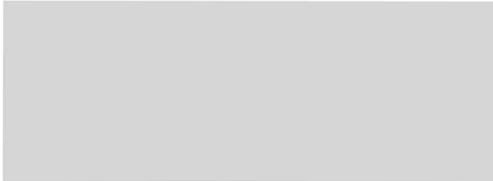


(b)(6)

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



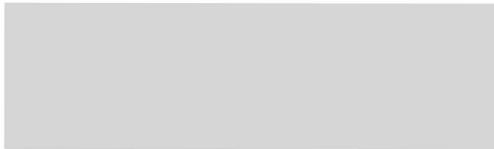
DATE: **JUL 07 2015**



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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition. 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 because the petitioner did not establish that she complied with the provisions of section 204(g) of the Act and was therefore eligible for immediate relative classification under section 201(b)(2)(A)(i) 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).

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. 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.

The record does not indicate that the petitioner resided outside of the United States for two years after the 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, 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 a self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act are further explained 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(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Mexico, claims to have last entered the United States in December 2002 (Form I-360) or December 2003 (petitioner's second affidavit), near ██████████ Arizona, without inspection, admission or parole. The petitioner was placed into removal proceedings on June 4, 2004.¹ While in removal proceedings, the petitioner married R-G-², a U.S. citizen, in ██████████ Indiana on ██████████. The petitioner filed the instant self-petition (Form I-360) on June 2, 2014. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's eligibility for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act and eligibility for immediate relative classification. 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 timely appealed.

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

Section 204(g) of the Act Bars Approval

Because the petitioner married R-G- while she was in removal proceedings and did not remain outside of the United States for two years after marrying, the Form I-360 self-petition cannot be approved pursuant to section 204(g) of the Act unless the record establishes, by clear and convincing evidence pursuant to section 245(e)(3) of the Act, that the petitioner entered into the marriage in good faith. 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. *See 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. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *see also 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. *See* Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); *see also* 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *See Matter of Arthur*, at 478.

The director correctly determined that the record did not establish the petitioner's eligibility for the bona fide marriage exemption at section 245(e) of the Act. The record included the petitioner's two personal affidavits, the statements of three acquaintances, a copy of a joint residential lease, a letter to the

¹ The petitioner's removal proceedings were administratively closed by the ██████████ Immigration Court on February 4, 2005. As the proceedings were not terminated and none of the other exemptions at 8 C.F.R. § 245.1(c)(8)(iii) apply, the petitioner remains subject to section 204(g) of the Act.

² Name withheld to protect the individual's identity.

petitioner from R-G- in jail, and a receipt for the payment of R-G-'s bond. The joint lease for an apartment on [REDACTED] Indiana ([REDACTED]), for a term from May 1, 2013 through November 1, 2013, is inconsistent with the petitioner's affidavit in which she stated that R-G- moved in with her the day after they married on [REDACTED]. It is also inconsistent with the Form I-360 self-petition on which the petitioner indicated that she resided with R-G- at [REDACTED] from June through August 2013. The dates of the lease are also inconsistent with the petitioner's Form G-325A, biographical information form, on which she indicated that she moved to [REDACTED] in February 2013 and remained there until March 2014. There is no assertion in the record that the joint lease supersedes or replaces any previous lease the petitioner had with the [REDACTED] management. The bond payment receipt, dated June 24, 2013, indicated that the petitioner paid \$505 bond for R-G-'s account, but the petitioner did not discuss any bond in her affidavits and there is no corresponding bank account deduction indicating that she paid the bond out of a joint account, her own funds, or from another source. R-G-'s letter to the petitioner from jail is dated in January 2015, approximately five months after August 2014, the date on which the petitioner claimed to have separated from him, and is not probative of the her good faith marital intentions.

