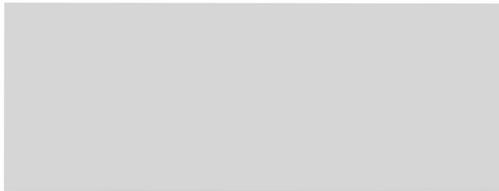




U.S. Citizenship
and Immigration
Services

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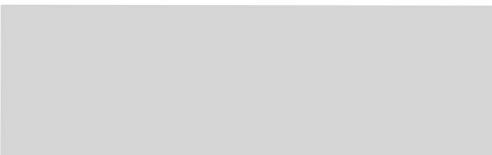
DATE: **MAY 12 2015**

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,

f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Center Director, Vermont Service Center denied the 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 a United States citizen.

The director denied the petition, finding that the petitioner had not established that he entered into his marriage in good faith. The director also determined that the petitioner had not met the requirement for the bona fide marriage exemption from the bar to approval at section 204(g) of the Act because he married while he was in removal proceedings.

On appeal, the petitioner submits a brief and additional evidence.

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 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 his marriage. In such a situation, 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 his 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 are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities

* * *

(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 was born in the Philippines. The record shows that he last entered the United States on April 20, 2007, as a B-2 nonimmigrant visitor. On January 11, 2011, the Department of Homeland Security (DHS) issued a Notice to Appear charging the petitioner with removability under section 237(a)(1)(B) of the Act for having been remained in the United States beyond October 19,

2007 without authorization. He married his U.S. citizen spouse, M-V-,¹ on [REDACTED] 2011, in [REDACTED] Illinois. On November 23, 2011, M-V- filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner. The agency denied the Form I-130 petition on July 24, 2012. The petitioner filed the instant self-petition on October 15, 2012. On January 14, 2014, the director issued a request for evidence (RFE) that, among other things, the petitioner entered into marriage with M-V- in good faith and was eligible for the bona fide marriage exemption from section 204(g) of the Act. The petitioner responded, but the director found the response insufficient to establish the petitioner's eligibility and denied the petition on these grounds. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Good-Faith Entry into Marriage

The petitioner provided a statement with his Form I-360 self-petition in which he indicated that he met M-V- at "[REDACTED]" in July of 2010 and that he thought that she was very nice and a good listener. He indicated that they subsequently dated every Friday or Saturday for a couple of months, and called each other every night. The petitioner asserted that M-V- told him she was divorced with two children, and worked as a telemarketer. On December 24, 2010, the petitioner and M-V- went to dinner and while they were discussing the possibility of living together, he explained that he "suddenly" proposed marriage to M-V- and she accepted. The petitioner stated that they married on [REDACTED], 2011, in [REDACTED], and that his mother, his cousin, his friend, and M-V-'s cousin and friend attended the ceremony, after which they "went out to celebrate." He said that they did not go on a honeymoon, and that when he came home from work after two days of marriage, M-V- had moved five children into his house rather than the two she initially claimed. The petitioner advised that although he was shocked to find out about her additional children, he agreed that they could both work and support the children. He stated that their household was chaotic, that M-V- was busy with the children during the day, and that the youngest child slept in their bed at night. A week later, the petitioner alleged that M-V- told him that she had lost her job, but she never looked for a new job and instead began to take money out of his wallet. The petitioner indicated that three months after their marriage, their apartment was dirty, that M-V- never finished any chores, and was always shouting at him and the children. The remainder of the petitioner's statement focuses on M-V-'s abusive behavior. He asserted that M-V- eventually left him, although he provided conflicting dates, first indicating that she left him in July of 2012 and then attesting that she left the house on April 23, 2012, and never came back. The petitioner did not provide any probative details of their courtship or dates, other than naming the bar at which they first met and generally asserting that they dated on weekends and became engaged at a restaurant. The petitioner did not describe their shared marital residence and routines, other than to describe their household as dirty and chaotic because of M-V-'s children, nor did he provide any other probative information about his intentions at the time he married M-V-.

¹ Name withheld to protect the individual's identity.

The petitioner provided an affidavit from his cousin, [REDACTED] who indicated that she visited the petitioner and M-V- at their residence. Ms. [REDACTED] stated that when she visited the petitioner and M-V-, M-V- always said hello and then left their presence. Ms. [REDACTED] stated that she witnessed M-V- hit the petitioner when they were at Ms. [REDACTED] house for dinner, and that she attended a surprise birthday party where M-V- yelled and hit the petitioner in front of the guests. The petitioner also provided an affidavit from his friend, [REDACTED] who indicated that he visited the petitioner and M-V- three times at their house. Mr. [REDACTED] did not describe the shared marital residence or provide details about any particular visit. Apart from describing M-V-'s behavior toward the petitioner during a dinner at Ms. [REDACTED] and during a surprise birthday party, Ms. [REDACTED] and Mr. [REDACTED] did not describe any particular visits with the petitioner and M-V-. They both generally asserted that they knew the petitioner married M-V- in good faith, but did not provide any details or insights into the petitioner's marital relations for purposes of establishing the petitioner's good faith entry into marriage with M-V-.

The petitioner provided three checking account statements from February, April, and May of 2012 from an account that lists both his name and M-V-. He included three withdrawal slips showing that M-V- withdrew \$1200.00 in cash from the account on May 15, 2012. The petitioner alleged that M-V- withdrew this money and an additional \$350.00 in February and April of 2012 to pay two businesses without his permission. Three months of bank statements and evidence relating to some disputed withdrawals are insufficient to establish the petitioner's good-faith entry into marriage with the petitioner. The petitioner included photographs of himself with M-V-, but these were all taken on their wedding day and do not provide any insight into their relationship before and after the wedding day.

