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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**

B9



DATE: APR 06 2012 OFFICE: VERMONT SERVICE CENTER

FILE:

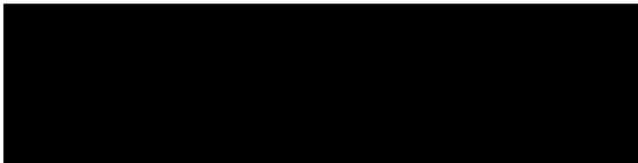


IN RE: Petitioner:



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 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center 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 on the basis of his determination that the petitioner failed to establish that she resided with her husband. On appeal, counsel submits a brief and additional evidence.

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.

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.

* * *

- (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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who entered the United States on November 15, 1988. She married J-G-¹ a citizen of the United States, on October 4, 2003. The petitioner filed the instant Form I-360 on July 20, 2010. The director issued a subsequent request for additional evidence (RFE) and the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on September 6, 2011.

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 ground for denying this petition.

Joint Residence

The petitioner stated on the Form I-360 that she and J-G- lived together from 2002 through 2004 and claimed in her March 10, 2010 letter that she began living with J-G- and his parents while pregnant with their first child, who was born in [REDACTED]. In her November 2, 2011 letter submitted on appeal, the petitioner stated that that she began spending weekends with J-G- at his parents' home after learning she was pregnant, and that by August 2002 she spent most of her time there. She recalled "officially" moving into the house in November 2002, and claimed that she lived there until February 2004. The petitioner explained that she has no evidence of her joint residence with J-G- such as utility bills or rental agreements because his parents owned the home and did not require the couple to contribute toward household expenses. The petitioner also submits brief statements from J-G-'s father, her brother, and her father on appeal, and they all state that she lived with J-G- in his parents' home from 2002 until 2004.

The relevant documentary evidence of the petitioner's joint residence with J-G- consists of the couple's marriage certificate providing a common [REDACTED] a medical clinic intake sheet signed by the petitioner in 2002 providing the couple's shared [REDACTED] [REDACTED] as her and her husband's address; and the petitioner's requests for restraining and

¹ Name withheld to protect individual's identity.

child custody orders from the Superior Court of Los Angeles County, California listing their joint residence from 2003 to 2004.

On appeal, counsel reiterates the assertions made by the petitioner and J-G-'s father that because J-G-'s parents did not charge the couple for rent, there is no documentary evidence of the joint residence such as a lease, rental receipts, or utility bills for the petitioner to submit.

When considered in the aggregate, the relevant testimonial and documentary evidence establishes that the petitioner and J-G- shared a joint residence during their marriage. The relevant evidence establishes that she and J-G- resided together from late 2002 until 2004. The petitioner has established that she resided with J-G- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The petitioner has overcome the director's ground for denial and has established that she resided with J-G-. Accordingly, the petitioner is eligible for immigrant classification 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). She has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.