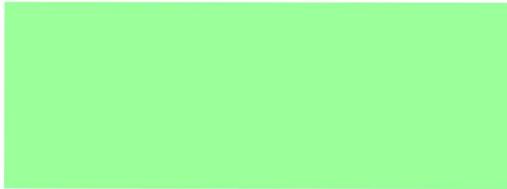




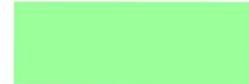
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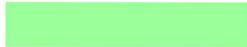


Date: FEB 02 2015 Office: VERMONT SERVICE CENTER

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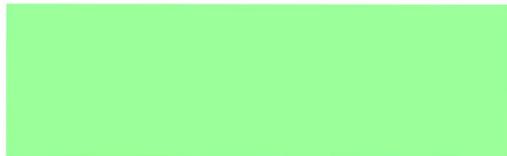


IN RE: Self-Petitioner:



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 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 his U.S. citizen spouse battered him or subjected him to extreme cruelty and that he entered into marriage with her in good faith. The petition was also denied 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.

On appeal, the petitioner, through counsel, 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, 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:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear

violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

\* \* \*

(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.

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

\* \* \*

(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. . . .

*Relevant Facts and Procedural History*

The petitioner, a citizen of Pakistan, entered the United States on July 15, 1998, as a B-2 nonimmigrant visitor. The petitioner was placed in removal proceedings on December 19, 2006.<sup>1</sup> The petitioner married I-R-<sup>2</sup>, a U.S. citizen, on April [REDACTED] in [REDACTED] Connecticut. I-R- filed an immigrant visa petition on behalf of the petitioner; however, the petition was denied and the immigration judge ordered the petitioner removed. I-R- appealed the denial of the immigrant visa petition to the Board of Immigration Appeals (BIA), which remanded the petition on January 12, 2012 for further consideration. However, before U.S. Citizenship and Immigration Services (USCIS) issued a new decision, I-R- withdrew the petition on March 1, 2013, citing the couple's pending divorce. The petitioner filed the instant Form I-360 self-petition on March 11, 2013. The director issued a Request for Evidence (RFE) of battery or extreme cruelty, and the petitioner's good-faith entry into the marriage. The director also advised the petitioner that because he married I-R- while in removal proceedings, section 204(g) of the Act further barred approval of his self-petition. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record reveals that the petitioner has established that he entered into his marriage with I-R- in good faith under section 204(a)(1)(A)(iii)(I)(aa) of the Act by a preponderance of the evidence, and by clear and convincing evidence to overcome the bar at section 204(g) of the Act. However, as the petitioner has not established on appeal that I-R- battered him or subjected him to extreme cruelty, the petition cannot be sustained. Beyond the director's decision, the petitioner has not established his good moral character.<sup>3</sup> The appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

The preponderance of the relevant evidence does not demonstrate that I-R- battered the petitioner or subjected him to extreme cruelty. In his personal affidavit dated March 1, 2013, the petitioner indicated that I-R- became demanding a few months into their marriage. He stated that I-R- insisted that he work despite his lack of legal authorization to do so, and would threaten to report him to immigration authorities if he did not earn enough money. The petitioner also stated that I-R- did

<sup>1</sup> Removal proceedings commence with the filing of a Form I-862, Notice to Appear, with the Immigration Court. 8 C.F.R. § 245.1(c)(8)(i)(D). The government filed the petitioner's Notice to Appear with the New York Immigration Court on December 19, 2006.

