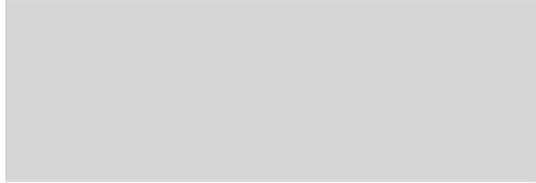




U.S. Citizenship
and Immigration
Services

(b)(6)



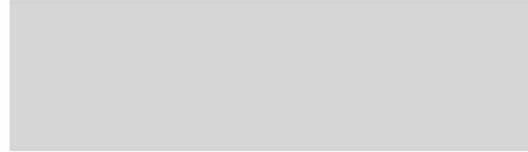
Date: MAY 12 2015

Office: VERMONT SERVICE CENTER File: 

IN RE: 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 Director, Vermont Service Center, 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 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 a U.S. citizen.

The director denied the petition finding that the petitioner lacked credibility, and for failure to establish that the petitioner's spouse subjected her to battery or extreme cruelty during their marriage, and that the petitioner entered into marriage with her husband in good faith and met the requirement for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act because she married while she was in removal proceedings. The director further determined that the petitioner also failed to demonstrate a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of that relationship.

Applicable Law

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 are further explicated 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 . . .

* * *

(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 . . . 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 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.

* * *

(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.

The record in this case indicates that the petitioner was in removal proceedings at the time of her marriage.¹ 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).

¹ The petitioner was ordered removed by an immigration judge on [REDACTED] 2004, and married her U.S. citizen spouse on [REDACTED] 2005.

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

(v) 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. Evidence that a visa petition based upon the same marriage was approved under the bona fide marriage exemption to section 204(g) of the Act will be considered primary evidence of eligibility for the bona fide marriage exemption provided in this part. The applicant will not be required to submit additional evidence to qualify for the bona fide marriage exemption provided in this part, unless the district director determines that such additional evidence is needed. In cases where the district director notifies the applicant that additional evidence is required, the applicant must submit documentary evidence which clearly and convincingly establishes 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. Such evidence may include:

- (A) Documentation showing joint ownership of property;
- (B) Lease showing joint tenancy of a common residence;
- (C) Documentation showing commingling of financial resources;
- (D) Birth certificates of children born to the applicant and his or her spouse;
- (E) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or
- (F) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nigeria who sought to procure admission into the United States on December 7, 2002, by presenting a Nigerian passport and visitor visa that did not belong to her. On December 13, 2002, the petitioner was placed in removal proceedings and was paroled into the United States until December 13, 2003. She was ordered removed by an immigration judge on [REDACTED] 2004. The petitioner married K-S-,² a U.S. citizen, in Connecticut on [REDACTED] 2005, 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.³ The petitioner filed the instant Form I-360 on June 8, 2012.⁴ The director subsequently issued Requests for Evidence (RFE) of: the petitioner's good-faith entry into the marriage; her eligibility for the bona fide marriage exemption from section 204(g) of the Act; and that her spouse battered or subjected her to

² Name withheld to protect the individual's identity.

³ 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).

⁴ Although the petitioner claims to have divorced her spouse, public records do not show that the petitioner and K-S- are divorced.

extreme cruelty during their marriage. The petitioner responded with additional evidence which the director found insufficient, and the director denied the petition accordingly. The petitioner filed a timely appeal.

We review these proceedings *de novo*. Although the record does not support the director's lack of credibility finding, which is withdrawn, a full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner has not demonstrated that K-S- battered or subjected her to extreme cruelty during their marriage, that she married K-S- in good faith, and that she met the requirement for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act. Further, the petitioner also failed to demonstrate a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of that relationship.

