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

(b)(1)

U.S. Citizenship and Immigration Services

Date: JAN 0 7 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 ("acting 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 his U.S. citizen spouse.

The acting director denied the petition for failure to establish that the petitioner was eligible for immigrant classification based on a qualifying relationship because he was subject to the provisions of section 204(g) of the Act and did not establish eligibility for a bona fide marriage exemption. 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 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].

Section 204(g) of the Act, 8 U.S.C. § 1154(g), 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.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), states, in pertinent part:

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 regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(Emphasis added).

The eligibility requirements for an abused spouse 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)(1), which states, in pertinent part:

(i) . . . (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]. . . .

* * *

(iv) *Eligibility for immigrant classification*. A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act. . . .

* * *

(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 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.
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> * * *
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> (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 Pakistan who entered the United States on September 20, 2002, as a nonimmigrant visitor. On September 14, 2009, the petitioner was served with a Notice to Appear for removal proceedings before the , Massachusetts, Immigration Court. On July , the petitioner married L-V-[1], a U.S. citizen, in Massachusetts. The petitioner filed the instant Form I-360 self-petition on June 4, 2012. The acting director subsequently issued two Requests for Evidence (RFE) to which the petitioner timely responded with additional evidence. The acting director found the evidence insufficient to establish the petitioner's eligibility and denied the self-petition. The petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The petitioner has failed to overcome the acting director's grounds for denial and the appeal will be dismissed for the following reasons.

Section 204(g) of the Act

The record shows that in September 2009, the petitioner was served with a Notice to Appear, placing him in removal proceedings, and that he subsequently married L-V- in July The petitioner contends that he is not subject to section 204(g) of the Act because he did not marry L-V- while in removal proceedings, but rather, during the 120-day period of voluntary departure. According to the petitioner, the Immigration Judge's voluntary departure order "concluded" removal proceedings against him and he is, therefore, not subject to the heightened standard of clear and convincing

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

evidence. The petitioner contends he met the lower burden of establishing he married L-V- in good faith by a preponderance of the evidence.

The petitioner cites no authority for his proposition that the voluntary departure period terminated removal proceedings. On the contrary, the regulation at 8 C.F.R. § 245.1(c)(8)(ii) specifies when removal proceedings have been terminated and does not include the granting of voluntary departure. The regulation states:

> (ii) *Termination of proceedings*. The period during which the alien is in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto, terminates:
>
> > (A) When the alien departs from the United States while an order of exclusion, deportation, or removal is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation or removal;
> >
> > (B) When the alien is found not to be inadmissible or deportable from the United States;
> >
> > (C) When the Form I–122, I–221, I–860, or I–862 is canceled;
> >
> > (D) When proceedings are terminated by the immigration judge or the Board of Immigration Appeals; or
> >
> > (E) When a petition for review or an action for habeas corpus is granted by a Federal court on judicial review.

There is no provision in the regulations indicating that proceedings are terminated with an order of voluntary departure. Moreover, the Immigration Judge's May 10, 2011 order granting voluntary departure did not check the box to indicate that proceedings were either terminated (with or without prejudice) or administratively closed. Furthermore, the record shows that hearings have continued to be scheduled for the petitioner's removal proceedings and counsel for the petitioner filed a Motion to Continue Master Calendar Hearing on May 23, 2012, as well as a Motion to Administratively Close or in the Alternative Continue Master Calendar Hearing on April 9, 2014. Therefore, section 204(g) of the Act applies to the petitioner's case.

Because the petitioner married his wife while he was in removal proceedings and he did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. The acting director's decision discussed the relevant evidence in the record, including, but not limited to: the petitioner's affidavits, affidavits from four of the petitioner's friends; copies of bills; a bank account statement; and an automobile insurance policy. The record does not clearly and convincingly establish that the petitioner married L-V- in good faith. Therefore, the petitioner has not established by clear and convincing evidence that he married L-V- in good faith. Accordingly, he has not established his

eligibility for the bona fide marriage exemption at section 245(e)(3) of the Act and section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

As the acting director concluded, the petitioner is also not eligible for immediate relative classification based on his marriage to L-V-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explained in the regulation at 8 C.F.R. § 204.2(c)(1)(iv), because he has not complied with, nor is he exempt from, section 204(g) of the Act.

Conclusion

The petitioner has failed to establish that he is exempt from the bar to approval of his petition under section 204(g) of the Act and is eligible for immediate relative classification based on his marriage to L-V-. 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). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.