



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: Office: VERMONT SERVICE CENTER

FILE:

SEP 30 2014

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)

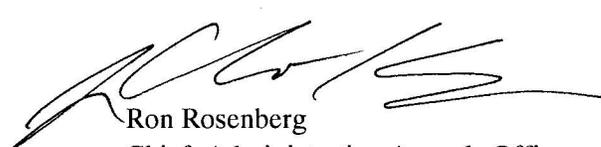
ON BEHALF OF PETITIONER:

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 and the petition will remain denied.

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 based on the petitioner's failure to establish that he entered into marriage with his U.S. citizen spouse in good faith and pursuant to the section 204(g) of the Act, 8 U.S.C. § 1154(g), bar against the approval of immigrant visa petitions based on marriages contracted while an alien is in removal proceedings. The director further found that the petitioner was ineligible for immediate relative classification based on his marriage.

On appeal, counsel submits a brief.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) 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 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.

In addition, the regulations require that to remain eligible for immigration classification, a self petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

Section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

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 or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides an exception to section 204(g) of the Act as follows:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –

- (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 corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

Facts and Procedural History

The petitioner, a citizen of Peru, entered the United States on October 29, 2000 as a nonimmigrant visitor. On August 11, 2009, the petitioner was placed in removal proceedings, which are ongoing.¹ The record reflects that the petitioner divorced his first wife in 2004, and had two subsequent marriages prior to marrying M-B-², a U.S. citizen, on August 4, 2010. The petitioner filed the instant Form I-360 self-petition on October 21, 2011. Upon review of the initial submission, the director issued a Request for Evidence (RFE) of good-faith entry into the marriage, among other issues. In addition, the director notified the petitioner that because he married M-B- while he was in removal proceedings, section 204(g) of the Act barred approval of his self-petition. The director provided guidance on requesting a bona fide marriage exemption from that bar. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility, 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 from counsel.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record reveals that the petitioner has established that he entered into his marriage with M-B- in good faith under section 204(a)(1)(A)(iii)(I)(aa) of the Act by a preponderance of the evidence. However, approval of the petition is barred by section 204(g) of the Act as the petitioner has not demonstrated his eligibility for the bona fide marriage exemption pursuant to section 245(e) of the Act.

¹ The petitioner was issued a Notice to Appear on August 11, 2009 and is currently in removal proceedings before the Immigration Court in Miami, Florida. The petitioner's next hearing is scheduled for [REDACTED] 2014.

² Name withheld to protect the individual's identity.

Good-Faith Entry Into Marriage

The petitioner has established by the preponderance of the evidence that he entered into his marriage with M-B- in good faith. In his initial October 4, 2011 statement, the petitioner indicated that he and M-B- made a mutual decision to get married after extensive consideration. He described helping M-B- achieve her personal goals such as dental treatment, career training, and international travel to visit family members. The petitioner indicated that he handled the bills, and that M-B- had difficulty with her finances. He noted that she made expensive purchases, and spent large amounts of money on psychic hotlines, utilizing her personal bank account, and ultimately the petitioner's debit card for this purpose. The petitioner provided bank statements showing that the petitioner and M-B- had an active joint checking account dating from at least July 15, 2010 (prior to their marriage) through April 2011. The petitioner also provided bank statements showing that both he and M-B- maintained individual accounts in addition to their joint account. The petitioner's personal account reflects minimal activity during the period covered by the joint account. The statements from M-B-'s account show that her funds came primarily from a savings account, and that she made numerous purchases from a company called [REDACTED] with an associated phone number. The petitioner also provided correspondence from the bank and statements showing unauthorized charges in March 2011 to Master Coaches and other companies on his business account.

