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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



B9

FILE:

EAC 05 059 52179

Office: VERMONT SERVICE CENTER

Date: DEC 20 2006

IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, 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 classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of 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 that he married his wife in good faith and was eligible for the bona fide marriage exemption from the bar to approval of visa petitions based on marriages contracted during removal proceedings at section 204(g) of the Act.

On appeal, counsel submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) 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 eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines 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:

*Evidence for a spousal self-petition –*

(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 provides the following pertinent facts. The petitioner is a native and citizen of Tunisia who entered the United States on July 26, 2000 as a nonimmigrant visitor (B2). On January 28, 2003 the former Immigration and Naturalization Service served the petitioner with a Notice to Appear for removal proceedings charging him as removable for remaining in the United States beyond the period of his authorized stay. The petitioner remains in proceedings before the New York Immigration Court and his next hearing is scheduled for January 5, 2007.

On June 28, 2003, the petitioner married A-H-<sup>1</sup>, a U.S. citizen, in New York. The petitioner's wife subsequently filed a Form I-130, petition for alien relative, on the petitioner's behalf, which was denied on December 29, 2004. The petitioner filed this Form I-360 on December 22, 2004. On July 14, 2005, the director issued a Request for Evidence (RFE) of the petitioner's good faith marriage and clear and convincing evidence that his marriage was not contracted to secure his admission as an immigrant. The petitioner, through counsel, requested and was granted additional time to respond and submitted further evidence on November 8, 2005. On March 3, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good faith marriage and ineligibility for the bona fide marriage exemption from section 204(g) of the Act. The petitioner, through counsel, responded to the NOID with additional evidence. On May 19, 2006, the director denied the petition on the grounds cited in the NOID. Counsel timely appealed.

On appeal, counsel contends that the director's decision was based on his misreading of one supporting affidavit. While the director overlooked a relevant detail of the affidavit, his oversight does not amount to reversible error because the record fails to establish both the requisite good faith marriage and the petitioner's eligibility for the bona fide marriage exemption to section 204(g) of the

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

Act. Counsel's claims and the evidence submitted on appeal fail to overcome these grounds for denial.

*Good Faith Entry into Marriage*

The petitioner submitted the following evidence relevant to his allegedly good-faith entry into marriage with his wife:

- The petitioner's affidavit dated October 25, 2004;
- Two electric bills and one account statement addressed to the petitioner's wife at their marital residence and dated December 8 and 22, 2003 and January 22, 2004;
- Three telephone bills addressed to the petitioner at the former couple's marital residence and dated December 13, 2003 and January 13, 2004 and one telephone bill addressed to both the petitioner and his wife dated February 13, 2004;
- A lease for the former couple's marital residence, which states the lease term as February 1, 2004 to January 31, 2005 and lists both the petitioner and his wife as tenants, but is signed only by the petitioner;
- Affidavit of the petitioner's friend, [REDACTED];
- Affidavit of the petitioner's friend and former roommate, [REDACTED];
- Letters dated September 16, 2005 and June 8, 2006 from \_\_\_\_\_ the landlord for the apartment building where Mr. [REDACTED] and the petitioner, and later his wife, lived;
- Undated letter and March 27, 2006 letter from [REDACTED] the superintendent of the building in which the petitioner and his wife resided;
- "Bona Fide Marriage Exemption Affidavit" of the petitioner's wife dated August 22, 2003;
- Affidavit of the petitioner's friend, [REDACTED]; and
- Two photographs of the petitioner and his wife at an unspecified place and time.

In his September 6, 2006 affidavit, the petitioner's friend, [REDACTED], explains that he and the petitioner were roommates until he moved out in the Spring of 2003. Mr. [REDACTED] states that he rented the apartment and when he moved out he left the apartment to the petitioner. Mr. [REDACTED] explains that the superintendent of the building was aware of the change, but that he did not notify the landlord because the petitioner did not have any credit history. With Mr. [REDACTED]'s affidavit, the

petitioner also submitted a letter from the landlord, Joseph LaRocca, dated September 16, 2005, which confirms that Mr. [REDACTED] lived at the apartment from April 1, 2002 to January 5, 2004. The director apparently misread Mr. [REDACTED] letter to reference the dates of the petitioner's own residency in the apartment and mistakenly inferred a discrepancy in the evidence. Full review of the evidence indicates that the petitioner and his wife resided together from May 2003 to February 2004 in the apartment formerly rented by Mr. [REDACTED]. The record does not establish, however, that the petitioner entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

In his affidavit, the petitioner states that he met his wife in the late winter of 2003 in New York City. The petitioner explains that the former couple met in Central Park, had a conversation and then began dating. The petitioner states that his wife moved in with him in May 2003 and that a month later they were married. The petitioner reports, "For the first four or five months as a married couple, we were inseparable. I have never been so happy in my life." The petitioner does not further describe the former couple's courtship, marriage or any of their shared experiences, apart from his wife's abuse.