In response to the RFE, the petitioner resubmitted the affidavits and bank statements he had initially provided. He included a written bona fide marriage exemption request. On appeal, the petitioner asserts that he entered into his marriage with M-V- in good faith. Although he submits a new affidavit, it is nearly identical to his initial affidavit. Although he clarifies that M-V- left him on July 15, 2012, he does not provide any additional insight into his intentions at the time he entered into marriage with M-V-.

The petitioner includes affidavits from his mother and friends. His mother states that she first met M-V- at a [REDACTED] restaurant in April of 2011 where they celebrated the petitioner's mother's birthday. According to the petitioner's mother, the petitioner also informed her at the restaurant that he and M-V- intended to marry. The petitioner's mother explains that she "was taken with [M-V-'s] charms" but provides no other details of the dinner. According to the petitioner's mother, the wedding one month later "was a happy day," and the petitioner told his mother he intended to adopt M-V-'s two sons. The petitioner's mother indicates that after the wedding she repeatedly invited M-V- and her two sons to family events, but that M-V- and the petitioner kept breaking plans to visit. The petitioner's mother does not explain why she appears to still believe that M-V- had only two sons when the petitioner stated that M-V- had five children. The remainder of the statement focuses on the petitioner's descriptions to his mother of M-V-'s behavior. His mother did not

describe her own conversations with or observations of M-V- and the petitioner during the shared dinner at [REDACTED] during their wedding ceremony, or at the celebration after their wedding day, nor did she provide any additional insight into the petitioner's marital intentions.

The petitioner's friend, [REDACTED] states that she often had dinner with the petitioner and M-V- at their apartment "at [REDACTED]" that she met M-V-'s five children and found them well-behaved, and that M-V- and the petitioner had come to her house for dinner at least two times. She advises that they seemed very happy together, and that M-V- was "talkative" and had the habit of touching the petitioner while talking to him. [REDACTED] explains that he first met M-V- at [REDACTED] Illinois after her wedding to the petitioner. He advises that the petitioner and M-V- "were always touching and holding hands, looking at each other, etc." and appeared very happy. He describes witnessing M-V- act angry toward the petitioner when the petitioner threw a surprise birthday party for her, and asserts that after the party the petitioner told him he and M-V- were having problems. Mr. [REDACTED] explains that even though M-V- already had five children, the petitioner told Mr. [REDACTED] that he still wanted to have one child with her and thought that maybe they needed more space. Although they assert that the petitioner and M-V- initially appeared happy together, Ms. [REDACTED] and Mr. [REDACTED] did not include probative details about the petitioner's relationship with M-V- that could establish his good-faith entry into marriage with M-V-.

Apart from describing M-V-'s abusive behavior on appeal, the petitioner, his family and his friends do not provide probative information regarding the petitioner's intentions at the time he entered into marriage with M-V-. The petitioner does not, for example, describe his courtship, his marriage proposal to M-V-, name the restaurant at which he proposed or at which he and his friends celebrated his wedding. Apart from describing M-V-'s abusive behavior on two occasions or recounting the petitioner's descriptions of M-V-'s behavior, his friends and mother do not include probative information regarding his courtship, wedding, and experiences with M-V-. The petitioner consequently has not established by a preponderance of the evidence that he entered into marriage with M-V- 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

The record reflects that section 204(g) of the Act bars approval of the petition. The petitioner last entered the United States on April 20, 2007, as a B-2 nonimmigrant visitor and on January 11, 2011, DHS issued a Notice to Appear charging the petitioner with removability. He married his U.S. citizen spouse, M-V-, on [REDACTED] 2011, in [REDACTED], Illinois.

In the RFE, the director advised the petitioner that service records show he married M-V- while he was in deportation, exclusion, removal, or judicial proceedings and that section 204(g) of the Act applied. The director provided the petitioner with the requirements for requesting a bona fide marriage exemption. The petitioner responded; however, the director found that the petitioner's evidence did not establish his eligibility for the bona fide marriage exemption.

On appeal, the petitioner confirms that he entered the United States on April 20, 2007 as a B-2 nonimmigrant visitor, but he does not specifically address the director's determination that the petition cannot be approved because he did not satisfy the bona fide marriage exemption. Although the petitioner submitted a written request for a bona fide marriage exemption in response to the RFE, because he married M-V- while he was in removal proceedings and did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act.

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; however, 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 his good-faith entry into the marriage with M-V- by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

Qualifying Spousal Relationship and Corresponding Eligibility for Immediate Relative Classification

As an additional matter, the petitioner has not demonstrated that he shares a qualifying spousal relationship with M-V- and corresponding eligibility for immediate relative classification.² The petitioner attested on his Form I-360 self-petition that his marriage to M-V- is his first marriage and that he has no children. U.S. Citizenship and Information Services (USCIS) records show that when the petitioner sought permission to travel to the United States on a B-2 nonimmigrant visa, he declared that he was married and had one child; however, he has not provided evidence of his divorce from his first wife. Without evidence of his divorce, the petitioner has not established that he was free to marry M-V- and that he was M-V-'s bona fide

² 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 (9th Cir. 2003).

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spouse within two years of the date he filed this petition. Accordingly, the petitioner has not demonstrated that he shares a qualifying spousal relationship with M-V- and his corresponding eligibility for immediate relative classification, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that he entered into his marriage with M-V- in good faith, that he has complied with the requirements of section 204(g) of the Act, and that he shares a qualifying spousal relationship with M-V- and corresponding eligibility for immediate relative classification. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish his 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, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.