

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: Office: VERMONT SERVICE CENTER File: 

DEC 14 2012

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)

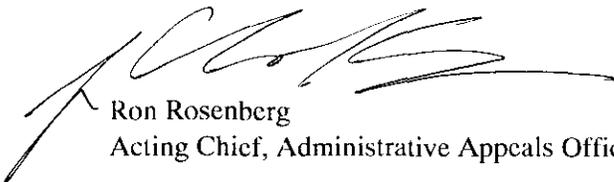
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will be granted, the previous decision of the AAO will be withdrawn, and the appeal will be sustained.

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 spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith. On February 13, 2012, the AAO affirmed the director’s decision and dismissed the appeal.

On motion, the petitioner submits a statement, letters from friends and relatives, a utility bill, a bank statement, purchase receipts, a tax return and photographs.

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).

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 Guyana who states that she entered the United States on September 15, 2004 without inspection. The petitioner married A-A-¹, a U.S. citizen, on August 29, 2008 in Kew Gardens, New York. The petitioner filed the instant Form I-360 on January 4, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed. The AAO dismissed the appeal. The petitioner has now filed a motion to reopen with the AAO, which satisfies the requirements and will be granted.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on motion, now establishes the petitioner's eligibility. The decision to dismiss the appeal will be withdrawn and the appeal will be sustained for the following reasons.

Entry into the Marriage in Good Faith

In its February 13, 2012 decision to dismiss the appeal, the AAO found that a full review of the relevant evidence submitted below and on appeal failed to reveal any error in the director's determination. The AAO noted that in the petitioner's affidavit, she described her relationship with A-A- 30 years ago in Guyana, but she did not describe their recent courtship, wedding ceremony, joint residence or any of their other shared experiences in the United States. The AAO further stated that the letters from the petitioner's friends did not discuss in probative detail their observations of the petitioner's interactions with or feelings for A-A- during their courtship or marriage in the United States. The AAO also found

¹ Name withheld to protect the individual's identity.

that the documentary evidence the petitioner submitted, including joint utility bills for a four month period in 2010, two receipts from furniture stores and three short notes that appear to be from A-A-, were not probative of the petitioner's good faith in entering into a marriage with A-A-.

De novo review of the record establishes that the petitioner married her spouse in good faith. On motion, the petitioner submits another statement, dated February 28, 2012, in which she provides a probative and credible account of how she reunited with A-A- and their subsequent relationship in the United States. The petitioner submits letters from her friend, Mary Motilall, brother-in-law, Hugh McPherson, and niece, Natasha Smith, who all attest to knowing of the petitioner's good-faith marriage to her husband. As additional documentary evidence of her good-faith entry into the marriage, the petitioner submits: a utility bill issued under her name and her husband's name; a bank statement reflecting their joint account; four photographs of herself and A-A-; two receipts issued under her name and A-A-'s name; and a copy of their 2011 jointly-filed federal and state income tax returns. When viewed in the totality, the preponderance of the relevant evidence 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 motion, the petitioner has established that she entered into the marriage in good faith. 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 previous decision of the AAO will be withdrawn, and the appeal will be sustained.