

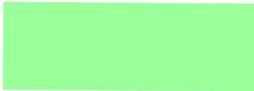
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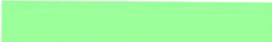
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

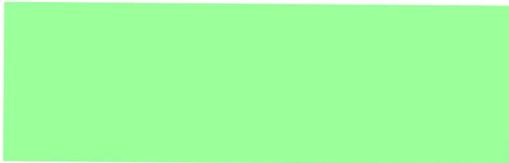


Date: FEB 26 2015 Office: VERMONT SERVICE CENTER File: 

IN RE: 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 Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) and dismissed a subsequent motion. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to 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 her U.S. citizen spouse. The director determined that the petitioner did not establish that she entered into her marriage in good faith, and that she failed to comply with the provisions of section 204(g) of the Act, 8 U.S.C. § 1154(g). On appeal, the petitioner submits a brief.

*Relevant Law and Regulations*

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act; 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, that:

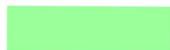
In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight 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 explained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.



(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

If a petitioner was in removal proceedings at the time of his or her marriage, section 204(g) of the Act, prescribes, in pertinent part:

*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.

Where such a petitioner has not resided outside of the United States for two years after his or her marriage, section 204(g) of the Act bars approval of the petition unless the petitioner can establish eligibility for the bona fide marriage exemption as set forth in 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 admissibility or deportation proceedings; bona fide marriage exception.* --

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (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.

### *Facts and Procedural History*

The petitioner is a citizen of Cambodia who entered the United States on February 20, 2002 as a B-2 nonimmigrant. The petitioner filed an application for asylum in November 2002; however, the application was denied, and the petitioner was issued a Notice to Appear (NTA) and placed into removal proceedings on July 30, 2003. An immigration judge ordered the petitioner removed on June 10, 2004, and subsequent appeals and motions of the immigration judge's decision were denied.<sup>1</sup>

The petitioner married G-S-<sup>2</sup>, a U.S. citizen, on [REDACTED] and she filed the Form I-360 petition on March 4, 2011. The director determined in an April 1, 2014 decision on motion, that the petitioner did not overcome the director's prior determination and failed to establish that she entered into her marriage in good faith. The director determined further that the petitioner failed to establish that she complied with the provisions of section 204(g) of the Act. The petitioner filed a timely appeal.

We review these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The appeal will be dismissed for the following reasons.

### *Entry into the Marriage in Good Faith*

Traditional forms of documentation are not required to demonstrate that a self-petitioner entered into her 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. . . . [a]nd affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In the present matter, the petitioner stated generally, in affidavits contained in the record, that she married G-S- in [REDACTED] Nevada on [REDACTED] and that they lived together for three years until she moved out of their home in December 2009. She recounted that she married G-S- because she cared for him and wanted to spend her life with him; however, their relationship deteriorated due to G-S-'s alcoholism and

<sup>1</sup> The Board of Immigration Appeals (BIA) summarily affirmed the immigration judge's decision on September 7, 2005, and on July 8, 2011 the BIA denied a motion to reopen the matter. The U.S. Ninth Circuit Court of Appeals affirmed the BIA's summary affirmance in an unpublished decision dated, March 19, 2010. See *Suong v. Holder*, 374 Fed. Appx. 708 (9<sup>th</sup> Cir. 2010). On October 4, 2010, the U.S. Supreme Court denied a petition of writ of certiorari of the Ninth Circuit Court decision. See *Suong v. Holder*, 131 S. Ct. 199 (2010).

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

gambling, and because she stopped putting money into their joint bank account. The petitioner's statements lack detailed information regarding the couple's courtship, wedding, or shared residence and experiences, and provide no probative and specific information regarding the petitioner's relationship with G-S- and her intentions for marrying him. Affidavits from six of the petitioner's friends [REDACTED] also indicate, only generally, that they have knowledge of the petitioner's marriage and relationship with G-S-. The friends do not describe any particular visit or social occasion with the petitioner and G-S-, or any interactions with the couple that would establish more than a general knowledge of the relationship or insight into the petitioner's intent when she entered into the marital relationship.

