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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090




U.S. Citizenship  
and Immigration  
Services



Date: **JAN 07 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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director for the 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 after determining that the petitioner did not establish that she entered into her marriage in good faith and that she complied with the provisions of section 204(g) of the Act.

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

#### *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 her 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 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:

*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 for this classification 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].

\* \* \*

(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 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 ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of... the self-petitioner ....

\* \* \*

(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 Madagascar, and last entered the United States on December 8, 2001, as a G-5 nonimmigrant. She divorced her first husband on May [REDACTED]. On January 27, 2009, the petitioner was issued a Notice to Appear (NTA) in removal proceedings as an alien present in the United States who failed to maintain or comply with the conditions of her status. She married her second spouse, R-C-,<sup>1</sup> a U.S. citizen, on October [REDACTED], New York. The petitioner filed the instant Form I-360 self-petition on April 11, 2011. The director subsequently issued several

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

Requests for Evidence (RFE) that, among other things, the petitioner entered into her marriage with R-C- in good faith and was eligible for the bona fide marriage exemption under section 204(g) of the Act. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these grounds. The director denied the petition and 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.

*Good-Faith Entry into Marriage*

In her initial affidavit, the petitioner stated that she met R-C- when they were both working for a newspaper delivery company. According to the petitioner, they started talking on a regular basis and shared their life stories. She said that she was initially reluctant to enter into a relationship but agreed to date R-C-. She explained that she eventually accepted his proposal in the summer of [REDACTED] and that they married in November of [REDACTED]. In fact, the petitioner's accompanying marriage registration shows that they were married in October of [REDACTED]. In her affidavit, the petitioner also asserted that R-C- lost his job in January of 2010 and she began to work more hours at a restaurant to make money. Apart from describing the abuse to which he subjected her, the petitioner did not provide any probative details regarding her good-faith entry into marriage with R-C-. For example, the petitioner did not describe their courtship, any of their conversations, R-C-'s marriage proposal, or their wedding ceremony. Instead, she submitted affidavits from two friends from her place of employment who primarily described R-C-'s abuse of the petitioner. Her friends did not describe any particular visit or social occasion with the couple or claim to have any personal knowledge or insight into the petitioner's marital relationship.

The petitioner also submitted a copy of her certificate of marriage with the petition, but this is evidence of her legal marriage rather than evidence of her good-faith entry into the marriage. The petitioner included a copy of a 2009 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, showing her name and that of R-C-; however, the tax return also shows that the petitioner was a self-employed hairstylist whereas she claimed in her affidavit to have worked at a newspaper delivery company and a restaurant during the same period. Based on this contradictory information, it is unclear whether any information on the tax return is correct. Accordingly, the petitioner's tax records are insufficient to establish that she resided with R-C-. With the Form I-360 self-petition, the petitioner also provided a client summary of an insurance policy dated April 6, 2010. Although the insurance policy names the petitioner and R-C-, there is no evidence that the petitioner or R-C- made any payments on the policy. Finally, the petitioner submitted some cable bills that list only her name on the account and not R-C-. Accordingly, the petitioner's initial evidence does not provide sufficient probative information to establish her good-faith entry into the marriage.

In response to the first RFE of the petitioner's good moral character, she provided an affidavit that also contained her assertions about her good-faith entry into marriage with R-C-. Specifically, the petitioner attested that she married R-C- in good faith "as shown by what we did together as husband and wife." However, she did not include any details about what she and R-C- did together for

purposes of establishing her good-faith entry into marriage with R-C-.

In the July 2, 2012 RFE, the director requested clear and convincing evidence that the petitioner entered into the marriage in good faith, including a written request from the petitioner for a bona fide marriage exemption. In response, the petitioner provided an affidavit September 20, 2012, in which she confirmed that she and R-C- married in October of [REDACTED] and not November of [REDACTED]. She attested that their relationship was initially very romantic, that they went to movies in Queens every Friday evening and that “it was a good experience.” She did not provide any details explaining why she found their relationship romantic, nor did she name any movies they enjoyed together or discuss any specific dates from their courtship. The petitioner also explained that her husband was a skilled barbecue cook and prepared chicken and ribs “whenever possible.” Also, R-C- asserted that because her husband loved African cooking, she prepared “special kinds of African dishes” for them to eat. The petitioner did not name any particular dishes she prepared or describe any of the African meals they shared. She said their wedding was simple and referred to pictures of them taken at the courthouse on their wedding day. The photographs show them on their wedding day and are insufficient to show her intentions at the time of her marriage to R-C-. The petitioner asserted that she already submitted a copy of her bona fide marriage exemption affidavit with her husband’s earlier Form I-130 petition, and resubmitted a copy of the document. However, the affidavit is from her husband and consists only of his assertions that he entered into their marriage in good faith. The petitioner did not provide her own request for a bona marriage exemption, nor did her affidavit include probative details about her courtship with R-C-, their wedding ceremony or any of their shared experiences and marital routines, apart from descriptions of R-C-’s abuse. Accordingly, the petitioner’s RFE response does not establish her good-faith entry into marriage with R-C-.

On appeal, the petitioner contends that “it was practically impossible for the parties to have joint asserts apart from the 2009 tax returns and the recei[p]t of the life insurance policy” because R-C- started exhibiting abusive behavior soon after their marriage. The petitioner speculates that because her husband was alcoholic he “would probably use all of the money in the bank account to satisfy his addiction,” if she had opened an account with him. In a third affidavit, she asserts that she loved the petitioner and “had the intention of spending the rest of my life with this man” but that he would not listen to her, was always drunk or sleeping, and that she could not convince him to have joint assets with her. The petitioner does not provide any additional information, such as probative details regarding their courtship or shared experiences, to establish her good-faith entry into marriage with R-C-.

Traditional forms of documentation are not required to demonstrate that a self-petitioner entered into her marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit “testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.” *See* 8 C.F.R. § 204.2(c)(2)(vii). Nevertheless, below and on appeal, the petitioner has failed to provide probative information of her courtship, wedding ceremony, joint residence, and shared experiences with R-C-. The petitioner has not established by a preponderance of the evidence that she entered into marriage with R-C- 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. As discussed, agency records show that on January 27, 2009, the petitioner was issued an NTA in removal proceedings as an alien present in the United States who failed to comply with the conditions of her change of status. She subsequently married R-C- on October 5, [REDACTED]. In the July 2, 2012 RFE, the director advised the petitioner that service records showed she married R-C- while she 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 her to request a bona fide marriage exemption, but the petitioner did not respond to this portion of the director's notice, and instead submitted a copy of R-C-'s affidavit regarding his request for a bona fide marriage exemption in the context of an unrelated Form I-130 petition.

On appeal, the petitioner confirms that she married in R-C- while in proceedings, but still does not submit a written request for a bona fide marriage exemption. Because the petitioner married R-C- 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 her 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 the marriage with R-C- 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. Section 204(g) of the Act consequently bars approval of this petition.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

As an additional matter, because the petitioner is not exempt from section 204(g) of the Act, she has also failed to demonstrate that she had a qualifying spousal relationship with a U.S. citizen and was

eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.<sup>2</sup>

*Conclusion*

On appeal, the petitioner has not demonstrated that she married her spouse in good faith, that she has complied with the requirements of section 204(g) of the Act, and that she has a qualifying relationship as the spouse of a U.S. citizen and corresponding eligibility for immediate relative classification. She 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 her eligibility. 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. at 369. 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.

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<sup>2</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 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).