U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-D-D-

DATE: DEC. 8, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. 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 eligibility requirements 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.

> (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

. . . .

(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.

. . . .

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . ., deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

. . . .

(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 indicates that the Petitioner was in removal proceedings at the time of the marriage upon which this petition is based. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), states:

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 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 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. § 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. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)(9) of this chapter, except that the 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.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Togo, entered the United States as a B-2 nonimmigrant visitor on June 10, 2000, and was granted a change to F-1 nonimmigrant student status on June 4, 2001. The Petitioner was placed in removal proceedings on May 3, 2006, and an immigration judge issued an order of removal *in absentia* on July 17, 2006. The record does not reflect that the Petitioner has left the United States since her entry in 2000. The Petitioner married E-K-,[1] a U.S. citizen, on 2008, and filed the instant petition on August 22, 2014. The Director denied the petition finding the record insufficient to establish that the Petitioner entered into her marriage with E-K- in good faith.

[1] Name withheld to protect the individual's identity.

The Director further determined that approval of the petition was barred pursuant to section 204(g) of the Act because the Petitioner married E-K- while in removal proceedings and did not demonstrate eligibility for the *bona fide* marriage exemption at section 245(e) of the Act. The Director therefore also found that the Petitioner could not establish her corresponding eligibility for immediate relative classification. The Petitioner filed a timely appeal.

On appeal, the Petitioner asserts that because Congress intended to create "a more flexible evidentiary standard" in regards to self-petitions, U.S. Citizenship and Immigration Services erred by not properly considering "all credible evidence" that she has submitted in support of her petition as she does not have access to documentation "common for a normal couple residing together." The Petitioner further argues that she is eligible for the *bona fide* marriage exemption under section 245(e) of the Act.

We review these proceedings on a *de novo* basis. A full review of the record, including the relevant evidence submitted on appeal, does not establish the Petitioner's eligibility, and we will dismiss the appeal for the following reasons.

III. GOOD-FAITH ENTRY INTO MARRIAGE

In her personal statement dated August 15, 2014, the Petitioner stated that she met E-K- in August 2007 at the in Minnesota, when he introduced himself while she was buying pretzels. The Petitioner generally relayed that they "talked like old friends," exchanged telephone numbers, and called one another, but she did not provide any further probative details of their first meeting or conversation. The Petitioner claimed that they met again at the about 10 days later, where E-K- told her about his son. She indicated that she "thought [she] finally found a partner with whom [she] will grow together and achieve marvelous things." The Petitioner stated that her "biological clock was ticking," that she wanted to have her own family, and that they discussed being foster parents. The Petitioner generally indicated that they went to restaurants and movies, E-K- bought her gifts, and that their marriage on 2008, was a "simple ceremony." The Petitioner did not further describe any specific occasions spent together during their courtship or engagement, her feelings for E-K- and intent in marrying him, or provide probative details of their marriage ceremony and their relationship and residence together after the marriage, other than as it related to the abuse.

In a personal statement dated January 27, 2015, the Petitioner generally described her daily life and weekly schedules with E-K-, and E-K-'s food preferences. She indicated that although E-K- did not have a stable job, he did odd jobs and sought employment with the postal service. The Petitioner stated that they sometimes took walks and watched the sunset together, watched movies, played games, and visited the to "remember that faithful day when [they] met." The Petitioner did not, however, describe any specific shared experience or occasion during their relationship in any detail, and she provided no further probative discussion of their times spent together as a couple and in the marital residence.

The letters submitted on the Petitioner's behalf do not contain any further probative and detailed information to establish the Petitioner's good-faith entry into her marriage. In a statement dated December 26, 2013, Ms. indicated that she is the Petitioner's cousin and they unexpectedly "found each other" in Minneapolis in 2010 when the Petitioner was living with E-K-. Ms. stated that despite inviting them to her home several times, the Petitioner came only one time by herself. Ms. also stated that since she knew where the Petitioner and E-K- lived, she decided to pay them a surprise visit. However, Ms. did not provide any specific details of the visit, including the address and description of the Petitioner and E-K-'s residence, nor did she provide probative details about their relationship and interactions to establish their good-faith marriage, other than as it relates to the abuse.

In a statement dated December 27, 2013, Ms. indicated that she has known the Petitioner, whom she refers to as "Aunty," since 2010. Ms. stated she met E-K- "a couple of times" when he visited the Petitioner at the braiding shop where they worked, and although she gave the Petitioner money the first time E-K- came to the shop, Ms. did not provide a detailed description of interactions she witnessed between the Petitioner and E-K-, or other probative details about their relationship, other than as it relates to the abuse.

