

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



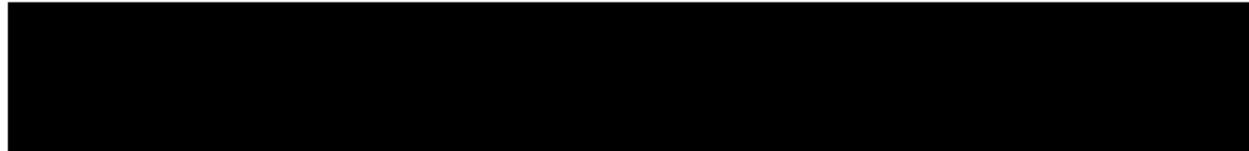
B9

Date: DEC 03 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)

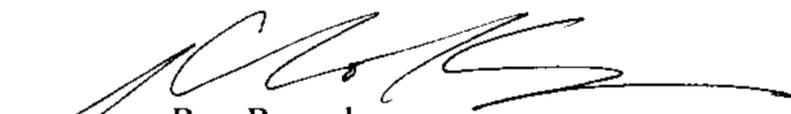
ON BEHALF OF PETITIONER:



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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“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 and the petition will be approved.

The petitioner seeks immigrant classification pursuant to 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 her U.S. citizen former spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her former husband in good faith.

On appeal, counsel submits a supplemental brief and additional evidence.

### *Relevant Law and Regulations*

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of India who last entered the United States on July 22, 2007 as a B-2 visitor. The petitioner married [REDACTED] a U.S. citizen, in Los Angeles, California on August 11, 2006. The two were later divorced on July 27, 2009. The petitioner filed the instant Form I-360 on November 23, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record and counsel's brief submitted on appeal, the petitioner has overcome the director's ground for denial and the appeal will be sustained for the following reasons.

*Entry into the Marriage in Good Faith*

The director correctly determined that the petitioner's testimony and the testimony submitted on her behalf were insufficient to support a finding of her good faith entry into marriage with [REDACTED]. The petitioner did not initially submit evidence that she entered into marriage with [REDACTED] in good faith. In response to the RFE, she submitted a personal affidavit and affidavits from family and friends. In her affidavit, the petitioner described meeting [REDACTED] at her grandparents' house and going on a subsequent date with him. She stated that during their date, she knew she was in love with [REDACTED] and they later married in June of 2006. In addition to her affidavit, the petitioner submitted affidavits from nine

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

family members and friends. In denying the petition, the director correctly found that the petitioner's testimony was insufficient to establish her good faith intent upon entering into marriage with her former husband. Further, the director correctly determined that the affidavits from her family and friends were all very similar and at times, contained exact passages thus diminishing the credibility of these statements.

*De novo* review of all of the relevant evidence submitted below and on appeal establishes the petitioner's good-faith entry into the marriage. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). On appeal, the petitioner submits another personal affidavit and second affidavit from her former father-in-law, [REDACTED]. In her new affidavit, she describes in probative detail her courtship with [REDACTED] through meetings arranged by their families in accordance with Hindu traditions. She describes in detail their official marriage on August 11, 2006 and the subsequent Hindu wedding ceremony that took place a year later. She describes moving into her in-laws home and explains that all of the utilities and financial documents were under her former father-in-law's name as the head of the household. In his affidavit, Mr. [REDACTED] explains that the petitioner came to live in his house after marrying his son, [REDACTED]. He further provides probative details about the petitioner's and his son's weddings and the living situation afterwards.

Upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director's denial. The petitioner has submitted an additional self-affidavit that describes in probative detail her courtship with [REDACTED] and her good faith intentions upon marrying him. The petitioner submitted a second affidavit from her father-in-law who attested to the petitioner's good faith marriage with his son. When viewed in the totality, the preponderance of the relevant evidence submitted below demonstrates that the petitioner entered into marriage with 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 ground for denial and she is consequently 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). Here, that burden has now been met. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.