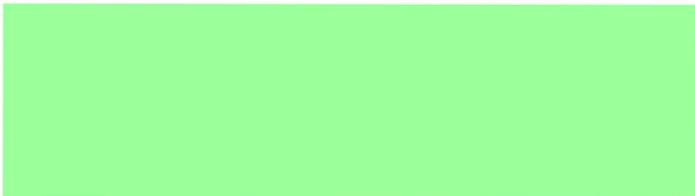


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

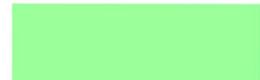


U.S. Citizenship
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Services

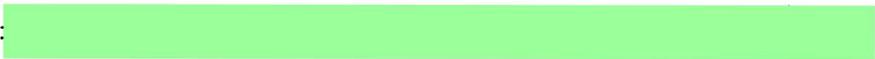


Date: FEB 12 2015 Office: VERMONT SERVICE CENTER

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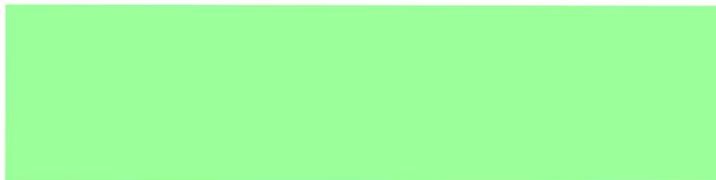


IN RE: Self-Petitioner:



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 she entered into marriage with her former 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 failed to establish a qualifying spousal relationship and corresponding eligibility for immediate relative classification based on her marriage.

On appeal, the petitioner, through counsel, submits a statement.

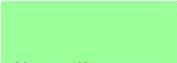
Applicable Law

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). An alien who has divorced an abusive U.S. citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act, 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:



(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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

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.

Facts and Procedural History

The petitioner, a citizen of Kenya, entered the United States in March 1998 as a B-2 nonimmigrant visitor. On June 23, 2004, the Immigration and Naturalization Service (INS) issued the petitioner a notice to appear and she was placed in immigration proceedings. Following a hearing related to her claims for asylum, an immigration judge ordered the petitioner removed to Kenya on January 22,

2008. The petitioner subsequently married L-M-¹, a U.S. citizen, on November [REDACTED] Massachusetts. L-M- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on June 17, 2009. However, before the petitioner was able to adjust her status in immigration court, L-M- obtained a default divorce from the petitioner on September [REDACTED]. The petitioner filed the instant Form I-360 self-petition on September 14, 2012. The director issued Requests for Evidence (RFE) of good-faith entry into the marriage, among other issues, and notified the petitioner that because she married L-M- while she was in removal proceedings, section 204(g) of the Act barred approval of her 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 subsequently appealed the director's decision. The appeal consists of a Form I-290B, Notice of Appeal, and a statement. Although the petitioner indicated that a brief would be filed within thirty days, to date we have not received any further submission. We thus evaluate the record as currently constituted.

We review these proceedings *de novo*. Upon a full review of the record, 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 the petitioner did not establish that she married L-M- 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 personal affidavits, dated November 1, 2012 and October 7, 2013, the petitioner discussed meeting L-M- through mutual friends, and briefly mentioned the couple's long distance courtship between Massachusetts and Michigan, noting that they each visited the other on one occasion prior to marriage. Although the petitioner recounted places that they visited on their trips to each other's cities, she provided few other details of her and L-M-'s courtship of over a year. The petitioner did not explain their decision to marry in November [REDACTED] nor did she explain why they waited until May [REDACTED] to hold their wedding ceremony and reception. The petitioner did not provide substantive information regarding her relationship with L-M- during the period between their civil ceremony in November [REDACTED] and their religious wedding in May [REDACTED]. The petitioner further did not provide probative details regarding her move to Michigan, noting that she moved there after the couple married, but traveled to Massachusetts often to care for her mother, and where she owned a home. The petitioner's claims regarding her move to Michigan conflict with information in a psychological evaluation, dated November 9, 2012, prepared by [REDACTED] indicating that the petitioner reported that she had worked at the same job at a group home in the [REDACTED] area "for over ten years." The petitioner's administrative record contains a copy of the petitioner's [REDACTED] federal income tax return, which the petitioner signed in July [REDACTED] using her Massachusetts address. The

¹ Name withheld to protect the individual's identity.

evaluation and tax return call into question whether the petitioner moved to Michigan to reside with L-M- immediately after their marriage as she has claimed.

The petitioner also submitted evidence to demonstrate that she and L-M- commingled their financial resources by providing a bank-generated list of their joint accounts, and a transaction history covering a three-month period. The petitioner submitted the first page of other statements, but did not provide the portion of the statements detailing the activity in the account, nor did she provide an explanation for failing to include them.

In addition, the petitioner also submitted brief affidavits and letters from friends and family members attesting that the couple had pre-marital counseling, that they were in love prior to marriage, and that L-M- gave the petitioner's father a dowry as required by the petitioner's customs. However, the affidavits provide minimal probative testimony regarding the petitioner's courtship, wedding, and other shared experiences with L-M-. Further, they 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 petitioner submitted evidence to support her claim that she entered into marriage with L-M- in good faith, including photographs and other documentation of her and L-M-'s religious wedding ceremony and reception, evidence that the petitioner traveled from Massachusetts to Michigan on two occasions, and travel insurance in L-M-'s name for a trip he took in December and January listing the petitioner as one of his beneficiaries. However, when viewed in the totality, specifically in light of the lack of probative testimony regarding the petitioner's and L-M-'s courtship, wedding ceremony, shared residence, and other experiences, and in consideration of the evidence indicating that the petitioner may not have resided in Michigan as she claimed, the record as currently constituted does not demonstrate either by a preponderance of the relevant evidence, or by clear and convincing evidence, that the petitioner entered into her marriage with L-M- in good faith.

On appeal, the petitioner indicates that the director failed to consider the fact that she and L-M- established eligibility for the bona fide marriage exemption with respect to L-M-'s Form I-130 immigrant visa petition. The regulation at 8 C.F.R. § 245.1(c)(8)(v) prescribes that when a visa petition based on the same marriage is approved, it will generally be considered primary evidence of eligibility for the bona fide marriage exemption *unless USCIS determines additional evidence is needed*. Here, the director issued two RFEs notifying the petitioner of the need for additional evidence. Although L-M- may have previously established eligibility for the bona fide marriage exemption, the evidence submitted by the petitioner currently contained in the petitioner's administrative record does not establish her good-faith entry into the marriage by clear and convincing evidence, as described above. Accordingly, the petitioner has not demonstrated that she is eligible for a bona fide marriage exemption under section 245(e)(3) of the Act, and section 204(g) of the Act consequently bars approval of the instant self-petition.

Qualifying Relationship and Immediate Relative Classification

The portion of the director's decision denying the self-petition on the basis of a lack of qualifying relationship will be withdrawn. The petitioner provided her and L-M-'s marriage certificate and L-M-'s naturalization certificate, which indicate that the petitioner was the spouse of a U.S. citizen.

She has therefore established that she has a qualifying spousal relationship as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

However, the director was correct in finding that because the petitioner is not exempt from and has not complied with section 204(g) of the Act, she is 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

The petitioner has not overcome all of the director's grounds for denial on appeal. The preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with L-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The 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.

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.