

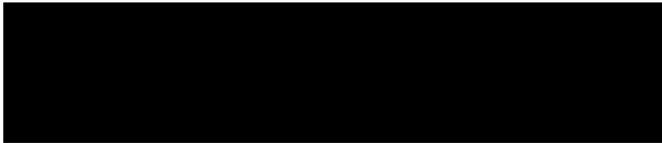
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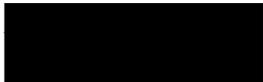
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B9

Date: **MAR 28 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:



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 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 entered into marriage with her husband in good faith.

On appeal, counsel 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:

(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 native and citizen of Nicaragua who was admitted to the United States on November 4, 2006 as a B-2 visitor. She married N-P-, a United States citizen, on May 24, 2007 in Miami, Florida. The petitioner filed the instant Form I-360 on December 18, 2008. The director subsequently issued two Requests for Evidence (RFEs) 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 counsel timely appealed.

Upon a full review of the record as supplemented on appeal, the petitioner has overcome the director's ground for denial and the appeal will be sustained for the following reasons.

Good-Faith Entry Into Marriage

The relevant evidence submitted below and on appeal demonstrates the petitioner's entry into her marriage in good faith. The petitioner submitted in response to the first RFE an affidavit, dated January 21, 2009, in which she stated that she met N-P- in Costa Rica in 2006. She recalled that N-P- visited her several times in Costa Rica and then proposed to her. The petitioner recounted that during N-P-'s last visit, he stayed at her home for one month and they then traveled to Puerto Rico on November 4, 2006.

In response to the first RFE, the petitioner also submitted a letter from her friend, [REDACTED] described her knowledge of the petitioner's courtship with N-P- and discussed how she hosted the petitioner's wedding reception in her home. The petitioner submitted several photographs of herself with N-P- and a letter from N-P-, dated September 20, 2006, in which he described his plans to visit her during their courtship.

In response to the second RFE, the petitioner submitted an undated statement in which she recalled with additional details that she met N-P- through a mutual friend on June 6, 2006 while he was on vacation in Costa Rica. She stated that they kept in contact after his departure, and N-P- returned to Costa Rica on October 4, 2006. The petitioner recounted that they became engaged and in November 2006 they

moved to Puerto Rico. She explained that they were wed in Miami, Florida at her friend's home on May 24, 2007.

In denying the petition, the director determined that the petitioner's testimony and the testimony submitted on her behalf was insufficient to support a finding of her good-faith entry into the marriage. On appeal, the petitioner submits another affidavit, dated May 3, 2011, in which she further explains how she first met N-P- in Costa Rica, their period of courtship, and his marriage proposal. Her affidavit provides additional probative information regarding her good-faith intentions in marrying N-P-. The petitioner also submits a letter from [REDACTED] and a second letter from [REDACTED]. [REDACTED] states that the petitioner resided at his home in Costa Rica and he introduced her to N-P-. He explains with probative detail his personal observations of the petitioner's courtship with N-P- in Costa Rica prior to their engagement and his observations of the couple after their marriage. In her second letter, [REDACTED] also credibly attests to her personal knowledge of the petitioner's good-faith intentions upon entry into marriage with N-P-.

De novo review of the record establishes that the petitioner married her spouse in good faith. 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.

Conclusion

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