

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 18 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:

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 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, the petitioner submits a statement 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).

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 United Kingdom who entered the United States on April 19, 2007 under the Visa Waiver Program. The petitioner married [REDACTED], a U.S. citizen, in Norwalk, California on November 24, 2009. The petitioner filed the instant Form I-360 on December 17, 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, through prior counsel, 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 reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record as supplemented on appeal establishes the petitioner's eligibility. 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. The petitioner initially submitted: her own personal statement; a copy of a 2009 tax return she jointly filed with [REDACTED]; and letters from her friends. In the petitioner's affidavit, she provided a probative, detailed and credible account of how she first met her husband, their courtship, joint residence and shared experiences. The petitioner's friends, [REDACTED] and [REDACTED], discussed their observations of the petitioner's interactions with her husband during their courtship and marriage. In response to the RFE, the petitioner submitted: a second personal statement; additional letters from friends; a letter from the petitioner's former handyman; and four photographs of herself and [REDACTED]. In her second personal statement, the petitioner provided additional details of how she first met her husband, their courtship and joint residence. The petitioner's former handyman, [REDACTED], stated that the petitioner and [REDACTED] were his regular customers for over one year. The petitioner's friends, [REDACTED] and [REDACTED] attested

¹ Name withheld to protect the individual's identity.

to their observations of the petitioner's marital relationship with [REDACTED] through visits to the couple's residence.

In denying the petition, the director found that other than the submitted 2009 joint tax return, the petitioner had not provided evidence of shared financial responsibilities such as jointly held bank accounts or jointly held utilities to demonstrate a good faith marriage. On appeal, the petitioner asserts that she could not be added to bank and credit card accounts or sign a lease agreement because of her unlawful immigration status. She also notes that her husband did not want her added to his bank account because he was hiding his finances from her. The petitioner contends that according to the Form I-360 instructions, any credible evidence is acceptable, including testimony to establish that her marriage was in good faith.

Evidence of commingled finances is not required to demonstrate a self-petitioner's entry into the marriage in good faith under section 204(a)(1)(A)(iii)(I)(aa) of the Act. 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, the petitioner has submitted her own detailed, credible statements, a jointly filed tax return, and statements from her friends who have demonstrated their personal knowledge of the relationship. The petitioner has therefore established by a preponderance of the evidence that she 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.