner’s assertion to have first met his wife while in the United States waiting for his 2008 divorce conflicts with his initial claim to have first met T-M- in St. Vincent in 2001, and to have become reacquainted with her through his sister in 2007. The petitioner included an affidavit from [REDACTED] the father of T-M-, who stated that T-M- introduced him to the petitioner in January of 2008, and that he was happy for her when she married but was unable to attend the ceremony and did not know why T-M- and the petitioner separated. The petitioner included additional affidavits from various friends and his former landlady, but they primarily described witnessing T-M-’s abuse of the petitioner and did not include probative details about the petitioner’s good-faith entry into the marriage. The petitioner provided a psycho-social update from his therapist, who discussed T-M-’s abuse of the petitioner and the petitioner’s subsequent diagnosis and therapy, but he did not include probative details that would establish the petitioner’s good-faith entry into marriage with T-M-.

The petitioner provided a lease, a September 2011 utility bill, and some bank statements from 2011, 2012, and 2013 that reflect the petitioner and T-M- shared a residence. He submitted additional photographs taken with T-M-, but they do not reflect a date or show where they were taken. Absent a probative, credible description of the petitioner’s courtship, wedding ceremony, joint residence and shared experiences, these documents do not establish the petitioner’s good-faith entry into the marriage.

On appeal, the petitioner states that he has provided sufficient evidence and that the director’s decision “fails to take into account numerous documents which were submitted, such as eight affidavits from family and friends that detailed the marital abuse that the applicant suffered.” The petitioner cites to his psychologist’s finding that the petitioner “married in good faith to commit himself to a life-long marriage based on love and trust, commitment and companionship” as evidence of his good-faith entry into the marriage, but because he fails to show that his psychologist had personal knowledge of the petitioner’s marital intentions when he married T-M-, this evaluation does not establish the petitioner’s good faith entry into the marriage. On appeal, the petitioner also refers to “[c]opies of their Florida State Driver’s Licenses, as evidence of their marital residence in Florida,” and asserts that considered collectively, the affidavits, “jointly held vehicle insurance and the furniture receipt evidence a good faith marriage.” The petitioner’s reasoning is unclear as he has never before claimed to have resided

with T-M- in Florida, and did not provide copies of Florida driver's licenses, evidence of vehicle insurance, or a furniture receipt. Because the petitioner does not provide any additional probative information on appeal, such as details of his courtship with T-M-, their wedding ceremony, joint residence, and shared experiences, the documents submitted below and on appeal do not establish the petitioner's good-faith entry into the marriage.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "affidavits or any other type of relevant credible evidence of residency may be submitted." 8 C.F.R. § 204.2(c)(2)(i). In this case, however, the documents and affidavits submitted by the petitioner are contradictory and detract from the credibility of his claimed good-faith entry into marriage with T-M-. He first claimed to have met her in 2000 in St. Vincent and that they became reacquainted in 2007 in New York through his sister, but then claimed in his second affidavit to have first met her in New York while he was waiting to divorce his first wife in 2008. While the petitioner asserted that T-M- has one daughter, the petitioner's sister says that T-M- has "kids," for whom the petitioner cooked and provided. The inconsistencies in the petitioner's assertions and documentation detract from the credibility of his claims. In addition, his statements and those of his family, friends, therapist, and pastor fail to provide probative information regarding his courtship, wedding, marital residence, and experiences, apart from the abuse. The petitioner has not established by a preponderance of the evidence that he entered into marriage with T-M- 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 bars approval of the petition.³ In response to the RFE, the petitioner submitted a July 25, 2013 request for a bona fide marriage exemption. Because the petitioner married T-M- 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 or her good-faith entry into the qualifying relationship by a

³ 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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 the marriage with T-M- 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

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

Conclusion

On appeal, the petitioner has not demonstrated that he married T-M- in good faith. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Chawathe*, 25 I&N Dec. at 369. Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.