Regardless of the deficiencies of the record, traditional forms of joint documentation are not required to demonstrate a 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 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." See 8 C.F.R. § 204.2(c)(2)(vii). Here, however, the affidavits of the petitioner and the statements of others do not establish her claim of entering into her marriage in good faith because they contain insufficient information regarding her marital intentions. In her initial affidavit, the petitioner indicated that she met R-G- at a Christmas party at a coworker's home. She recalled a New Year's Eve party at R-G-'s home a week later during which he told her he wanted to marry her, and would wait until she obtained her divorce from P-M-⁴, the father of her two children in the United States. The petitioner did not describe in further detail her courtship with R-G-, their wedding ceremony, shared residence and experiences apart from the abuse.

The statements of the petitioner's acquaintances also did not contain probative details regarding her intentions in marrying R-G-. [REDACTED] stated that the petitioner and R-G- were frequent visitors at a restaurant where his company provided security services, and that he witnessed R-G- being aggressive with the petitioner. [REDACTED] stated that he was the petitioner's basement tenant at [REDACTED] knew that she and R-G- were married because "she told me a bit about what was going on in her house," and witnessed R-G- slap the petitioner through the window. [REDACTED] of the Victim Assistance Program at the [REDACTED] County Prosecutor's Office, stated that she was aware that the petitioner and R-G- were living together in the summer of 2013. None of the authors attested to knowing the petitioner and R-G- as a married couple, described any particular visit or social occasion in probative detail or otherwise provided detailed information establishing their personal knowledge of the relationship. [REDACTED] statement to the effect that the petitioner and R-G- lived in a house with a basement is inconsistent with the lease agreement, which indicates that the petitioner and R-G- rented

⁴ Name withheld to protect the individual's privacy.

“apt. 1.” Nor is [REDACTED] an authorized sub-lessee on the lease agreement for [REDACTED]. The record does not contain any explanation for these discrepancies.

On appeal, the petitioner claims that the evidence of record is sufficient to prove her good faith marital intentions and she does not submit any further evidence. However, the totality of the entire record does not establish by clear and convincing evidence that the petitioner entered into her marriage with R-G- in good faith. The petitioner’s initial affidavit discussed her first two meetings with R-G- but focused primarily on the abuse and did not provide sufficient detail of her marital intentions. The petitioner’s second affidavit did not discuss her relationship with R-G- at all. The statements of three acquaintances also failed to provide relevant, substantive information and do not show that the authors had any personal knowledge of the petitioner’s relationship with R-G-. When viewed in the totality, the record does not demonstrate, by clear and convincing evidence, that the petitioner entered into her marriage with R-G- in good faith as required for the bona fide marriage exemption at section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Eligibility for Immediate Relative Classification

Because the petitioner is not exempt from the bar at section 204(g) of the Act, she has consequently not demonstrated that she is eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act, 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).

The Petitioner’s Prior Marriage and Lack of Evidence of its Lawful Termination

Beyond the director’s decision, the petitioner has not submitted evidence that she divorced, or otherwise lawfully terminated her marriage to her first husband, H-M-⁵, prior to marrying R-G-. During an interview before the legacy United States Immigration and Naturalization Service (INS) on June 2, 2004, the petitioner stated that she married H-M- when she was 13 years old, had five children with him, and later divorced him with the assistance of an attorney. The petitioner contradicted this statement in her second affidavit in these proceedings, in which she stated that she never married H-M-, but rather resided with him and referred to him as her husband for convenience. The inconsistencies in the petitioner’s testimony cast doubt on whether she was free to marry R-G- and as in all visa proceedings, the burden of proof is on the petitioner alone to establish her eligibility. Therefore, in any further proceeding, the petitioner must address this issue.

Conclusion

On appeal, the petitioner has not overcome the director’s grounds for denial. She has not complied with section 204(g) of the Act, which bars approval of this petition and renders her ineligible for immediate relative classification based on her marriage. Beyond the decision of the director, the petitioner has not demonstrated that her marriage to R-G- was valid under Indiana law.

⁵ Name withheld to protect the individual’s identity..

Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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.

ORDER: The appeal is dismissed.