Battery or Extreme Cruelty

In her initial letter, the petitioner recounted that upon their marriage she and K-S- moved into a bedroom in K-S-'s family home and that their relationship was "okay" until she suggested they move. The petitioner generally claimed that K-S- forced her to have sex on several occasions, one of which resulted in her having to go to the hospital. She did not provide specific details of any incident, her injuries, or her hospital visit. She indicated that K-S- would stay away from their home for days and would slap her if she asked where he had been. The petitioner claimed that when she became pregnant in 2010, K-S- forced her to have an abortion. She indicated that K-S- belittled and degraded her, and she left him to stay with her aunt before she went to her sister's home. In her affidavit in response to the RFE, the petitioner stated that her husband used illegal drugs, her refusal to engage in his sexual demands ended in "a physical fight," and her husband threatened her.

The petitioner also submitted letters from family members, friends, a colleague, and her pastor which, like the petitioner's statements, contain only vague references to the claimed abuse. [REDACTED] the petitioner's aunt, recalled that the petitioner told her that K-S- would beat her. Similarly, the petitioner's mother and sister indicated that the petitioner claimed that K-S- would force himself on her if she refused to have sex, and after K-S- forced the petitioner to have sex she went to a hospital's emergency room for treatment for bleeding. The petitioner's brothers generally recounted that K-S- abused the petitioner physically, mentally, and emotionally and the petitioner's friend, [REDACTED], claimed that K-S- was verbally abusive to the petitioner. Similarly, the petitioner's colleague, [REDACTED] recalled that the petitioner told her that K-S- was aggressive sexually and forced the petitioner to have sex. The petitioner's pastor, [REDACTED] reported only that he was aware of the couple's marital problems and offered counseling. None of the letters submitted on the petitioner's behalf provide specific information about the claimed physical, sexual, emotional, or verbal abuse. The petitioner's friends and family do not indicate that they witnessed any particular incident and fail to describe any alleged occurrence related to them by the petitioner in detail.

In addition, the petitioner submits notes, treatment plans, and assessments regarding the claimed abuse. The progress notes dated July 6, 2012, from [REDACTED] Physicians Assistant, diagnose the petitioner with symptoms of depressive disorder. The treatment plan and assessment/evaluation

progress notes dated July 11, 2012, and July 12, 2012, respectively, from [REDACTED], a licensed clinical social worker, indicated that K-S- reportedly was abusing the petitioner (“slaps her”) and the petitioner had symptoms of hallucinations, anxiety, and depression. The assessment/individual therapy progress notes dated August 15, 2012, from [REDACTED], master of social work, reported that after the death of her child, the petitioner had symptoms of depression, and two years into her marriage K-S- was “primarily verbally abusive” and had “slapped [the petitioner] in the past.” The mental health assessment dated April 11, 2014, from [REDACTED], a licensed clinical social worker and licensed alcohol drug abuse counselor, stated that the petitioner continued to be depressed after the death of her child. Mr. [REDACTED] indicated that K-S- reportedly abused alcohol and crack cocaine, always wanted to have sex with the petitioner when under the influence, and would hit and choke the petitioner if she refused. Mr. [REDACTED] stated that K-S- forced the petitioner to terminate pregnancies, threatened the petitioner, and belittled her in front of family and friends. Mr. [REDACTED] stated that the petitioner continues to suffer from the effects of Battered Spouse Syndrome and Post Traumatic Stress Disorder (PTSD) as a result of her marriage to K-S-. Again, however, the reports, notes and assessments do not document any specific occurrence. Instead, the documents reference only the petitioner’s general claims that physical, sexual and verbal abuse occurred.

On appeal, the petitioner submits a police report and [REDACTED] credit documents to establish she was battered or subjected to extreme cruelty during her marriage. The police incident report states that on March 4, 2013, the petitioner alleged that K-S- had forged her signature to obtain a car loan.