The petitioner submitted numerous bills and correspondence addressed to the petitioner or M-B- at a residence on [REDACTED] and a condominium in [REDACTED] dating from 2008; however, he did not explain in his statement when they began residing together at either address. There is a lease for the [REDACTED] residence dated October 15, 2008 in the petitioner's name only, but with an indication that the property would be occupied by two adults. The petitioner submitted several photographs, one of which depicts M-B- at the [REDACTED] residence and is labeled as a joint residence that the couple rented on October 15, 2008. The petitioner also submitted tax, mortgage, and residential association documentation regarding the [REDACTED] condominium, also in his name only.

The petitioner provided various car insurance documents, one of which shows that the petitioner and M-B- were listed on the same policy until it was cancelled on November 21, 2010. In addition, the petitioner provided photographs of his and M-B-'s wedding, as well as photographs of M-B-'s father's visit in 2008, and of the couple at several social gatherings.

In response to the RFE, the petitioner provided a second personal statement. In the second statement, the petitioner described in probative detail meeting M-B- in February 2008. He described their first date, their courtship, and the circumstances surrounding their decision to rent an apartment. The petitioner recounted that he suggested that M-B- move in to his [REDACTED] condominium; however, she preferred a residence with more outdoor space and the couple ultimately found the [REDACTED] home.

The petitioner discussed challenges in his relationship related to M-B-'s depression and anxiety, and also discussed their shared experiences during happier times. The petitioner related that in 2010, M-B- lost her job, and the petitioner lost his driver's license, which affected his ability to work. They moved

to the [REDACTED] condominium to save money. The petitioner stated that after consideration they decided that since they loved each other and were already living together, it made sense for them to marry.

Also in response to the RFE, the petitioner provided four short affidavits from friends and extended family attesting to the legitimacy of his marriage to M-B-. In an affidavit dated July 8, 2013, [REDACTED] attested that the petitioner and M-B- were romantically involved between 2008 and 2010, and that he witnessed their marriage. He briefly stated that he was present with the couple on special occasions, such as family gatherings and birthdays, and that the couple sang karaoke in his home. The petitioner submitted an affidavit from [REDACTED] his brother-in-law, dated June 27, 2013. In his affidavit, Mr. [REDACTED] indicated that he welcomed M-B- into his home as part of the family, and that the petitioner and M-B- were romantically involved before they got married. He stated that the petitioner and M-B- spent holidays together at his home. The affidavit is supported by photographs of the petitioner and M-B- at Mr. [REDACTED] home for Thanksgiving. The affidavit from the petitioner's acquaintance, [REDACTED] dated June 28, 2013, briefly attests to the petitioner's romantic involvement with M-B- prior to marriage. Finally, in a June 28, 2013 affidavit, the petitioner's friend [REDACTED] stated that he witnessed how the petitioner and M-B- lived together, and their desire for a stable relationship.

In his decision, the director found that the petitioner had failed to submit sufficient evidence demonstrating commingling of resources and shared financial responsibilities to establish his good-faith entry into his marriage with M-B-. However, for self-petitions of abused spouses under section 204(a)(1)(A)(iii) of the Act, 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), 204.2(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). The petitioner credibly described his and M-B-'s courtship and shared experiences prior to marriage. He provided evidence that he and M-B- shared a car insurance policy shortly after their marriage in 2010, as well as a joint checking account. The petitioner's description of M-B-'s financial management issues is supported by documentation in the record, including evidence of her habitual spending on certain types of services of which the petitioner did not approve. Thus, the record provides credible support for the petitioner's explanation for declining to commingle his financial affairs his wife. The petitioner's claim of good-faith entry into his marriage with M-B- is further supported by the four affidavits from family and friends attesting to the petitioner's relationship with M-B-.

De novo review of the record establishes by a preponderance of the evidence that the petitioner married M-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The portion of the director's decision to the contrary will be withdrawn.

Section 204(g) of the Act

Although the petitioner has established by a preponderance of the evidence that he married M-B- in good faith, the appeal cannot be sustained because the petitioner has not established eligibility for the bona fide marriage exemption from section 204(g) of the Act.