On the Form I-360, the petitioner states that he and his wife lived together from May 2003 until February 26, 2004. Yet the submitted documentation does not indicate that they shared any financial assets or liabilities during this time. The two electricity bills and one account statement are addressed to the petitioner's wife individually and are dated within the last three months of their relationship. Two of the telephone bills are addressed to the petitioner individually and the single bill jointly addressed to the former couple is dated February 13, 2004, the last month of their relationship. The former couple's residential lease also states a term beginning in February 2004 and is signed only by the petitioner. The two photographs of the former couple show that they were together on one occasion, but do not establish the petitioner's good-faith entry into their marriage.

The affidavits and letters of the petitioner's friends, wife and building superintendent also fail to support the petitioner's claim. In his first, undated, letter, the superintendent of the petitioner's apartment building, [REDACTED], simply states that the petitioner and his wife lived together from May 2003 until February 2004 and "were having a normal life and at many times troubled relationship." In his March 27, 2006 letter, Mr. [REDACTED] further states:

In the beginning of their relationship they were inseparable. I would always see them holding hands, kissing one another. They were always leaving the building together and returning to the building together. A couple of times they had some repairs that needed to be done in the apartment. . . . When I would come up to repair things, they were usually both home. I was even invited to their apartment on a few occasions and had some coffee with both of them.

Mr. [REDACTED] does not further discuss the former couple's relationship, apart from the abuse.

The petitioner's friend [REDACTED] states that he met the petitioner's wife when the former couple was dating and that the petitioner "appeared to be very happy and very much in love. He always spoke so lovingly about [his wife]." Mr. [REDACTED] provides no further description of the couple's relationship,

apart from the abuse. Mr. [REDACTED] describes the petitioner as being “very happy” when he was dating his wife, but Mr. [REDACTED] also fails to provide any probative information about the petitioner’s allegedly good-faith entry into marriage. The “Bona Fide Marriage Exemption Affidavit” of the petitioner’s wife, (apparently executed in connection with her Form I-130 petition), briefly states how the former couple met, when they moved in together and got married, but the affidavit provides no further probative details about their marital relationship. The petitioner’s friend, [REDACTED] states that the petitioner expressed his love for his wife to Mr. [REDACTED] and that Mr. [REDACTED] observed that the petitioner’s wife was very affectionate to him. Mr. [REDACTED] states that he visited the couple “many times” at their apartment, but he provides no further details regarding their relationship, apart from the abuse.

The only documentation submitted by the petitioner dates from the last three months of the former couple’s joint residence and, with the exception of a single telephone bill, is addressed to either the petitioner or his wife individually. The residential lease lists the petitioner and his wife as tenants, but is signed only by the petitioner and states a term beginning just three weeks before the former couple separated. In his affidavit, the petitioner does not discuss in any probative detail the former couple’s courtship, joint residence, marriage or any of their shared experiences, apart from the abuse. The affidavits and letters from the petitioner’s friends, superintendent and wife also fail to provide sufficient, probative information regarding the former couple’s marital relationship. Accordingly, the record does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Section 204(g) of the Act*

Section 204(g) of the Act states:

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], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act states:

- (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 regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

*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 . . . .

The record in this case shows that the petitioner married his wife after he was placed in removal proceedings, which remain pending. Section 204(g) of the Act thus bars the approval of this petition and the petitioner has not established his eligibility for the bona fide marriage exemption.

While 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 exemption 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 (5<sup>th</sup> Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate good faith entry into the qualifying relationship for a self-petition 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. 8 C.F.R. § 204.2(c)(2)(i); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). 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 has failed to establish his good faith marriage under the lower standard of proof required under section 204(a)(1)(A)(iii) of the Act, he has also failed to establish a bona fide marriage by the higher

standard required by section 245(e)(3) of the Act. Consequently, section 204(g) of the Act bars the approval of this petition.

The record fails to establish that the petitioner entered into his marriage in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. The petitioner has also failed to establish his eligibility for the bona fide marriage exemption and section 204(g) of the Act thus bars the approval of this petition. Accordingly, the petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Consequently, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.