Upon a full review of all the relevant and credible evidence, the petitioner has failed to demonstrate, by a preponderance of the evidence, that she was subjected to battery or extreme cruelty during her marriage to K-S-, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner claimed that she was subjected to physical, sexual, and verbal abuse but failed to provide specific details of any particular incident. Her friends and family do not describe witnessing any particular incident of abuse and fail to describe with specificity any alleged occurrence of abuse related to them by the petitioner. Her pastor reported only his awareness of the couple’s marital problems and his offer of counseling. The reports, notes and assessments also do not document any specific occurrence of abuse. The police report and [REDACTED] do not demonstrate that the petitioner was subjected to battery or extreme cruelty. Accordingly, the record fails to demonstrate the battery or extreme cruelty required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into the Marriage

In her initial letter, the petitioner stated that she met K-S- in 2003 while he was working as a handyman on odd jobs at her sister’s home. She recounted that he made her laugh and helped with her child, who was born with a heart disease. She stated that she fell in love with K-S- and married him against her mother’s advice. The petitioner indicated that at first their relationship was “okay.” She, however, did not discuss in probative detail the first time she met K-S-, their courtship and subsequent engagement, marriage ceremony, joint residence, or any of her shared experiences with K-S-, apart from the abuse.

In her second letter, the petitioner primarily discussed her marital problems. Similarly, her mother, aunt, sisters, brothers, pastor, and friends discuss the problems in her marriage generally, but provide no probative information about her relationship with K-S- and good-faith marital intent. Although the petitioner submitted documents from [REDACTED] and [REDACTED] indicating that she was five weeks pregnant in late 2010, which was during her marriage to K-S-, the documents do not identify the father and are not sufficiently probative to establish K-S- as the father.

On appeal, the petitioner submits joint documents. The 2008 income tax return⁵ shows the couple's tax filing status as "Married filing jointly," and the 2007 tax return shows their tax filing status as "Married filing separately," but there is no evidence that the tax returns were ever filed with the Internal Revenue Service. The account statements from [REDACTED] show a joint checking account but they are for January to December of 2009 and January through March of 2010 only; the account was frozen in April 2009, May 2009, and June 2009. The petitioner further submitted [REDACTED] and [REDACTED] insurance plan cards for 2010 which show the names of the petitioner and K-S-; a [REDACTED] vehicle insurance policy for the petitioner and K-S- for the period October 30, 2008, to April 30, 2009; and an invoice from [REDACTED] dated November 26, 2008. The record also contains vehicle tax bills in the petitioner's name; letters, invoices, and credit card receipts for the petitioner from [REDACTED] her medical records; and unemployment insurance payments to K-S- for 2005 and 2009. These latter documents do not show comingling of funds or resources, or provide information about the petitioner's intentions in entering into the marriage. In addition, the petitioner submitted photographs of herself and K-S- pictured together, but the photographs are undated and the petitioner does not describe the significance of the events in the photographs. Finally, the January 2005 residential lease agreement is signed by the petitioner and K-S- but not only is the lease dated almost a year before the period in which the petitioner claimed to live with K-S-⁶ but it also shows the petitioner's married name before she wed K-S-.

The letters submitted on appeal from Ms. [REDACTED] Ms. [REDACTED] and Mr. [REDACTED] stated that the petitioner has been married to K-S- since 2005 but do not provide any probative information about her relationship with K-S-, such as their courtship, engagement, and decision to marry.

The petitioner contends on appeal that she has met her burden of showing she was in a bona fide marriage with K-S-; however, the testimonial and other relevant evidence submitted does not demonstrate her entry into the marriage in good faith. Although the petitioner has submitted some joint documents showing a shared checking account and insurance, the petitioner's affidavits only briefly describe meeting her husband and do not discuss her courtship, subsequent engagement, marriage ceremony, joint residence, or any of her shared experiences with K-S- in meaningful detail. Similarly, the affidavits from friends and relatives are general and do not discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage.

⁵ The petitioner provided only the first page of the 2008 tax return.

⁶ The petitioner stated that she married K-S- on December 23, 2005 and thereafter moved into his family home.

When viewed in the totality, the preponderance of the relevant evidence fails to establish that the petitioner's entry into marriage with K-S- was 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 K-S- while she was in removal proceedings and 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 his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. Although 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 his or 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 his or 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 K-S- 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 heightened standard of proof required by section 245(e)(3) of the Act.