A copy of a 2007 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, contains both the petitioner's and G-S-'s names; and a March 21, 2008 letter from the U.S. Treasury department, addressed to the petitioner and G-S-, reflects IRS payment of a debt owed to the U.S. Department of Veterans Affairs. The tax-related documents lack probative information regarding the petitioner's relationship with G-S- and her intentions for marrying him, and are insufficient to establish that the petitioner entered into her marriage with G-S- in good faith. Bank statements contained in the record are similarly insufficient to establish the petitioner's good-faith entry into her marriage. Although the statements reflect that the petitioner and G-S- had a joint banking account between 2007 and 2009, the bank statements reflect minimal account balances during that period and reflect only generally that automated teller machine deposits and withdrawals were made. Moreover, the statements are addressed to the petitioner and G-S- at a post office box rather than a marital home address. The record also contains a January 2008 medical insurance policy; however, the policy contains only the petitioner's name and lacks probative information to demonstrate the petitioner's good-faith entry into the marriage. Various photographs showing the petitioner and G-S- together are undated and without context, and also shed no light into the petitioner's marital intentions when she married G-S-.

The petitioner asserts, on appeal, that her marriage to G-S- is presumptively one of good faith, because G-S- filed a Petition for Alien Relative (Form I-130) on her behalf, and the petition was approved by U.S. Citizenship and Immigration Services (USCIS) on May 23, 2007. The fact that a visa petition based on the marriage in question was previously approved, however, does not automatically entitle the beneficiary to subsequent immigrant status. *See Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9<sup>th</sup> Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove . . . that the marriage was bona fide and not entered into to evade immigration laws"). Moreover, although similar, the parties, statutory provisions and benefits procured through sections 204(a)(1)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. The petitioner's husband was the petitioner and bore the burden of proof in the prior Form I-130 adjudication, in which he was required to establish his citizenship and the validity of their marriage. *See* Section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i); 8 C.F.R. §§ 204.1(f), 204.2(a)(2). In the present Form I-360 proceeding, however, the petitioner bears the burden of proof to establish her own good-faith entry into the marriage. *See* Section 204(a)(1)(A)(iii)(I)(aa) of the Act. Moreover, in making a decision on the self-petition USCIS has sole discretion to determine what evidence is relevant and credible and the weight to be given that evidence. *See* 8 C.F.R. § 204.2(c)(2)(i). In this case, the petitioner provided only a cursory description of her marital relationship, and the remaining relevant evidence lacks probative information to meet her burden of proof. The approved Form I-130 is therefore not probative of the petitioner's good-faith entry into the marriage.

The petitioner also asserts that the director erroneously applied a “preponderance of the evidence” standard of proof to her case, rather than a more lenient “any credible evidence” standard used in Violence Against Women Act of 1994 (VAWA) related cases. For self-petitioning abused spouses and children, the statute prescribes an evidentiary standard, which mandates that USCIS “shall consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act. *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not, however, equivalent to the petitioner's burden of proof. In this case, as in most visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010) (“Except where a different standard is specified by law, a petitioner . . . in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought[.]”) When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. “[T]he determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion.” Section 204(a)(1)(J) of the Act; 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). The mere submission of evidence that is relevant or credible may not always suffice to meet the petitioner's burden of proof. In the present matter the overall record does not establish the petitioner's good-faith entry into the marriage by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Section 204(g) of the Act*

Section 204(g) of the Act further bars approval of the petition. The record reflects that the petitioner married G-S- in [REDACTED] after she was issued an NTA (on July 30, 2003), and while she was in removal or judicial proceedings.<sup>3</sup> Because the petitioner did not remain outside of the United States for two years after their marriage, her self-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 as set forth in 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 (Form I-360) and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. As discussed above, 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. *See* section 204(a)(1)(J) of the Act; *Matter of Chawathe*, 25 I&N Dec. at 375. To be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, however, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. *See Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992) (“Clear and convincing evidence” is a more stringent standard.) *See also Pritchett v. INS*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) As the petitioner failed to establish her good-faith entry into her marriage with G-S- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also not

<sup>3</sup> *See* 8 C.F.R. § 245.1(c)(8)(ii)(A) (Section 204(g) of the Act applies and proceedings remain pending until the removal order is executed and the alien departs the United States, is found not to be removable or the proceedings are otherwise terminated.)

demonstrated the bona fides of her marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

Beyond the director's decision, because the petitioner is not exempt from section 204(g) of the Act, she has also failed to demonstrate that she had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.<sup>4</sup>

*Conclusion*

The petitioner bears the burden of proof to establish her eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. at 375. Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>4</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).