

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)

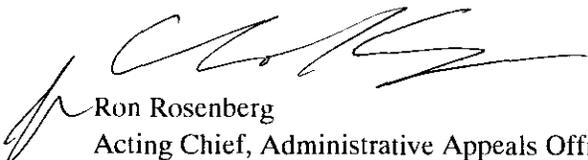
ON BEHALF OF PETITIONER:



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.

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 appeal, counsel asserts the petitioner’s eligibility and submits 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).

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 the Dominican Republic who claims she entered the United States without inspection on January 28, 2001. The petitioner married C-A-¹, a U.S. citizen, in Orlando, Florida on January 31, 2002. The petitioner filed the instant Form I-360 on November 1, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's entry into the marriage in good faith. The petitioner 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). A full review of the record, including the evidence submitted on appeal, establishes the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal 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 relevant evidence submitted below and on appeal demonstrates the petitioner's entry into her marriage in good faith. In response to the RFE, the petitioner submitted a statement in which she recalled that she first met C-A- after she entered the United States in January 2001. She recounted that they wed on January 31, 2002 in the Orange County Courthouse and moved to a residence in Orlando where they signed a lease with the option to purchase. The petitioner stated that they separated in August 2003 and then reunited in 2007 while she was in Florida and C-A- resided in Orlando. The petitioner explained that C-A- moved back to Orlando in March 2008 and they resided together until December 2009. The petitioner also submitted: fourteen photographs of herself and C-A-; an apartment lease she jointly signed with C-A- on October 13, 2008; a lease with option to purchase she jointly signed with C-A- on March 1, 2002; utility bills in her name only issued after she last separated from C-A-; and utility bills in C-A-'s name only issued prior to their first separation.

¹ Name withheld to protect the individual's identity.

In denying the petition, the director found that the petitioner failed to provide evidence of jointly held accounts or other documentation of financial commingling of funds. On appeal, counsel asserts that the lack of documentation is in part because the petitioner did not have a social security number and in part because of the abuse she suffered. Counsel submits letters and identification documents from C-A-'s family members, including his parents, [REDACTED] and his sister's partner, [REDACTED]. C-A-'s family members attest to their personal knowledge of C-A-'s relationship with the petitioner, including the couple's separations and reconciliations. His family members explain that they have this knowledge because the petitioner attended family gatherings with C-A-. The regulation 8 C.F.R. § 204.2(c)(2)(vii) provides that all credible, relevant evidence will be considered, including affidavits from individuals who have personal knowledge of the relationship. Here, petitioner has submitted her own detailed statement, statements from several of C-A-'s family members, two lease agreements she jointly signed with C-A-, evidence that they shared at least one bank account and several photographs of herself with C-A-. The preponderance of the 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 appeal, 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 appeal will be sustained.