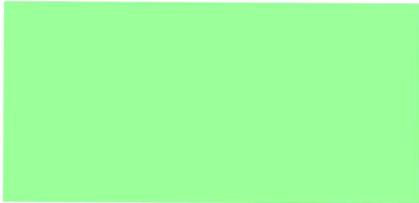




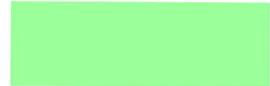
U.S. Citizenship
and Immigration
Services

(b)(6)

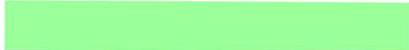


Date: AUG 15 2014

Office: VERMONT SERVICE CENTER File:



IN RE: 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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

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 for failure to establish that the petitioner married her husband in good faith.

Relevant Law and Regulations

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 further 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 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)(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:

(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.

Facts and Procedural History

The petitioner is a citizen of Uganda who last entered the United States on a visitor's visa on January 22, 2008. The petitioner married A-L-¹, a U.S. citizen, on April 7, 2008. The petitioner filed the instant Form I-360 on October 6, 2011. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's entry into the marriage in good faith. The petitioner timely responded with additional evidence, which the director found insufficient and denied the petition.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has overcome the director's ground for denial.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal demonstrates the petitioner's entry into her marriage in good faith. In her initial declaration, the petitioner primarily discussed the abuse in her relationship with A-L-. In the response to the RFE, the petitioner stated that she met A-L- at a party in the United States in 2006 and when she returned to Uganda communicated with him by phone. She stated that in 2008 she traveled to the United States to be with A-L-, and that they got married even though they had no money and had to live with her aunt. The petitioner provided only cursory statements about when she first met A-L-, their courtship, her decision to marry, their wedding ceremony, their joint residence, and their shared experiences, apart from the abuse.

The petitioner also submitted: medical records showing the petitioner's ectopic pregnancy and laparoscopy surgery in June 2009; joint utility bills addressed to the apartment at [REDACTED] a lease agreement for the apartment at [REDACTED] a letter and fact sheet for an insurance application; a police incident report and protective order showing the [REDACTED] apartment as the petitioner and her husband's residence; a joint tax return for 2009 and joint tax refund check for 2008; and joint bank account statements. The director correctly determined that these documents alone are not enough to demonstrate that the petitioner married A-L- in good faith.

In denying the petition, the director found that the petitioner's statements failed to provide insight into her intentions in marrying A-L-. The director also stated that there was an inconsistency between the petitioner's statements about her intentions to marry A-L- and the information in her Form DS-156,

¹ Name withheld to protect the individual's identity.

Nonimmigrant Visa Application, dated November 5, 2007, stating that she was to visit the family of her fiancé/boyfriend [REDACTED]. The director concluded that this inconsistency brings into question the reliability of the petitioner's statements and diminishes their weight as probative evidence.

On appeal, the petitioner submitted a detailed statement in which she credibly and probatively described how she first met A-L- in the United States at a party at his uncle's house, her long-distance friendship with A-L- upon her return to Uganda, her decision to end her relationship with [REDACTED] and be with A-L- in the United States, her feelings for A-L-, their courtship, and her decision to marry A-L-. Counsel contends that the additional evidence of the petitioner's statement, the affidavit from her friend [REDACTED] visa stamps in the petitioner's Uganda passport, and e-mail correspondence from [REDACTED] demonstrate that the petitioner married A-L- in good faith.

Upon a full review of all the relevant and credible evidence submitted below and on appeal, we find that the petitioner has overcome the basis of the director's denial. The petitioner credibly explains how she first met A-L-, their long-distance friendship upon her return to Uganda and her feelings for him, her decision to be with A-L- in the United States, and their courtship and her decision to marry. The petitioner had also provided evidence that she lived with A-L- and was treated for an ectopic pregnancy in June 2009. The preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has overcome the director's determination and established that she entered her marriage with her spouse in good faith. She is consequently eligible for immigrant classification based on her marriage to A-L- under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her 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). Here, that burden has now been met. The appeal will be sustained.

ORDER: The appeal is sustained.