

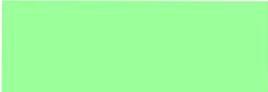
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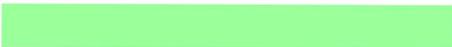
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Administrative Appeals Office (AAO)*  
20 Massachusetts Ave. N.W. MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **JAN 20 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:

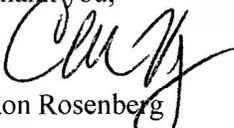


INSTRUCTIONS:

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 Vermont Service Center acting 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.

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 because the petitioner failed to establish that she has a qualifying relationship with a United States citizen spouse, that she entered into the marriage with her United States citizen spouse in good faith and that she was exempt from the bar to approval of her petition under section 204(g) of the Act. The director also determined that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a brief and additional evidence.

*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].

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

8 U.S.C. § 1255(e) (emphasis added).

The eligibility requirements for a self-petition under section 204(a)(1)(A)(iii) of the Act are explained 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(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

\* \* \*

(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 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.

\* \* \*

(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.

*Facts and Procedural History*

The petitioner is a citizen of Kenya who entered the United States on September 16, 2008, as a nonimmigrant visitor. The petitioner was placed in removal proceedings on April 18, 2012, and was ordered removed *in absentia* on June 18, 2013.<sup>1</sup> She married R-H-<sup>2</sup>, a U.S. citizen, on September [REDACTED] County, Texas. The petitioner filed the instant Form I-360 self-petition on September 16, 2013. The director subsequently issued a Request for Evidence (RFE) of, in part, the requisite battery or extreme cruelty, the *bona fide* marriage exemption, and entry into her marriage with R-H- in good faith. The director determined that the evidence was insufficient to overcome the concerns expressed in the RFE, and denied the petition. The petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

*Battery or Extreme Cruelty*

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include other forms of credible relevant evidence." *See* 8 C.F.R. § 204.2(c)(2)(iv). Here, the petitioner submitted a personal affidavit asserting that R-H- had a drinking problem and physically and verbally abused her when he drank. She recounted several incidents where R-H- physically assaulted her, stole from her, and called her demeaning names. She recounted that a couple of months after they married, she and R-H- had lunch after church with R-H-'s nephew and cousin, and that the nephew gave her some money to take to his mother. Later that day, she indicated that she and R-H- started arguing, he hit her, took the money given to her as well as her cellular telephone, and left in her car. Although the petitioner provided details about the events that occurred after the claimed incident of battery, she did not provide substantive information about the specific incidents themselves.

The Incident/Offense Report dated January 25, 2013, reflects that the petitioner filed a report with the police stating that R-H- assaulted her because she had left her car keys at work. The responding police officer stated that the petitioner did not appear to be suffering from any bodily injury. The officer further stated that he was advised by the petitioner that alcohol and drugs were not a contributing factor in the incident and there was no history of physical violence between her and R-H-.<sup>3</sup> The Family Violence Report dated January 25, 2013, indicated that there were no injuries as a result of the claimed assault. No arrest was made at the time and there were no additional details in the Incident/Offense Report or the Family Violence Report regarding this incident or other specific incidents of abuse. We

<sup>1</sup> The record reflects that the petitioner appealed this decision to the Board of Immigration Appeals (BIA).

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

<sup>3</sup> The redacted copy of the report submitted by the petitioner does not state the name of the assailant or identify him as her spouse.

cannot conclude based on this report and the petitioner's testimony that the petitioner was subjected to battery on the claimed date. The petitioner described an incident on February 25, 2013<sup>4</sup> when she left her car at work. The petitioner stated that she came home from work in a taxi and R-H- was waiting for her on the porch. She indicated that they argued about the car, he repeatedly hit her, and threw her on the floor. The petitioner stated that she had a very swollen upper lip, and injuries to that her hand, jaw and eye. As noted by the director, the petitioner's testimony is inconsistent with the police reports that do not reflect that the petitioner suffered any bodily injuries as claimed. In addition, the police report reflects that the petitioner left her car keys at work with no mention of her vehicle whereas in her affidavit, the petitioner claimed that she left her car at work. The petitioner stated that after this incident, R-H- decided to seek medical help and admitted himself into a treatment center. The petitioner recounted, however, that R-H- left the center before the end of his treatment and reverted to drinking and being abusive towards her. She described an incident on the night before her immigration court hearing when he took the car, and came home at four a.m. to get money. She stated that he left again with her car after hitting her with his elbow causing her to miss her court date. Again, the petitioner provided some details about what happened after the claimed battery but provided few probative details about the battery itself.

The petitioner also submitted: letters from her employer, [REDACTED] a letter from [REDACTED] the mother of one of the residents where the petitioner worked; and an affidavit from her friend, [REDACTED] stated in his letter that on January 25, 2013, when he arrived at work the police were there questioning the petitioner. He indicated that it was obvious from her bruises, bloody lip and swollen face that the petitioner had been assaulted. Mr. [REDACTED] stated that he requested that the police file a criminal trespass warning against R-H- to not show up at any of the six locations that he owned. The director noted the discrepancy between Mr. [REDACTED] statement that the petitioner had obvious bruises, a bloody lip and a swollen face, and the police officer's observation in the report that the petitioner did not appear to have any injuries nor did she report any. Another discrepancy is between the petitioner's testimony that her husband was waiting for her on the porch when she arrived home from work in a taxi, and the police report indicating that R-H- came home after the petitioner was already there. These discrepancies diminish the probative value of the petitioner and Mr. [REDACTED] claims, and call into question whether the physical assault occurred as reported. The record contains no explanation for these inconsistencies. In her affidavit, [REDACTED] stated that the petitioner was physically and mentally assaulted many times. She did not, however, describe with any detail her observations of any injury, how her friend felt afterwards, or any battery or extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1). In her letter [REDACTED] stated that the petitioner confided in her about R-H-'s abuse. Ms. [REDACTED] stated that in October of 2013, R-H- beat the petitioner and Ms. [REDACTED] was shocked to see the petitioner's face with her eyes swollen shut. However, the petitioner stated on her self-petition that she separated from R-H- in June of 2013 nor provided any information that an October of 2013 assault took place.

