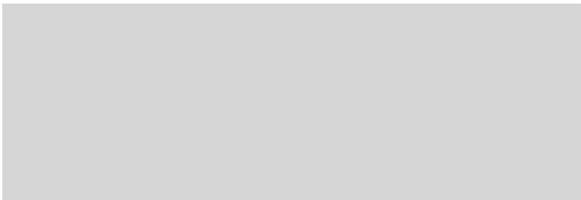




U.S. Citizenship
and Immigration
Services

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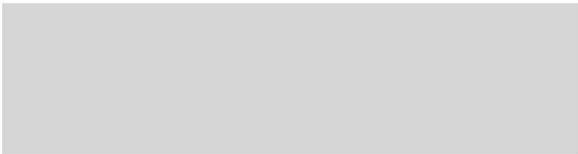
DATE: JUL 13 2015

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before us on a motion to reopen and reconsider. The motion will be denied.

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 her United States citizen spouse.

The director denied the petition, finding that the petitioner did not establish that she entered into the marriage with her husband in good faith and did not comply with section 204(g) of the Act. On appeal, we determined that the petitioner established, by a preponderance of the evidence, that she married her husband in good faith but did not meet the higher burden of proof required for the bona fide marriage exemption from section 204(g) of the Act. We further found that the record did not establish the petitioner's eligibility for immediate relative classification based on her marriage. On motion, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) 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 eligibility requirements 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.”

* * *

(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.

As noted, the regulations require that to remain eligible for immigration classification, a self-petitioner must comply with the provisions of section 204(g) of the Act. 8 C.F.R. § 204.2(c)(1)(iv).

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 or preference status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], 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), provides an exception to section 204(g) of the Act as follows:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –

- (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.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide. . . .

Facts and Procedural History

The petitioner, a citizen of Georgia, entered the United States on August 27, 2004 as a B-2 nonimmigrant visitor. The administrative record indicates that the petitioner and her first husband divorced on [REDACTED] 2006 and that she married her second husband, L-W-¹, a U.S. citizen, on [REDACTED] 2008. L-W- filed a Petition for Alien Relative (Form I-130), on behalf of the petitioner and subsequently withdrew it during an interview with United States Citizenship and Immigration Services (USCIS).² The petitioner married A-K-³, a U.S. citizen, on [REDACTED] 2011 in Maryland, and filed the instant Form I-360 self-petition on February 12, 2013 based on that marriage. The director issued Requests for Evidence (RFEs), in part, of the petitioner's good-faith entry into the marriage, informing her that section 204(g) of the Act barred approval of the self-petition because she married A-K- while she was in removal proceedings. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility, and denied the petition. We dismissed the appeal in a decision dated October 31, 2014, which is incorporated herein by reference. The petitioner timely filed the instant motion to reopen and reconsider.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

We review these proceedings *de novo*. The petitioner has not asserted any new facts to be proved in the reopened proceeding. The petitioner does not cite binding precedent decisions or other legal authority establishing that our decision or the director's incorrectly applied the pertinent law or agency policy, nor does she show that the prior decisions were erroneous based on the evidence of

¹ Name withheld to protect the individual's identity.

² As discussed in our October 31, 2014 decision, incorporated herein, the administrative record contains evidence of marriage fraud in the petitioner's prior marriage to L-W-. However, as the director did not make a finding of ineligibility pursuant to section 204(c) of the Act, and the petition is not otherwise approvable, we do not reach this issue on motion but are not precluded from doing so in any further proceeding.

³ Name withheld to protect the individual's identity.

record at the time. Consequently, the motion to reopen and reconsider will be denied for the reasons discussed below. See 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

Section 204(g) of the Act Bars Approval

In our appeal decision, we determined that the record established, by a preponderance of the evidence, the petitioner's good faith in marrying A-K- but did not demonstrate by clear and convincing evidence the bona fides of her marriage as required by 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 (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 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.

In our appeal decision, we noted factual deficiencies in the record. The petitioner did not acknowledge that she maintained separate checking and credit card accounts from her husband, detracting from her assertion that their financial resources were combined. We indicated that the lease for the [REDACTED] apartment was unsigned. We explained that the petitioner's three statements and the affidavits in support of the self-petition provided minimal information regarding the petitioner's intentions in marriage and did not provide probative testimony regarding the petitioner's courtship, wedding ceremony, and other shared experiences with A-K-.

On motion, the petitioner submits a signed copy of the [REDACTED] lease, a fourth personal statement, and supplemental letters from friends, [REDACTED]

With respect to the lease agreement, the petitioner does not explain how she obtained a signed copy of the [REDACTED] lease which was previously not signed. The signatures on the lease are not dated. There is also an inconsistency in the terms of the lease. The lease is for a two-year term from January 1, 2012 through December 31, 2013 at a monthly rent of \$775. Under Part 6 of the lease, however, the total rent due during the term is \$9,300. The total amount due for a 24-month term should be \$18,600, not \$9300 as stated in the lease. Further, the petitioner previously indicated in her statement dated October 29, 2013 that she lived with A-K- at the [REDACTED] address when she got married on [REDACTED] 2011, which is prior to the beginning of the lease term. The record does not contain an explanation for these discrepancies.

In the petitioner's statement on motion, she explains that A-K- did not give her money, in part, because he was controlling, greedy and jealous, and wanted to keep her completely dependent on

him. The record does not establish how the petitioner was able to maintain a separate bank account and credit cards in her name alone during her marriage to A-K-. [REDACTED] states that she liked A-K- in the beginning of his relationship with the petitioner, and spent a lot of time with the couple. Ms. [REDACTED] states that she attended their post-wedding dinner party at a Georgian restaurant, and described toasting the couple, dancing, and singing. [REDACTED] and [REDACTED] similarly described the party, and most indicated that they spent a significant amount of time with the petitioner and A-K-. However, none of the letters submitted on motion provide any further, probative information regarding the petitioner's early relationship with A-K-, her decision to marry him, their joint residence and other shared experiences sufficient to demonstrate her good-faith entry into the marriage by clear and convincing evidence. Accordingly, the record does not establish the petitioner's 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

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 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).

Conclusion

On motion, the petitioner has not overcome the grounds for dismissal of her appeal. She has not demonstrated that she entered into the marriage with A-K- in good faith by clear and convincing evidence. The petitioner 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. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the motion will be denied. 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 motion is denied. Our October 31, 2014 decision is affirmed. The petition remains denied.