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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

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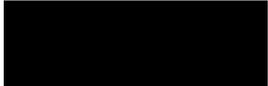
**U.S. Citizenship
and Immigration
Services**



B9

DATE: MAY 03 2011

OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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)

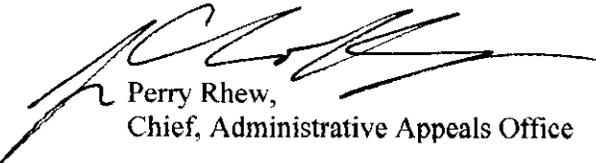
ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew,
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that she shared a joint residence with her husband; and (2) that she married her husband in good faith. On appeal, counsel submits a brief argument made on the Form I-290B, Notice of Appeal or Motion.¹

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

¹ Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or additional evidence would be sent within 30 days. However, to date, eleven months later, we have not received an additional brief or evidence. Accordingly, we deem the record complete and ready for adjudication.

- (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, the following:

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.
- (ii) *Relationship.* A self-petition file 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
- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

- (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, a citizen of Brazil, married J-H-² a citizen of the United States, on December 19, 2008. She filed the instant Form I-360 on September 10, 2009. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the request for additional evidence, the director denied the petition on April 27, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has overcome the director's grounds for denying this petition. However, the petition may not be approved because the record does not demonstrate the petitioner's qualifying relationship with a citizen of the United States, and her corresponding eligibility for immediate relative classification on the basis of such a relationship. As the director did not address that issue, the petition will be remanded for further action.

Joint Residence

The petitioner stated on the Form I-360 that she and J-H- lived together from December 2008 until February 2009. In her June 24, 2010 self-affidavit submitted on appeal, the petitioner discussed several aspects of her shared residence with J-H-. For example, she discussed in detail how she and J-H- enjoyed watching sports when they lived together; played with their dog; spent time with J-H-'s grandson; and traveled together through the southeastern United States. She had also discussed various aspects of her shared residence with J-H- in her October 12, 2009 self-affidavit submitted below: for example, the petitioner briefly discussed J-H-'s son's separation from his wife and subsequent move into the home of J-H-, as well as disputes over how she and J-H- divided household bills.

The petitioner also submitted a letter from [REDACTED] on appeal. Although [REDACTED] did not indicate whether she had personally visited the couple's home, she described conversations she and the petitioner had regarding the former couple's joint residence. For example, [REDACTED] described how she and the petitioner discussed the petitioner moving into J-H-'s residence and how J-H-'s son moved into the house shortly thereafter. [REDACTED] also described how she gave the petitioner some clothing to wear after J-H- told the petitioner to leave the house.

The record also contains a January 30, 2009 police report containing the same address for both J-H- and the petitioner.

Although brief, the testimonial evidence of record regarding the petitioner's joint residence with J-H- is detailed and credible, and the police report displaying a shared address adds additional weight. Considered in the aggregate, the relevant evidence of record establishes that the petitioner resided with J-H-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act and the director's contrary determination is hereby withdrawn.

² Name withheld to protect individual's identity.

Good Faith Entry into Marriage

The relevant testimonial and documentary evidence submitted below and on appeal also demonstrates that the petitioner married J-H- in good faith. The petitioner described her courtship with J-H- in her two self-affidavits in probative detail, and her affiants submitted additional testimony regarding the petitioner's good faith in entering the marriage. The record, therefore, contains an account of the couple's first introductions, their courtship, and their life together that is detailed, probative, and credible. The pictures of the couple together and information regarding a joint automobile insurance policy add further weight to the petitioner's claim.

Considered in the aggregate, the relevant testimonial and documentary evidence of record establishes that the petitioner married J-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act and the director's contrary determination is hereby withdrawn.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Although the evidence submitted by the petitioner below and on appeal overcomes the director's grounds for denying this petition, the record as currently constituted does not demonstrate the existence of a qualifying relationship with a citizen of the United States and the petitioner's corresponding eligibility for immediate relative classification on the basis of such a relationship.

The December 8, 2008 application for marriage licensure before [REDACTED] County, Georgia indicates that the petitioner was married prior to marrying J-H-, and that her former marriage ended in divorce. However, the record lacks proof of the legal termination of that marriage, and her resultant legal eligibility to marry J-H-, as required by 8 C.F.R. § 204.2(c)(2)(ii). Absent such documentation, the petitioner has not demonstrated the existence of a qualifying relationship with a citizen of the United States pursuant to 8 C.F.R. § 204.2(c)(1)(i).

However, the director did not address this issue. Accordingly, this matter will be remanded to the director for further action and entry of a new decision regarding the petitioner's qualifying relationship with a citizen of the United States and the petitioner's corresponding eligibility for immediate relative classification on the basis of such a relationship. Specifically, the director should request proof of the legal termination of the petitioner's first marriage as required by 8 C.F.R. § 204.2(c)(2)(ii).

Conclusion

As discussed above, the petitioner has established that she resided with J-H- and that she married him in good faith and the director's contrary determinations are hereby withdrawn. However, the record does not demonstrate the existence of a qualifying relationship with a citizen of the United States and the petitioner's corresponding eligibility for immediate relative classification on the basis of such a relationship. As the director did not address this matter, the petition will be remanded for

entry of a new decision and the director may afford the petitioner reasonable time to provide evidence pertinent to that issue as well as any other grounds for eligibility. He shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's April 27, 2010 decision denying the petition is withdrawn. The petition is remanded to the director for further action and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.