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> 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).

not want him to speak with his parents, and would “cause problems” if he spoke to them. The petitioner indicated that I-R- was “verbally abusive” to him during arguments and noted that I-R- would threaten to hurt herself if he left her. The petitioner recounted that on March [REDACTED] he came home from work and realized that it was his step-daughter’s birthday and he did not have a birthday gift for her. He stated that I-R- became angry and ordered him to leave the home. The petitioner indicated I-R- followed him outside with a broom, and hit the windshield of his car several times, causing it to crack. The petitioner submitted a police report confirming the incident. The police report indicates that I-R- told police that the petitioner was using profanity towards her as he exited the home. I-R-’s daughter informed the police that she called 9-1-1 when she saw I-R- and the petitioner on the sidewalk holding a broom and a tennis racquet respectively. The petitioner did not further provide probative details about this incident or any other specific incidents of abuse. The petitioner stated that after the incident, he and I-R- reconciled, but that she soon became controlling again. The petitioner indicated that he stayed with I-R- because he was in removal proceedings, and he was afraid that he would be removed if she withdrew her petition. The petitioner further indicated that the couple lived together until October 2010, when I-R- moved to Florida to be closer to her family. The petitioner stated that when they had their second immigration interview in 2012, I-R- refused to attend unless he paid her, but ultimately went when the interview was rescheduled. The petitioner did not indicate that I-R- ever battered him or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted an affidavit from his brother, dated March 1, 2013, in which his brother recounted that the petitioner went for months without speaking to his parents because I-R- did not approve. He stated that the petitioner told him that I-R- was controlling and abusive, but did not provide a probative description of I-R-’s behavior, except to briefly note that I-R- threatened to report the petitioner to immigration. In addition, the petitioner provided a psychological evaluation prepared by psychologist [REDACTED] dated February 28, 2013. In the report, Dr. [REDACTED] indicated that the petitioner attributed his depression and anxiety to having been robbed at gunpoint at his place of employment, and exacerbated by his wife’s emotional and physical abuse. Dr. [REDACTED] stated that the petitioner reported that I-R- was abusive and threatening toward him, but did not provide probative information regarding the abuse.

In response to the RFE, the petitioner submitted an additional letter from Dr. [REDACTED] dated May 17, 2013, indicating that the petitioner met with him several times throughout 2012 and once in 2013, and describing the protocols that he administered in his sessions. In the letter, Dr. [REDACTED] did not describe any incidents of abuse. The petitioner also submitted an affidavit from his father, dated June 17, 2013, in which his father stated that on occasion, I-R- would kick the petitioner out of their home, and he would spend the night at his father’s house, and reconcile with I-R- the following day. The petitioner’s father also reported that I-R- did not want the petitioner to speak to or meet with his parents, and that the petitioner met with them on occasion without I-R-’s knowledge. He further reported that the police were called to I-R-’s and the petitioner’s home after the incidents in 2007 and in 2010.

Also in response to the RFE, the petitioner submitted a police report regarding an incident that

occurred on November 1, 2007. According to the police report, both the petitioner and I-R- reported that the petitioner was speaking on the telephone to an individual that he identified to I-R- as female, and I-R- became angry, threw framed photographs of the couple on the floor, and stomped on them in her bare feet. I-R-'s daughter called the police when she heard the argument.

In her decision, the director correctly determined that the preponderance of the relevant evidence submitted below did not demonstrate that I-R- battered or subjected the petitioner to extreme cruelty. On appeal, the petitioner submits an additional letter from Dr. [REDACTED] dated July 7, 2013. In the letter, Dr. [REDACTED] states that his facility's records reflect that I-R- frequently demanded money from the petitioner and told him that she could have him deported or arrested. Dr. [REDACTED] opines that the petitioner experienced abuse by I-R- that was more severe than normal marital difficulties, as the petitioner "endured some physical abuse." However, Dr. [REDACTED] did not describe the physical abuse, and the petitioner has not claimed that I-R- battered him. On appeal, the petitioner also provides an article about a Pakistani-Canadian abused husband.

*De novo* review of the record, as supplemented on appeal, does not demonstrate by a preponderance of the relevant evidence that the petitioner was battered or subjected to extreme cruelty by I-R-. The petitioner's affidavits, and those of his father and brother, indicated that I-R- threatened to call immigration if the petitioner left her and on one occasion threatened to harm herself. They further indicated that she demanded money from the petitioner despite his lack of work authorization, and did not like it when the petitioner spoke to his parents. In addition, the psychological evaluation and the police reports did not describe in probative detail, battery or behavior that reflected a pattern of violence constituting extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner's former spouse battered him or subjected him to extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Entry into the Marriage in Good Faith and Section 204(g) of the Act*

At the time the petitioner married I-R-, he was in removal proceedings and had not departed the United States under an order of deportation, 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). He must therefore establish eligibility for the bona fide marriage exemption at section 245(e) of the Act to demonstrate eligibility for immediate relative classification.

