

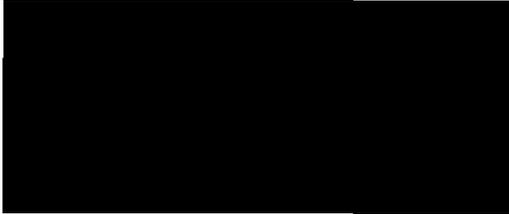
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

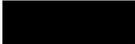


By

Date: FEB 27 2012

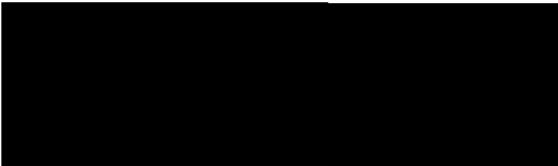
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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)

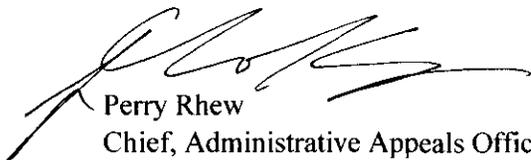
ON BEHALF OF PETITIONER:



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 Vermont Service Center director denied the immigrant 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 spouse.

The director denied the petition for failure to establish that the petitioner has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship.

On appeal, counsel submits a 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).

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 evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of

the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages

Pertinent Facts and Procedural History

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China. She was admitted to the United States a B-1 visitor for business on July 29, 2002. On June 9, 2005, the petitioner married [REDACTED]. On [REDACTED] the petitioner filed the instant Form I-360. The petitioner subsequently received a Request for Evidence (RFE) of, *inter alia*, [REDACTED] identity as a U.S. citizen and the termination of the petitioner's prior marriage. Counsel responded to the RFE 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). Counsel's claims and the evidence submitted on appeal have overcome the director's grounds for denial and the appeal will be sustained for the following reasons.

Qualifying Relationship

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) provides that evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages, and evidence of the citizenship of the U.S. citizen spouse. The petitioner initially submitted an [REDACTED] marriage certificate reflecting that she and [REDACTED]. She also provided copies of [REDACTED] social security card and the [REDACTED] of an individual named [REDACTED]. In response to the RFE, the petitioner resubmitted these documents and her divorce decree reflecting the termination of her first marriage in China. In denying the petition, the director determined that the submitted evidence did not demonstrate that [REDACTED] are the same person. The director concluded that the record did not contain satisfactory evidence to demonstrate that the petitioner has a qualifying relationship with a U.S. citizen and is eligible for immigrant classification under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. § 1151(b)(2)(A)(i).

On appeal, counsel asserts that the additional documentation submitted on appeal reflects that the petitioner's husband, [REDACTED] is the same individual listed on the [REDACTED]. Upon a full review of the record, including the additional evidence submitted on appeal, we find that the petitioner has submitted sufficient credible evidence to demonstrate that her spouse is a U.S. citizen. On appeal, the petitioner submitted a copy of her and [REDACTED] signed marriage license application on which [REDACTED] listed his place of birth in [REDACTED] father's name and mother's maiden name. The information provided by [REDACTED] on the marriage license application is identical to the information on his Ohio birth certificate. The petitioner also submitted an original statement from the social security administration issued under the petitioner's husband's first name and his father's surname as reflected

¹ Name withheld to protect the individual's identity.

on the marriage license and [REDACTED] birth certificate. The last four digits of his social security number listed on the social security statement are identical to the last four digits on [REDACTED] previously submitted social security card. In addition, the petitioner submitted [REDACTED] Wage and Tax Statements (Forms W-2) for 2001, 2006, 2007 and an Internal Revenue Service tax return transcript for 2004, which reflect earnings that are identical to the earnings listed on the social security statement. These documents further corroborate that [REDACTED] is the individual for whom the [REDACTED] birth certificate was issued. The preponderance of the evidence demonstrates that [REDACTED] are the same individual. Therefore, the petitioner has established that she has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

Conclusion

On appeal, the petitioner has overcome the director's grounds 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.