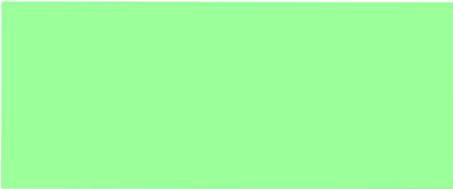


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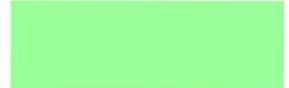


U.S. Citizenship
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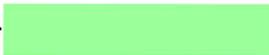


Date: SEP 25 2014

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.

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 sustained.

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 because the petitioner married her spouse while she was in removal proceedings, did not show she entered the marriage in good faith, and did not show she was eligible for immediate relative classification based on the marriage under the bar at section 204(g) of the Act. On appeal, counsel asserts the petitioner’s eligibility and submits 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” 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).

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 are further explained 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 . . . section 204(g) 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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen . . . abuser. . . .

* * *

(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 [REDACTED] who entered the United States on June 5, 2007, as a nonimmigrant visitor. On February 23, 2009, the petitioner was served with a Notice to Appear for removal proceedings at the New York City Immigration Court on March 20, 2009. The petitioner married M-H¹, a U.S. citizen, on March 30, 2010, in New York City. On August 5, 2010, an immigration judge with the New York City Immigration Court ordered the petitioner removed.² Her marriage to M-H- was terminated in a divorce on March 14, 2012. The petitioner filed the instant Form I-360 on February 12, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's entry into the marriage in good faith and her eligibility for the bona fide marriage exemption from section 204(g) of the Act. The petitioner responded with additional

¹ Name withheld to protect the individual's identity.

² The petitioner has not departed the United States in compliance with the removal order and consequently, her removal proceedings have not terminated and she remains subject to section 204(g) of the Act. See 8 C.F.R. § 245.1(c)(8)(ii)(A).

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 establishes the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal overcome the director's grounds for denial and the appeal will be sustained for the following reasons.

Entry into the Marriage in Good Faith

The petitioner gave a probative, credible, and detailed account of how she first met M-H-, their courtship, shared residence and experiences. The petitioner initially submitted a letter describing how she met M-H- in Central Park in New York City. She recounted their first and second dates, and the time they spent with each other's families. The petitioner described in probative detail her decision to marry M-H- and expressed how, as a practicing Muslim, she was uncomfortable living with him without being married. She described the particulars of their wedding, wedding reception, and honeymoon. The petitioner also submitted pictures from the wedding reception and honeymoon with detailed descriptions. In response to the RFE, the petitioner submitted a supplemental affidavit providing additional details of their courtship and relationship, including weekend trips and shared activities. She also credibly explained that she was unable to produce additional documentary evidence because M-H- continued to live in their apartment after she moved out and she was afraid he would react with violence if she tried to obtain additional documents. On appeal, the petitioner credibly explained how M-H- owed money for child support and, therefore, did not like to use their joint bank account for fear that any money in the account would be used to pay his debts. She submitted additional photographs with detailed descriptions of trips the couple took together.

The record also includes numerous affidavits from the petitioner's friends. The petitioner initially submitted an affidavit from [REDACTED] who described the petitioner and M-H- as a happy couple during the early part of their relationship. In response to the RFE, the petitioner submitted additional affidavits from [REDACTED] the petitioner's landlord, stated that the couple lived together and seemed to be in love, frequently holding hands. Mr. [REDACTED] and Ms. [REDACTED] briefly described that the couple looked very happy together and in love. On appeal, the petitioner submitted additional affidavits in which the affiants described specific occasions where they observed the couple together, their relationship to the couple, and the basis of their personal knowledge of the petitioner's marriage. For instance [REDACTED] described how he met the petitioner seven years ago and how he independently met M-H- at work. Mr. [REDACTED] recounted spending time at the couple's apartment and going out to eat, and witnessed them frequently telling each other they loved each other. Similarly, [REDACTED] provided probative details regarding spending time with the petitioner at her home during barbecues and personally observing the former couple's interactions. Furthermore, the petitioner's sister, [REDACTED] provided additional information regarding the petitioner's marital intentions, describing in detail how she went with the petitioner to shop for her wedding dress, helped her plan the wedding and the wedding reception. Ms. [REDACTED] described observing the former couple's affections and the petitioner's feelings for M-H-. The record also includes a 2010 joint income tax return, joint bank account statements, and an application for an apartment lease for the couple. When viewed in the totality, the preponderance of the relevant

evidence establishes that the petitioner entered into marriage with M-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

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.

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.

In this case, upon a full review of the record as supplemented on appeal, the petitioner has demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. The petitioner provided a detailed, probative, and credible affidavit describing her relationship with M-H-, their courtship, and her decision to marry him after she fell in love with him. Furthermore, as described above, the record contains numerous affidavits attesting to the bona fides of the marital relationship. The affidavits submitted on appeal from [REDACTED]

provided particularly detailed, relevant and substantive information regarding the petitioner's good-faith entry into the marriage. They fully recounted their interactions with the couple, explained how they acquired personal knowledge of the marriage, and unequivocally described a bona fide relationship. Affidavits from other individuals, also described above, provided similar accounts of the petitioner's good-faith marriage. The record also contains an application for an apartment lease for the couple to live together, two letters from the petitioner's landlord, attesting to the couple's joint residency before their marriage, joint bank account statements, a joint income tax return, and numerous photographs of the couple accompanied by detailed descriptions of the pictured events and their significance to the marriage. The petitioner provided a credible and reasonable explanation for the minimal activity in the couple's joint bank account and for being unable to provide any further documentation. The record indicates that the petitioner submitted all of the types of documents listed in 8 C.F.R. § 204.2(a)(1)(iii)(B) that she could reasonably be expected to provide considering the circumstances of her abusive marriage. The petitioner has therefore established her eligibility for the bona fide marriage exemption under section 204(g) of the Act as provided in section 245(e)(3) of the Act.

Eligibility for Immediate Relative Classification

Since the petitioner established that she has a qualifying relationship with a United States citizen and that she is exempt from section 204(g) of the Act, she has demonstrated her eligibility for immediate relative classification, 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).

Conclusion

On appeal, the petitioner has 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, and is therefore eligible for immediate relative classification based on her marriage to a U.S. citizen. She is consequently eligible 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. Here, that burden has been met.

ORDER: The appeal is sustained.