On appeal, the petitioner refers to the approved Form I-130, Petition for Alien Relative,⁷ filed by K-S- on her behalf as evidence of her good-faith entry into the marriage pursuant to 8 C.F.R. § 245.1(c)(8)(v), and argues that "[US]CIS cannot require additional proof of the bona fides of the petition." She cites *Patel vs. Ashcroft*, 375 F.3d 693, 696 (8th Cir. 2004), in which the Court of Appeals for the Eighth Circuit determined that notice of an approved visa petition sufficed to constitute clear and convincing evidence of a bona fide marriage. The instant case, however, arises in the jurisdiction of the Second Circuit, and we are not bound to follow decisions outside of the Second Circuit.

More importantly, the record indicates that the prior petition was approved in error. K-S- filed four Form I-130s on the petitioner's behalf. The first Form I-130 was filed on July 9, 2006,⁸ and denied for abandonment on October 22, 2007. The second Form I-130 was filed on February 19, 2008,⁹ and denied on December 16, 2010, for failure to establish the bona fides of the marriage by clear and

⁷ Approval notice for [REDACTED] with the July 5, 2012, Notice Date.

⁸ Petition Receipt Number [REDACTED]

⁹ Petition Receipt Number [REDACTED]

convincing evidence. In the decision denying the second Form I-130, the director found that the submitted joint documentation covered the period since 2008 but did not include the first three years of the couple's marriage, the joint lease was "questionable," there were discrepancies between the documents that show the address of the claimed joint residence, and the petitioner's husband did not establish the petitioner's "true identity." *Decision of the Field Office Director*, December 16, 2010. The petitioner's husband appealed the director's denial. Upon review of the director's decision, the Board of Immigration Appeals (BIA), affirmed the denial finding the record contained "insufficient persuasive evidence of a joint life" and the petitioner's husband had not "overcome the concerns" of the Field Office Director regarding the petitioner's identity. *Decision of the Board of Immigration Appeals*, dated November 25, 2011. The third Form I-130 was filed on December 19, 2011,¹⁰ and approved on July 5, 2012. The record does not indicate that there was an in-person interview prior to the approval and the third Form I-130 submission contains only a marriage certificate, birth certificate, Form G-325A, Biographic Information forms, passport photographs, and a letter from the attorney of the petitioner's husband. This evidence is not sufficient to establish by clear and convincing evidence a bona fide marital relationship and we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

Furthermore, even if the petitioner has an approved Form I-130, the regulation at 8 C.F.R. § 245.1(c)(8)(v) prescribes that when a visa petition based on the same marriage is approved, it will generally be considered primary evidence of eligibility for the bona fide marriage exemption unless the U.S. Citizenship and Immigration Services (USCIS) determines additional evidence is needed. 8 C.F.R. § 245.1(c)(8)(v). The fact that a visa petition based on the marriage in question was previously approved does not automatically entitle the beneficiary 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 . . . that the marriage was bona fide and not entered into to evade immigration laws.").

Moreover, although similar, the parties, statutory provisions and benefits procured through sections 204(a)(1)(A)(i) (Form I-130) and 204(a)(1)(A)(iii) (Form I-360) of the Act are not identical. K-S- 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 U.S.C. § 1151(b)(2)(A)(i); 8 C.F.R. §§ 204.1(f), 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 that she entered the marriage in good faith by clear and convincing evidence, a heightened standard of proof. Section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I); 8 C.F.R. § 204.2(c)(1)(iv). As already discussed, the evidence in the record and on appeal does not provide clear and convincing evidence of her entry into the marriage in good faith. Accordingly, the petitioner has not established her 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.

¹⁰ Petition Receipt Number [REDACTED]

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, 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).

Conclusion

The petitioner has failed to demonstrate that K-S- battered or subjected her to extreme cruelty during their marriage, that she married K-S- in good faith, and that she met the requirement for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act. The petitioner also failed to demonstrate a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of that relationship.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition remains denied.