At the time the petitioner married M-B-, he was in removal proceedings and had not departed the United States under an order of removal, nor had he resided outside of the United States for the requisite two-year period; thus, he remains subject to the bar at section 204(g) of the Act. 8 C.F.R. §§ 204.2(a)(1)(iii), 245.1(c)(8)(ii)(A). The petitioner did not request an exemption from section 204(g) of the Act in writing, as required by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(A) and the present record does not establish the bona fides of his marriage by clear and convincing evidence.

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

(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 the [abused spouse];
- (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.

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 exemption 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, 375 (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.

Although the petitioner has established his good-faith entry into his marriage with M-B- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he has not provided clear and convincing evidence that his marriage is bona fide under the heightened standard of proof required by section 245(e) of the Act. The record supports the petitioner's explanation for his lack of evidence of shared marital assets. However, even in light of this explanation, the petitioner's statements and the third party affidavits do not provide clear and convincing evidence of the bona fides of the petitioner's marriage, as prescribed by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B)(5). The brief third party affidavits are conclusory with regard to the petitioner's intent in marriage and do not provide probative testimony regarding the petitioner's courtship, wedding, and other shared experiences with M-B-.

On appeal, counsel emphasizes that the record contains substantial evidence indicating that the petitioner and M-B- resided at the same address. However, the petitioner's residence with M-B- was established and is not at issue on appeal, and evidence that the petitioner and M-B- resided at the same address is not in itself evidence of a good-faith marriage. For example, the October 29, 2008 police report refers to the petitioner and M-B- as “roommates.” Counsel also asserts that the affidavits and supporting photographs provided by the petitioner establish the petitioner's good-faith entry into marriage with M-B-. While they may do so by a preponderance of the evidence, the affidavits and photographs are not clear and convincing evidence of the petitioner's good faith in marrying M-B-. Three of the third party affidavits do not conform to the technical requirements of 8 C.F.R. § 204.2(a)(1)(iii)(B)(5) in that they lack the date and place of birth of the affiant. Further, they do not contain “complete information and details explaining how the person acquired his or her knowledge of the marriage” as required by the regulation at 8 C.F.R. § 204.2(a)(1)(iii)(B)(5). For example, Mr. [REDACTED] stated that his personal knowledge of the petitioner's and M-B-'s relationship is derived from “times [they] spent together,” but did not discuss any of those times. Similarly, Ms. [REDACTED] stated that she has known the petitioner and M-B- “for many years” and can “certify” that the petitioner entered into his marriage in good faith, but did not state her relationship to either the petitioner or M-B-, indicate in what capacity she knew them, or describe specific occasions that demonstrated the petitioner's intent in marriage. As discussed above, all of the third party affidavits contain minimal probative information regarding the petitioner's intent in marrying M-B-. While

the petitioner's personal affidavits reference other individuals with personal knowledge of the petitioner's relationship with M-B-, such as his son, the petitioner submitted brief affidavits from only four individuals as previously discussed. The photographs provided by the petitioner demonstrate that he and M-B- were together on approximately ten occasions over a two-year relationship. However, the photographs and affidavits are not clear and convincing evidence that the petitioner entered into his marriage with M-B- in good faith, and thus qualifies for the bona fide marriage exemption at section 245(e) of the Act. Section 204(g) of the Act thus bars approval of the instant self-petition.

Immediate Relative Classification

Because the petitioner is not exempt from and has not complied with section 204(g) of the Act, he is also ineligible 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 established by a preponderance of the evidence that he entered into his marriage with his U.S. citizen spouse in good faith, but remains ineligible pursuant to section 204(g) of the Act. The petitioner has not demonstrated his eligibility for the exemption from that bar under section 245(e)(3) of the Act. The petitioner has also not established 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).

In these proceedings, the petitioner bears the burden of proof to establish eligibility. 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

ORDER: The appeal is dismissed.