In his statement dated December 27, 2013, Pastor indicated that he has known the Petitioner since 2011 in the capacity of her spiritual mentor and guide, and he invited the Petitioner and E-K- to Texas for counseling purposes. However, Pastor did not provide any probative details about their relationship, other than as it relates to the abuse.

Moreover, the Petitioner has provided inconsistent information concerning her and E-K-'s relationship and marital residence. In her personal statement dated August 15, 2014, the Petitioner claimed that she left Atlanta "to have a new start with [her] life" in July 2007 and came to Minnesota. She then stated that she met E-K- in August 2007. However, the Petitioner's clinical therapist stated that the Petitioner indicated she met E-K- in June 2007. The Petitioner does not provide an explanation for why she described having initially met E-K- in August 2007, yet reported to her therapist that their first meeting occurred in June.

Of greater significance is the Form G-325, Biographic Information, signed by the Petitioner on July 8, 2011. On her Form G-325, the Petitioner indicated that she was living at an address in , North Carolina until April 2008, and then subsequently listed an address in Minnesota beginning April 2008. The Petitioner does not provide an explanation for why her personal statements indicate that she met E-K- in August 2007, after moving to Minnesota and purportedly lived with him in Minnesota beginning in 2008, but her Form G-325 indicates that she was residing at an address in North Carolina during the same timeframe.

Even without the inconsistencies discussed above, the record is insufficient to establish the Petitioner's good-faith entry into her marriage. The Petitioner submitted photographs of her and E-K- during their wedding ceremony and some documentation identifying her residences in Minnesota. She explained

that she has been unable to provide joint documentation such as bank accounts, leases, and tax returns to demonstrate her good-faith marriage because of the controlling and abusive nature of her relationship with E-K- and because E-K- was unwilling to co-sign due to the Petitioner's preexisting financial debt. Given the difficulties posed by a marriage with domestic violence, as mentioned previously, 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 may be submitted. 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the Petitioner's statements and those submitted on her behalf do not provide a probative account of their courtship, wedding ceremony, shared residence, and shared experiences, apart from the abuse. In addition to these insufficiencies, the Petitioner has provided contradictory information regarding when she met E-K- and the dates of their residence together. When viewed in the totality, the preponderance of the relevant evidence does not establish that the Petitioner's entry into marriage with E-K- was in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

IV. SECTION 204(g) OF THE ACT

As the Petitioner married E-K- while she was in removal proceedings and did not remain outside of the United States for two years after their marriage, her 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. Although 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). "Clear and convincing evidence" is a more stringent standard. 20 I&N Dec. at 478. *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, a 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; *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, a 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 C.F.R. § 245.1(c)(8)(v). As the Petitioner has not established her good-faith entry into the marriage with E-K- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she cannot demonstrate the *bona fides* of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, she has not established her eligibility for the *bona fide* marriage exemption at section 245(e)(3) of the Act, and section 204(g) of the Act consequently bars approval of this petition.

V. ELIGIBILITY FOR IMMEDIATE RELATIVE CLASSIFICATION

As the Petitioner is not exempt from section 204(g) of the Act, she also has not demonstrated her eligibility for immediate relative classification. *See* section 204(a)(1)(A)(iii)(II)(cc) of the Act; *see also* 8 C.F.R. § 204.2(c)(1)(iv).

VI. BEYOND THE DECISION OF THE DIRECTOR

Beyond the decision of the Director, the Petitioner has not established by a preponderance of the evidence that she resided with E-K-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.[2] As discussed above, although the Petitioner has generally indicated that she resided with E-K- at two separate addresses in Minnesota, neither she nor any of the individuals who submitted statements on her behalf discussed those residences in probative detail. In addition to not submitting sufficient detailed information of her claimed shared residence with E-K-, she has submitted information that directly contradicts her claim of residence with E-K- beginning in 2008.

VII. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not demonstrated by a preponderance of the evidence that she married E-K- in good faith, and that she met the clear and convincing standard for the *bona fide* marriage exemption from the bar to approval at section 204(g) of the Act. The Petitioner, therefore, also did not demonstrate her eligibility for immediate relative classification. Beyond the grounds determined by the Director, the Petitioner did not establish by a preponderance of the evidence that she resided with E-K-. Accordingly, the appeal must be dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of S-D-D-*, ID# 14591 (AAO Dec. 8, 2015)

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[2] 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).