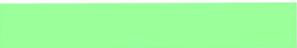




U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **MAR 18 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)

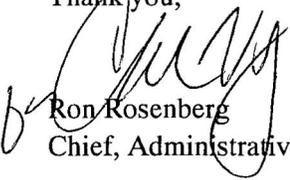
ON BEHALF OF PETITIONER:

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 (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 did not establish by a preponderance of the evidence that she entered into the marriage in good faith under section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director also noted that the petitioner married while she was in removal proceedings and did not establish by clear and convincing evidence that she entered into the marriage in good faith, and was consequently subject to the bar to approval of her petition under section 204(g) 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 U.S. 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 for preference classification as the spouse of a United States citizen, 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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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(g) 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.

\* \* \*

(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.

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 provides:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* -- Notwithstanding subsection (a) of this section, except as provided in section 1255(e)(3) of this title, a petition may not be approved to grant an alien . . . preference 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 be admitted or 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, 8 U.S.C. § 1255(e) 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 corresponding regulation at 8 C.F.R. § 204.2(a)(1)(iii) states, in pertinent part:

*Marriage during proceedings -- general prohibition against approval of visa petition.* A visa petition filed on behalf of an alien by a United States citizen or a lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in . . . removal proceedings, or judicial proceedings relating thereto. . . . [T]he burden in visa petition proceedings to establish eligibility for the exemption . . . shall rest with the petitioner.

(A) Request for exemption. [T]he request must be made in writing . . . . The request must state the reason for seeking the exemption and must be supported by documentary evidence establishing eligibility for the exemption.

(B) Evidence to establish eligibility for the *bona fide* marriage exemption. The petitioner should submit documents which establish that the marriage was entered into in good faith and not entered into for the purpose of procuring the alien's entry as an immigrant. The types of documents the petitioner may submit include, but are not limited to:

- (1) Documentation showing joint ownership of property;
- (2) Lease showing joint tenancy of a common residence;
- (3) Documentation showing commingling of financial resources;
- (4) Birth certificate(s) of child(ren) born to the petitioner and beneficiary;
- (5) Affidavits of third parties having knowledge of the *bona fides* of the marital relationship (Such persons may be required to testify before an immigration officer as to the information contained in the affidavit. Affidavits must be sworn to or affirmed by people who have personal knowledge of the marital relationship. Each affidavit must contain the full name and address,

date and place of birth of the person making the affidavit and his or her relationship to the spouses, if any. The affidavit must contain complete information and details explaining how the person acquired his or her knowledge of the marriage. Affidavits should be supported, if possible, by one or more types of documentary evidence listed in this paragraph); or  
(6) Any other documentation which is relevant to establish that the marriage was not entered into in order to evade the immigration laws of the United States.

### *Facts and Procedural History*

The petitioner is a citizen of Haiti who presented herself for admission into the United States on February 15, 2012 as an intending immigrant without entry documents. On February 17, 2012, the petitioner was placed in removal proceedings, which remain pending. The petitioner married A-K-<sup>1</sup>, a United States citizen, on February [REDACTED] thus subjecting herself to the bar on approval of immigrant petitions based on marriages entered into while the alien is in removal proceedings at section 204(g) of the Act.<sup>2</sup> The petitioner filed the instant Form I-360 self-petition on September 6, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, clear and convincing evidence that the petitioner entered into the marriage in good faith. The petitioner responded to the RFE with additional evidence which the director found insufficient and denied the petition. The petitioner filed a timely appeal.

We review these proceedings *de novo*. The petitioner's assertions on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

### *Good Faith Marriage*

We agree with the director that the evidence did not establish the petitioner's good faith entry into the marriage. The record contained a personal statement from the petitioner, a lease agreement, pay stubs, a police report and a letter from the petitioner's landlord. The petitioner stated in her written declaration that A-K- approached her at the coffee shop where she worked in October 2013, that after two weeks she became romantically involved with him, and after three months he proposed. She stated that A-K- told her that he loved her and wanted to start a family with her. She indicated that she wanted to start a family, that she hesitated to marry him because he showed signs of violence, and that she married him to show him that she loved him. The petitioner did not describe her feelings for A-K- or articulate any probative details about their relationship. She described nothing further about the courtship, the wedding ceremony, their shared residence or their experiences as a couple apart from the abuse.

<sup>1</sup> Name withheld to protect the individual's identity.

<sup>2</sup> See 8 C.F.R. § 245.1(c)(8)(ii)(A) (Section 204(g) of the Act applies and proceedings remain pending until the removal order is executed and the alien departs the United States, is found not to be removable or the proceedings are otherwise terminated).

The lease agreement was signed by the petitioner for the premises at [REDACTED] Florida, entered into February 24, 2013 with a termination date of April 30, 2014. The lease was written in the name of the petitioner only. The copies of three pay stubs issued to A-K- and dated for three consecutive weeks in June and July, 2013 were addressed to him at the noted [REDACTED] address. The letter from [REDACTED], Manager of the [REDACTED] indicated that the petitioner and A-K- resided together at the noted address. The police report in the record dated August 2013 described a verbal altercation between the petitioner and A-K- both residing at the noted address, in which A-K- stated he did not want to get married. The three pay stubs issued to A-K-, the letter from [REDACTED] and the police report established that the petitioner and A-K- resided together, but this evidence did not demonstrate that the petitioner married A-K- in good faith.

On appeal, the petitioner does not provide any further evidence regarding her marital intentions. She asserts that the evidence overall establishes her good faith marriage. She states that the fact that she shared a home with A-K- and endured his abuse establishes her good faith and that she intended to share a life with A-K- when she married him. She indicates that her desire to start a family with her husband establishes her *bona fide* intention to create and maintain a life with him. The petitioner does not, however, give details about the couple's shared lives, their families, friends, or activities. Without a probative account of their courtship, the wedding ceremony, their shared residences and experiences, the evidence is not sufficient to demonstrate that the petitioner entered into a marriage with A-K- in good faith. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Section 204(g) of the Act Bars Approval*

Although the petitioner states that Section 204(g) of the Act does not apply to the self-petition in the instant case, she cites no law or precedent decision to support her assertion. As noted above, Section 204(g) of the Act applies to any alien who enters into marriage during removal proceedings. See 8 C.F.R. § 245.1(c)(8)(ii)(A). 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 than "preponderance of the evidence." *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."). As the petitioner has not established by a preponderance of the evidence that she entered into the marriage with A-K- in good faith, she has not demonstrated under the more heightened standard of clear and convincing evidence that she entered into a good faith marriage.

*Eligibility for Immediate Relative Classification*

Beyond the decision of the director, the petitioner has not established that she has a qualifying relationship with a United States citizen and that she is exempt from section 204(g) of the Act, and thus has not demonstrated her eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.<sup>3</sup>

*Conclusion*

On appeal, the petitioner has not established that she entered into her marriage in good faith by either a preponderance or clear and convincing evidence, or that she complied with the provisions of section 204(g) of the Act and that she is eligible for immigrant classification based on her marriage to a United States citizen. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.

**ORDER:** The appeal is dismissed.

<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003).