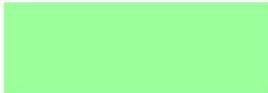


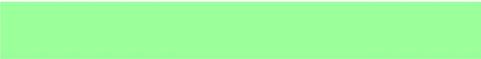


U.S. Citizenship
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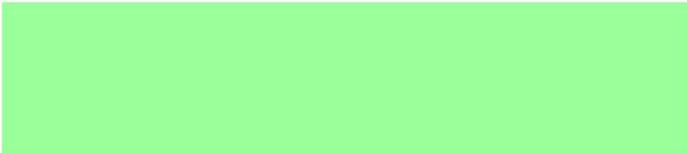


Date: **SEP 30 2014** Office: VERMONT SERVICE CENTER File: 

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:

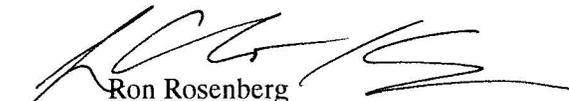


INSTRUCTIONS:

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 after determining that the petitioner did not marry her spouse in good faith and also under section 204(g) of the Act, because she married while in removal proceedings.

On appeal, counsel submits a brief.

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 eligibility requirements 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)(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:

(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 record in this case indicates that the petitioner was in removal proceedings when she married her U.S. citizen husband.¹ The instant petition is thus subject to the requirements of section 204(g) of the Act:

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, which states in pertinent part:

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.

¹ The petitioner was issued a Notice to Appear on August 31, 2011 and is currently in removal proceedings before the Immigration Court in [REDACTED], Arizona. The petitioner's next hearing is scheduled for [REDACTED].

- (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.

8 U.S.C. § 1255(e) (emphasis added).

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(iii) states, in pertinent part:

Marriage during proceedings – general prohibition against approval of visa petition. A visa petition filed on behalf of an alien by a United States citizen . . . shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . removal proceedings, or judicial proceedings relating thereto. . . . [T]he burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

(A) *Request for exemption.* . . . The request must be made in writing The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(B) *Evidence to establish eligibility for the bona fide marriage exemption.* The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit 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.

The instant self-petition cannot be approved pursuant to section 204(g) of the Act unless the petitioner 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.

Facts and Procedural History

The petitioner, a citizen of Mexico, represents that she entered the United States in 1995 without inspection by an immigration officer. The petitioner divorced her first husband in 2008. On August 31, 2011 the petitioner was placed in removal proceedings. She married B-E-², a U.S. citizen, on October 13, 2011 in [REDACTED] Arizona. B-E- filed an immigrant visa petition on behalf of the petitioner, which he subsequently withdrew. The petitioner filed the instant Form I-360 self-petition on May 29, 2012. Upon review of the initial submission, the director issued a Request for Evidence (RFE) of good-faith entry into marriage, among other issues. The petitioner timely responded with additional evidence. Based on a review of the entire record of proceeding, the director found that the evidence did not establish eligibility for the benefit sought and denied the petition.

The petitioner, through counsel, subsequently appealed the director's decision. The appeal consists of a Form 1-290B, Notice of Appeal; and a brief. We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, including the documents provided on appeal, we find that the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage and Restriction on Petitions Based on Marriages Entered into while in Proceedings

The director correctly determined that that the petitioner did not establish that she married B-E- in good faith either by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, or by providing clear and convincing evidence that her marriage is bona fide under the heightened standard of proof required by section 245(e)(3) of the Act. In her initial Form I-360 submission, the petitioner provided an undated statement in which she credibly described the abuse inflicted on her by

² Name withheld to protect individual's identity.

