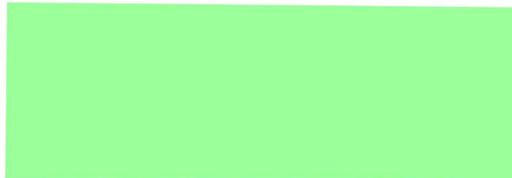




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 02 2015** Office: VERMONT SERVICE CENTER File:

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 Director, Vermont Service Center, (“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.

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 denied the petition for failure to establish that the petitioner entered into marriage with her former spouse in good faith, she resided with him, and that she complied with the provisions of section 204(g) of the Act.

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).

An alien who has divorced an abusive United States 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 further 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 record in this case indicates that the petitioner was in removal proceedings at the time of her marriage. In such a situation, 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 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 second marriage (upon which this petition is based). 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 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.

(Emphasis added)

The eligibility requirements for this immigrant classification are further explicated in the regulation 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(g) 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 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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of the Philippines who entered the United States on April 12, 2003 as a nonimmigrant visitor. On November 12, 2009, the petitioner was issued a Notice to Appear in removal proceedings as an alien who has remained in the United States beyond her period of authorized stay.¹ The petitioner divorced her first spouse on August [REDACTED] in Nevada. She married her second spouse, T-B-, a U.S. citizen, on November [REDACTED] in California.² The petitioner was granted a divorce from T-B- on April [REDACTED] in Nevada.

The petitioner filed the instant Form I-360 on May 10, 2013. The director subsequently issued a Request for Evidence (RFE) of the petitioner's residence with T-B- and her good-faith entry into the

¹ The petitioner remains in removal proceedings before the Los Angeles Immigration Court.

² Name withheld to protect the individual's identity.

marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. 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 filed a timely appeal.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

In the petitioner's declaration, dated October 31, 2012, she stated that she met T-B- in August 2010 while attending a friend's birthday party. She recounted that they dated and she felt that he was committed to her and her children from her first marriage. The petitioner stated that they wed on November [REDACTED] and T-B- moved into her residence. The remainder of her statement focused on the abuse in the marriage. The petitioner did not probatively describe how she met her husband, their courtship, wedding, joint residence or any of their shared experiences.

The petitioner's sister, [REDACTED] stated in her declaration that the petitioner and T-B- resided with her in her home. She briefly recounted that the couple was happy and loving, but she failed to provide any further information on the petitioner's good-faith entry into the marriage. The petitioner's friend, [REDACTED] stated that the petitioner and T-B- were happy and frequently visited her and her family. However, she failed to discuss in probative detail any particular or visit or social occasion with the couple. In addition, the petitioner provided a letter from T-B- in which he apologized for the couple's separation, but did not provide any substantive information to demonstrate the petitioner's good-faith entry into the marriage.

The petitioner submitted as documentary evidence: joint bank statements; two joint lease agreements; joint rent receipts; [REDACTED] statements addressed to the couple; and a life insurance application. The bank statements show no or little transaction activities. The handwritten rent receipts appear to be issued by the petitioner's sister for the amount listed in the lease agreement. However, the first lease agreement the petitioner submitted for the term of November 2010 to November 2011 is not signed by the petitioner. The second lease agreement is signed by both the petitioner and T-B-, but it is dated November 2011, which is after the couple's separation. As noted by the director in his decision, the lease term also predates the contract date by one year, drawing into question the probative value of the document as credible evidence. The petitioner does not further address this discrepancy on appeal. In addition, the [REDACTED] billing statements contain the T-B-'s name in the mailing address, but the account itself is in the petitioner's name only. Finally, the petitioner has not submitted evidence that she actually filed the life insurance application and that a life insurance policy was issued for herself with T-B- as the beneficiary.

On appeal, the petitioner asserts that she would not have entered into an abusive relationship if it was not in good-faith. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. The petitioner must establish her good-faith entry into the marriage independent from her establishment of abuse since meeting one eligibility requirement will not necessarily demonstrate the other. The petitioner further asserts that her documentary evidence is limited because of abuse in

the relationship. Regardless of the deficiencies in the petitioner's documentary evidence, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). However, "the 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. In this case, the petitioner does not provide any detailed, probative information regarding her intentions in marrying her second husband. The statements from her sister, [REDACTED] and her friend, [REDACTED] also fail to discuss in probative detail their observations of the petitioner's interactions with her husband during the couple's courtship or marriage. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that she entered into marriage with T-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act further Bars Approval

Because the petitioner married T-B- while she was in removal proceedings and 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 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). 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 (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.

As the petitioner failed to establish her good-faith entry into her marriage with T-B- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she also has not demonstrated the bona fides of this 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.

Eligibility for Immediate Relative Classification

Beyond the decision of the director, because the petitioner is not exempt from section 204(g) of the Act, she has also failed to demonstrate her eligibility for immediate relative classification, as

required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).³

Joint Residence

The director determined that the petitioner failed to submit probative, credible evidence of her joint residence with T-B-. On appeal, the petitioner asserts that she submitted sufficient evidence of her joint residence. A full review of the record fails to overcome this basis for denial. On the Form I-360, the petitioner stated that she lived with T-B- from November [REDACTED] until October [REDACTED] and their last joint address was on [REDACTED] California. The [REDACTED] billing statements are addressed to T-B- at [REDACTED]. In addition, the petitioner submitted evidence that a magazine subscription and a postmarked letter were mailed to T-B- at [REDACTED]. However, as discussed, the petitioner initially submitted a lease agreement for the term of November [REDACTED] to November [REDACTED] at [REDACTED] that does not contain her signature. She then submitted another lease agreement for the same residence and time period that is signed by both her and T-B-, but is dated after their separation and the lease term predates the contract date. [REDACTED] stated that the couple resided with her at her residence, but she did not describe their living arrangements or any interactions with the couple in probative detail. In addition, the petitioner did not herself describe her home with T-B- or their shared residential routines in any detail, apart from the abuse. [REDACTED] stated that she is the petitioner's close friend, but she did not indicate that she ever visited the couple at their residence. Accordingly, the preponderance of the relevant evidence does not establish that the petitioner resided with T-B-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's determination that she did not establish that she entered into marriage with T-B- in good faith, that she resided with him, and that she complied with the provisions of section 204(g) of the Act. Beyond the director's decision, the record also fails to demonstrate that the petitioner is eligible for immediate relative classification based on their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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, that burden has not been met.

ORDER: The appeal is dismissed.

³ 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).