



U.S. Citizenship
and Immigration
Services

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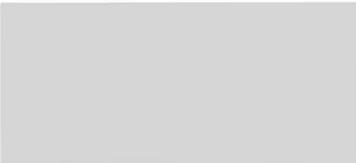
FILE #: [REDACTED]

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center (the director), denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 his United States citizen spouse.

The director denied the petition because the petitioner did not establish that he entered into the marriage with his United States citizen spouse in good faith and was exempt from the bar to approval of his petition under section 204(g) of the Act, and thus, he also did not demonstrate his eligibility for immigrant classification under section 201(a)(b)(2)(A)(i) of the Act.

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 eligibility requirements 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)(1), which states, in pertinent part:

(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 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.

* * *

(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, a citizen of Mexico, entered the United States on February 5, 2008, as a nonimmigrant visitor. He was placed into removal proceedings on December 12, 2008 and was last paroled into the United States on December 22, 2008. On January 29, 2009, an immigration judge ordered the petitioner removed from the United States *in absentia*. The petitioner thereafter married C-E-¹, a U.S. citizen, on [REDACTED] 2011 in [REDACTED] Illinois. He filed the instant Form I-360 self-petition on June 19, 2012 based on his relationship to C-E-. On September 4, 2012, the petitioner was removed from the United States pursuant to the 2009 removal order. The record indicates that he has since remained outside the United States during the adjudication of the instant petition. The director issued a Request for Evidence (RFE) of, among other things, the petitioner's good faith intentions in marrying C-E- and that he is exempt from the bar to approval at section 204(g) of the Act. The petitioner responded to the RFE 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 matters on a *de novo* basis. Upon full review of the record, as supplemented on appeal, the petitioner has overcome all of the director's grounds for denial. Accordingly, the appeal will be sustained for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal has demonstrated the petitioner's good faith entry into his marriage with C-E-. In his initial statement, the petitioner described in probative detail his first meeting with C-E- at a barbeque hosted by mutual friends. He recalled C-E- staying close to his side and asking for his telephone number, and he explained that he liked her. They exchanged telephone numbers, and met again the following week. The petitioner described the conversation they had during their second meeting and the personal details C-E- shared with him about her life. He described in further probative detail the circumstances of their first date at a movie theater and dinner thereafter, and recalled telling C-E- of his feelings for, and serious intentions towards, her. The petitioner described his courtship and relationship with C-E-, including meeting each other's

¹ Name withheld to protect the individual's identity.

families, and stated that in December 2010, C-E- and her son moved in with him. In a subsequent personal statement, submitted in response to the RFE, the petitioner further described his relationship with C-E-, explaining that they dated for approximately a year before deciding to move in together. He recounted in detail that he was residing with his sister, a single mother of two, and described the conversation they had about his feelings for and intentions toward C-E- and inviting her and her son to their trailer home, where they would all reside together. The petitioner recalled his sister's positive impressions of his relationship with C-E- and C-E-'s excitement about the news. The petitioner described bonding with C-E-'s son and taking him and his nieces all out together.

The petitioner also submitted, below and on appeal, numerous photographs of his wedding, attended by his stepson and several other family members, as well as photographs of him with C-E- at various times and at different family gatherings and parties. He also proffered copies of two joint bank account statements from September and October 2011, a notice from the bank indicating a change of address for both the petitioner and C-E-, a July 28, 2011 name change confirmation for C-E- indicating the couple's joint address, and the petitioner's patient record listing C-E- as his spouse in September 2011. On appeal, he provides copies of several personal greeting cards, an invitation addressed jointly to him and C-E-, and two personal drawings the petitioner made for C-E- during their relationship.

The record also includes the personal statements of multiple family members and friends. Although the statements submitted below focused primarily on the abuse, the petitioner submits additional statements on appeal from family and friends attesting to his good faith intentions in marrying C-E-. His sister, [REDACTED] discusses the petitioner's happiness after meeting C-E- and how he described C-E- to her as a special woman and the best thing that had ever happened to him. She further details her Sunday routines shared with the petitioner and C-E-, and discusses the thoughtful gifts she saw him give to C-E- on numerous occasions. She also recounts a birthday party she attended with the couple where she witnessed the petitioner trying to teach C-E- a dance style. The petitioner's aunt, [REDACTED] similarly describes in probative detail her interactions with the petitioner and C-E-, including her vacation with them, and explains how happy the family was planning and organizing the couple's wedding. The petitioner's friend, [REDACTED] indicates that he interacted with the couple on multiple occasions and often observed them declaring their mutual love and showing affection toward one another. He describes C-E-'s birthday party for which he helped the petitioner prepare a cake, purchase gifts and decorations to surprise her, and discussed preparations made by the petitioner's mother and sister.

On appeal, the petitioner has demonstrated by a preponderance of the evidence that he entered into his marriage with C-E- in good faith. The petitioner has submitted his own personal statements and the statements of family and friends, providing probative details of his courtship and marital intentions. In addition, the petitioner has submitted evidence that he and C-E- shared joint accounts, a common address and joint residence, listed one another as spouse, took photographs on multiple occasions as a couple, and exchanged greeting cards and drawings. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner married C-E- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director's decision to the contrary is withdrawn.

Section 204(g) of the Act

The director further determined that because the petitioner married while he was in removal proceedings, he was subject to the bar to approval of his self-petition at section 204(g) of the Act, which 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.

On the date of the director’s September 5, 2013 decision, the petitioner had not resided outside of the United States for two years after his marriage. Accordingly, the director properly determined that section 204(g) of the Act barred approval of his self-petition unless the petitioner could 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.

The record indicates that the petitioner was removed from the United States on September 4, 2012 and has remained outside of the United States since that date. Although the petitioner had not yet resided outside the United States for two years following his marriage to C-E- at the time the director rendered the decision below, the petitioner has now remained outside of the United States for the requisite two years after the date of his marriage. He is therefore, no longer subject to the bar at section 204(g) of the Act and the corresponding heightened evidentiary standard requiring that he establish the *bona fide* marriage exemption pursuant to section 245(e)(3) of the Act.² The director's determination to the contrary is withdrawn.

Eligibility for Immediate Relative Classification

Because the petitioner is not subject to the bar to approval at section 204(g) of the Act, and because, even if he had been so subject he has complied with, and is exempt from section 204(g) of the Act, he has also demonstrated that he is eligible for immediate relative classification based on his marriage to his U.S. citizen spouse, 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). The director's determination to the contrary is hereby, withdrawn.

Conclusion

On appeal, the petitioner has overcome all of the director's grounds for denial. The petitioner has established by a preponderance of the evidence that he entered into his marriage with C-E- in good faith. The petitioner has demonstrated that he is no longer subject to the statutory bar to approval of his petition at section 204(g) of the Act, and thus, he is eligible for immediate relative classification based on his qualifying marriage. Accordingly, the petitioner is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. 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 been met and the appeal will be sustained.

ORDER: The appeal is sustained.

² Even if section 204(g) of the Act did apply to bar approval of the instant petition, based on our *de novo* review of the record below and on appeal, the petitioner has now demonstrated his exemption from the statutory bar under that provision by establishing the *bona fides* of his marriage to C-E- under the heightened clear and convincing evidence standard. Our determination here that section 204(g) of the Act does not apply to bar approval of the instant petition, however, renders a full discussion of whether the petitioner is exempt from the bar unnecessary.