B-E-. However, apart from noting that she met B-E- in June 2009, and that they married on October 13, 2011, she did not make any statements regarding her intentions in marrying B-E-. The petitioner briefly mentioned difficulties in the relationship and her belief that B-E- would change. She indicated that B-E- moved in with her and she believed that together they could address his issues with alcohol. However, the petitioner did not provide any information regarding the couple's courtship, wedding ceremony, and shared experiences beyond the details of the abuse. The petitioner submitted evidence suggesting that the couple may have resided together for a substantial period prior to their marriage. For example, the petitioner submitted a cable television bill, dated August 13, 2011, addressed to B-E- at the petitioner's residence. Other evidence submitted by the petitioner suggests that the petitioner had contact with B-E-'s extended family. The petitioner's marriage certificate indicates that the ceremony was witnessed by two of B-E-'s relatives. There is also an unlabeled photograph in the record of the petitioner, B-E- and several other individuals. However, in her statement, the petitioner did not discuss the pictured event or provide probative information about her wedding, her and B-E-'s courtship, or other details regarding their shared experiences that would demonstrate her good-faith entry into the marriage. In addition, the petitioner provided documents that indicate that she and B-E- had begun the process of purchasing a home and that B-E- had added the petitioner and her children to his health insurance. However, the petitioner's statement is silent regarding the significance of these milestones in her and B-E-'s relationship.

In the RFE, the director advised the petitioner that she was subject to section 204(g) of the Act, and provided clear instructions on how to request a bona fide marriage exemption from that bar to approval of this petition. The director indicated that the petitioner should request an exemption in writing, and submit clear and convincing evidence to establish that the marriage was entered into in good faith. The director noted that the petitioner's personal statement contained insufficient information regarding her relationship with her spouse and her intent at the time of her marriage to establish that she had entered the marriage in good faith. The director indicated that the statement and other evidence of record did not establish a good-faith marriage by clear and convincing evidence, and provided examples of possible further evidence to be submitted, including affidavits of third parties, and the requirements for such affidavits.

Counsel responded to the RFE with a medical bill in the name of the petitioner, bank statements in the name of both the petitioner and B-E-, photocopies of two greeting cards from B-E-'s family members addressed to the petitioner, and copies of previously submitted documents. Counsel did not provide an additional statement from the petitioner addressing the bona fides of her relationship or the significance of the additional evidence, nor did he provide third party affidavits from individuals familiar with the petitioner's and B-E-'s relationship.

In her decision, the director correctly concluded that the petitioner did not provide sufficient evidence to establish by either a preponderance of the evidence, or by the higher clear and convincing standard, that the petitioner entered into her marriage with B-E- in good faith. The director again referenced the deficiencies of the petitioner's personal statement and unlabeled photographs. The director indicated that the petitioner provided some evidence in support of the bona fides of her marriage, such as documents indicating that she and B-E- shared a residence,

insurance, and were in the early stages of buying a home, but concluded that when viewed in the totality, the evidence did not establish the petitioner's eligibility.

On appeal, counsel submits a brief in which he asserts that the petitioner and B-E- began living as husband and wife shortly after they met in 2009. However, counsel submitted no additional evidence, such as an additional personal statement from the petitioner, or third party affidavits, with information regarding her and B-E-'s courtship and decision to cohabitate. In his brief, counsel claims that the director denied the petition because the bank statements provided by the petitioner showed little activity and because the petitioner did not provide documents demonstrating that she and B-E- ultimately purchased a home together. Counsel expresses concern that in order to obtain such evidence, the petitioner would have had to endure further abuse. However, section 204(a)(1)(A)(iii) of the Act does not require such traditional forms of joint documentation to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(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. § 204.2(c)(2)(vii).

In her undated statement, the petitioner indicated that B-E- destroyed many of her important documents. As noted above, traditional joint documentation is not required, but the petitioner must still meet her burden of proof with respect to her good faith entry into her marriage. The petitioner's sole personal statement provided insufficient context for the submitted documentation with respect to her intentions in marriage. The petitioner did not discuss her and B-E-'s courtship (including their decision to cohabitate), their wedding ceremony, or shared experiences such as their utilization of the same insurance policy, their shared financial plans with respect to their bank account, or their decision to purchase a house together. In addition, the petitioner did not submit third party affidavits attesting to personal knowledge of the petitioner's relationship with B-E- beyond the details of the abuse.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, 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).

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with B-E- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The present record also does not show by clear and convincing evidence that the petitioner entered into the marriage in good faith as required to establish eligibility for the bona fide marriage exemption of section 245(e) of the Act from the bar at section 204(g) of the Act, and is therefore ineligible for immediate relative classification. The

petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three grounds.

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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.