On appeal, the petitioner asserts that the petitioner submitted sufficient probative evidence to establish the claimed abuse. She further claims that the director improperly determined that her failure to press

<sup>4</sup> The police report established that the date of this incident was January 25, 2013.

<sup>5</sup> Mr. [REDACTED] was identified on the police report as the owner of the residence where the petitioner worked. Other evidence showed that the petitioner works at an assisted living residence.

criminal charges against R-H- and obtain a protective order against him detracts from her claim. To the extent that the director indicated that criminal charges and a protective order against R-H- were necessary to establish the requisite abuse, that portion of the director's decision is withdrawn. However, the petitioner's statement and those provided by her boss, her friend, and a professional acquaintance failed to provide probative details about R-H-'s abuse of the petitioner sufficient to establish that he subjected her to battery or extreme mental cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). In addition, the petitioner and Mr. Buckholz's statements were inconsistent with the police report and further evidence to clarify these inconsistencies was not submitted on appeal. When viewed in the aggregate, a preponderance of the evidence does not show that R-H-subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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

The director correctly determined that the petitioner failed to establish that she married R-H- in good faith. The relevant evidence on the record consists of: the petitioner's statement; correspondence from the petitioner's husband and from the petitioner's bank and automobile insurance company addressed to the petitioner at the marital address; the statement of Ms. [REDACTED]; and photographs of the couple taken at their wedding and other occasions.

The petitioner described in her statement how she met R-H- at a bus stop, called him after a few days and spoke with him by telephone for several months before their first date. She stated that when they began dating, she spent weekends with R-H and his family, and later on attended church with him and met his parents. She recounted how she went shopping with R-H's mother; went to the park with his nieces and nephews; played games; and rode horses. One day he surprised her with a marriage proposal, and she said yes; she and R-H's mother planned a church wedding with the extended family on September 12, 2012. While the petitioner provided details about the wedding and reception and briefly listed activities that they enjoyed doing, she did not share any probative details about the courtship, marriage, shared residence and experiences, apart from the alleged abuse.

The petitioner submitted copies of letters written to her from R-H- when he was in treatment for substance abuse in the month of February 2013. In these letters, R-H- referred to the petitioner as his wife; he told her that he loved her and wanted to be the husband she wanted him to be. These letters revealed R-H-'s intentions toward the petitioner but did not establish that the petitioner herself entered into their marriage in good faith. [REDACTED] stated in her affidavit that she had known the petitioner for many years and was the maid of honor at the wedding. She stated that the couple lived together as husband and wife on [REDACTED] TX, and that she visited them there a number of times. However, she did not describe any visit in probative detail or otherwise establish her knowledge of the relationship.

The [REDACTED] correspondence consisted of a letter requesting the petitioner's signature on a form, and two bank statements, one of which shows a zero balance and no transactions and the second showing a (\$3.73) balance and one deposit transaction of \$3.73. The bank statements show

only that the petitioner gave [REDACTED] her address in [REDACTED] TX for that account, but the account was not the petitioner's primary bank account and did not establish any serious financial commitment on the part of the petitioner toward their shared residence or reflect on the petitioner's good faith at the inception of the marriage. Similarly, while the correspondence from the [REDACTED] was addressed to the petitioner at the marital home, the petitioner was the sole named insured. The petitioner submitted one piece of correspondence addressed to the couple jointly from a solicitor for life and disability insurance following their marriage. This document supported the fact that the petitioner and R-H- entered into a legal marriage, but is insufficient to reflect on the petitioner's good-faith intent at the time of the marriage. The photographs showed that the petitioner and R-H- were pictured together but without probative testimony, the photographs alone were insufficient to establish that the petitioner married R-H- in good faith.

On appeal, the petitioner resubmits the letters from R-H- to the petitioner and submits a copy of the approval notice of the Form I-130 Immigrant Petition for Alien Relative filed by R-H- on her behalf. The petitioner incorrectly argues that the approval of the Form I-130 Petition for Alien Relative filed by the petitioner's husband on her behalf establishes the petitioner's good-faith marriage. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not standing alone prove by a preponderance of the evidence that the marriage was *bona fide* and not entered into to evade immigration laws."). Although similar, the parties, statutory provisions and benefits procured through sections 201(b)(2)(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. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also her own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act further explain the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with R-H- 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 R-H- while she was in removal proceedings and she 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.

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 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 (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 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 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 R-H- 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 her marriage under the applicable 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*

The petitioner is also not eligible for immediate relative classification based on her marriage to R-H-, 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 she has not complied with, nor is she exempt from section 204(g) of the Act.

#### *Conclusion*

The petitioner failed to establish that she was subjected to battery or extreme cruelty by R-H- during their marriage and that she married him in good faith. She further failed to demonstrate she is exempt from the bar to approval of her petition under section 204(g) of the Act and that she is eligible for immediate relative classification based on her marriage to R-H-. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons, with each considered an independent and alternative basis for denial.

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.

**ORDER:** The appeal is dismissed.