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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services



B9.

Date: **JUN 08 2012** Office: VERMONT SERVICE CENTER

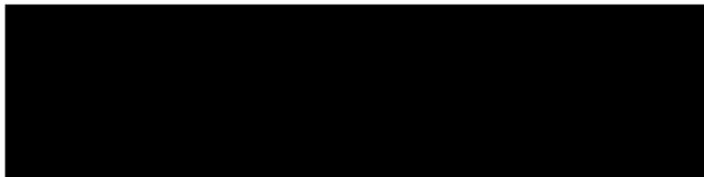


IN RE:



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 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 The director’s decision shall be withdrawn and the matter remanded for entry of a new decision.

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’s accredited representative submits a brief and additional evidence. 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 demonstrates that the petitioner has overcome the director’s ground for denial and the appeal will be sustained for the following reasons.

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:

(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 was admitted to the United States on September 24, 2008, as the fiancée of a U.S. citizen. The petitioner married her U.S. citizen fiancé on November 13, 2008 in Pennsylvania. The petitioner filed the instant Form I-360 on September 14, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's entry into marriage with her husband in good faith. The petitioner, through her representative, timely responded with additional evidence which the director found insufficient to demonstrate the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

Good-Faith Entry Into Marriage

In her affidavits submitted below and dated September 3, 2010 and September 6, 2011, the petitioner recounted in detail how she met her husband at her sister's wedding in Santo Domingo, how they got to know each other through mutual acquaintances and the beginning of their courtship. The petitioner described her husband's second visit to the Dominican Republic, their shared activities and how she introduced him to her family, friends and coworkers. The applicant explained that she was very content with her life before she met her husband because she had a good job and a nice home, but that she eventually decided to give up her life in the Dominican Republic when she was assured of their mutual love and dedication to building a life together. The petitioner stated that the first three months of their marriage in the United States were wonderful, but then her husband's behavior changed drastically.

The petitioner explained that her husband controlled and isolated her by withholding her social security card, not allowing her to work or leave the house without him, and never adding her to any of the household bills or other financial accounts. The petitioner recounted that she fled her husband's home after an incident of abuse on December 23, 2009 and was only able to take a few belongings with her, circumstances which left her with no other documentation of their marital relationship.

The petitioner initially submitted letters from her friends [REDACTED] and [REDACTED] as well as her mother daughter and son; and a friend of her husband, [REDACTED]. In response to the RFE, the petitioner submitted additional letters from her sister; her friends [REDACTED] and [REDACTED]. The petitioner also submitted letters and other documents that are addressed to her husband and herself individually, but were sent to their shared marital residence. These documents as well as medical records and a store membership card identify the petitioner with her husband's surname. In addition, the record contains copies of numerous photographs showing the petitioner and her husband at their wedding and on 12 other occasions. On appeal, the petitioner submits a letter from the owner of a restaurant in the Dominican Republic verifying that the petitioner's husband held a surprise birthday party there for the petitioner during their courtship and a letter from the petitioner's former employer in the Dominican Republic verifying her salary and supporting her claim that she left a good position in her native country in order to join her husband in the United States.

The director determined that the supporting affidavits of the petitioner's family and friends did not evidence her good-faith intent when marrying her husband. Specifically, the director stated, "The attendance at parties and the affiants' opinions that you were happy does not corroborate your claim to a good faith marriage." The director failed to fully assess the content of the 13 supporting affidavits submitted below, the majority of which provide detailed and credible information relevant to the petitioner's good faith in marrying her husband. For example, [REDACTED] explained that she grew up in the same town as the petitioner and had known her for many years. [REDACTED] recounted that she attended a welcome party that the petitioner's husband held upon the petitioner's arrival in the United States and that she frequently visited the petitioner at her marital home because the petitioner baby-sat her daughter. [REDACTED] also described specific details of conversations between the former couple regarding their future plans. All of the other affiants also provided pertinent information about the petitioner's marriage and fully stated their relationship to the petitioner and her husband and the basis for their personal knowledge of the relationship, as required by the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Accordingly, the director erroneously determined that the statements of the petitioner's family members and friends did not support her claim.

The director also concluded that the petitioner had "not submitted documentary evidence showing that [she and her husband] shared a marital relationship whereby [they] shared bank accounts, the responsibility for bills, and other requirements associated with a marriage." As the petitioner's representative correctly notes, self-petitioners are not required to submit primary, documentary evidence given the obstacles that many survivors of domestic violence face in obtaining such traditional forms of marital documentation. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). In this case, the petitioner submitted some documentation and provided a reasonable and credible explanation of why other evidence did not exist or was unobtainable due to the abuse.

When viewed in the aggregate, the preponderance of the relevant evidence submitted below and on appeal 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.

Good Moral Character

On appeal, the petitioner has overcome the director's ground for denial. However, as the record is presently constituted, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act because she has not complied with the regulation at 8 C.F.R. § 204.2(c)(2)(v) regarding evidence of her good moral character, which states:

Good moral character. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The petitioner filed the Form I-360 in September 2010, and during the three-year period prior to the filing of the petition, the petitioner lived in the State of Pennsylvania and the Dominican Republic. Although the record contains the appropriate police clearance from the State of Pennsylvania, it does not contain a police clearance, criminal background check or similar report issued by the appropriate authority in the Dominican Republic. In addition, the record does not contain an affidavit from the petitioner attesting to her good moral character.

Conclusion

The matter is remanded to the director so that he may request the appropriate evidence relating to the petitioner's good moral character and enter a new decision into the record. As always 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).

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.