



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted]
EAC 06 099 50523

Office: VERMONT SERVICE CENTER

Date: JAN 09 2008

IN RE: Petitioner:

[Redacted]

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:

[Redacted]

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.

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks immigrant classification 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, finding that the petitioner failed to establish that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal with 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 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 contained 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 petitioner in this case is a native and citizen of Thailand who entered the United States on October 4, 2004, as a nonimmigrant student (F-1). The petitioner married T-R,¹ a United States citizen, on May 21, 2005 in Washington. The petitioner filed this Form I-360 on February 15, 2006. On May 17, 2006, the director requested the petitioner to submit additional evidence of the claimed abuse. The petitioner, through counsel, responded to the director's request on July 13, 2006 and requested an additional 60 days in which to respond. On August 21, 2006, the director issued a Notice of Intent to Deny (NOID) the petition informing the petitioner that the evidence contained in the record did not establish that the petitioner was battered or subjected to extreme cruelty by her spouse during their marriage and that she entered into the marriage in good faith. The petitioner responded to the NOID on October 2, 2006 with additional evidence. The director denied the petition on October 30, 2006 based on the petitioner's failure to establish that she entered into the marriage in good faith.

On appeal, counsel for the petitioner argues that the director failed to consider all of the evidence submitted by the petitioner and that she did not elaborate on the deficiencies in the record as it relates to the petitioner's evidence of a good faith marriage. As will be discussed, upon review, we are persuaded by counsel's arguments. As such, in addition to reviewing the evidence previously submitted into the record, we will also accept and review the additional evidence submitted on appeal.

As it relates to her good faith marriage, with the initial filing the petitioner submitted a personal statement, her identification card, photographs, a letter from Washington Mutual Bank, a joint health insurance card, and a letter from First Horizon Home Loans. The director's May 17, 2006 Request For Evidence (RFE) acknowledged only two of these documents and indicated that the petitioner's evidence showed that she maintained separate accounts from her spouse, that the letter from First Horizon Home Loans was "part of a 'mass mailing,'" and was not specifically addressed to the petitioner and her spouse. Although the director's August 21, 2006 NOID indicated that the petitioner's evidence did not establish her good faith marriage, the director did not specifically address any of the petitioner's evidence or elaborate on why the evidence was deficient. The only evidence referred to by the director in his October 30, 2006 denial was the petitioner's photographs. While the denial also referred to "other evidence previously discussed in the Service's Notice of Action," as we have already indicated, the only other evidence specifically discussed was the letter from First Horizon Home Loans. On appeal, the petitioner submits an additional personal statement, additional statements from acquaintances, and additional photographs.

The statute and regulations contain no specific formula for determining whether a petitioner has entered into his or her marriage in good faith. Rather, the determination of what evidence is credible and the weight to be given

¹ Name withheld to protect individual's identity.

that evidence shall be within the sole discretion of the Service. Section 204(a)(1)(J) of the Act , 8 C.F.R. § 204.2(2)(i). In this instance, through her own statements and the statements submitted on her behalf, the petitioner has submitted detailed testimonial evidence about her relationship with her spouse before her marriage and their life together, as well as her feelings toward her spouse and reasons for entering into her marriage. Also, while we do not generally accord significant evidentiary weight to photographs, in this instance the petitioner has described her photographs and the occasions depicted in the photographs and the photographs cover events both before and after their marriage. Moreover, although never acknowledged or discussed by the director, the documentary evidence contained in the record demonstrates that the petitioner and her spouse shared health insurance and a joint account. Contrary to the director's finding that the petitioner failed to submit evidence of shared accounts, the letter from Washington Mutual Bank shows that the petitioner and her spouse were, in fact, joint owners of an account. Accordingly, we withdraw the director's determination and find that the documentary evidence, combined with the detailed and credible testimonial evidence of the petitioner and her affiants, is sufficient to establish that the petitioner entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has overcome the findings of the director and sustained that burden.

ORDER: The denial of the petition is withdrawn. The appeal is sustained and the petition is approved.