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.

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 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 (5<sup>th</sup> 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.

*De novo* review of the relevant evidence establishes by the preponderance of the evidence and by clear and convincing evidence that the petitioner entered into his marriage with I-R- in good faith. In his March 1, 2013 affidavit, the petitioner described meeting I-R- at a nightclub in [redacted] proposing to her in the beginning of [redacted] and marrying her in April of that year. He indicated that the couple honeymooned in [redacted]. In an affidavit dated March 1, 2013, the petitioner’s brother attested to knowing I-R- when she and the petitioner were dating, and to being the best man at the petitioner’s and I-R-’s wedding. The petitioner submitted jointly filed Internal Revenue Service (IRS) federal tax

returns for [REDACTED] and documentation showing that he and I-R- had a car loan in [REDACTED] in both of their names. The petitioner also submitted joint credit card statements from [REDACTED] showing that the cards were utilized by both parties and documentation showing that they had a joint bank account. In addition, the petitioner submitted leases showing both the petitioner and I-R- as joint tenants at a residence on [REDACTED] Connecticut, for the period of June 1, [REDACTED] through May 31, [REDACTED].

In response to the RFE, the petitioner submitted an affidavit from his father indicating that the petitioner left his parents' house, against their wishes, to marry and live with I-R- because he was in love with her. The petitioner also submitted a police report from an incident on November [REDACTED] showing that the couple resided together at that point. The petitioner also provided an additional credit card statement showing that both he and I-R- utilized the same card and documentation of a trip that the couple took to the [REDACTED]. The deposit confirmation reflects a "honeymoon" reservation. The petitioner further provided photographs of the couple on several different occasions.

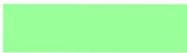
Upon *de novo* review of the relevant evidence of record, described above, the petitioner has established that he entered into marriage with I-R- in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, and by clear and convincing evidence as required to establish eligibility for the bona fide marriage exemption at section 245(e) of the Act from the bar at section 204(g) of the Act. The portion of the director decision finding to the contrary is hereby withdrawn. However, although we have withdrawn the director's finding on these grounds, as the petitioner has not established that I-R- battered him or subjected him to extreme cruelty, the appeal cannot be sustained.

#### *Good Moral Character*

Beyond the director's decision, the petitioner has also not established his good moral character. A review of the record shows that the petitioner was arrested on December [REDACTED], and January [REDACTED] on family violence charges. The record further shows that A-S-<sup>4</sup>, an individual who may be the mother of the petitioner's child, was granted a temporary restraining order against the petitioner.<sup>5</sup> The petitioner was accepted into the [REDACTED] and upon successful completion of this program, the charges against the petitioner will be dismissed on September 2, 2015. Although it is unclear from the record whether a finding or admission of guilt was made in order to participate in this program, the record nonetheless shows that the petitioner remains on probation until September [REDACTED] and that failure to complete the program may result in the prosecution of these charges against him. The record thus still shows that the petitioner may be convicted of unlawful acts which adversely reflect upon his moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Accordingly, the petitioner has not established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

<sup>4</sup> Name withheld to protect the individual's identity.

<sup>5</sup> The "Agreement of the Parties" contains custody orders for A-R-, a child born on August [REDACTED] bearing the petitioner's last name.



*Conclusion*

On appeal, the petitioner has established by a preponderance of the evidence and by clear and convincing evidence that he entered into his marriage with his U.S. citizen spouse, I-R-, in good faith, and has thus demonstrated his eligibility for the exemption from the bar at section 204(g) of the Act under section 245(e)(3) of the Act. However, the petitioner failed to demonstrate that I-R- battered him or subjected him to extreme cruelty. Beyond the director's decision, the petitioner also did not establish his good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.