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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

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Date: **MAY 04 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)

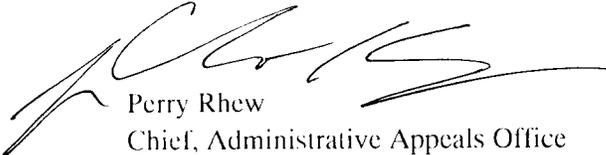
ON BEHALF OF PETITIONER:



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 and asserts that the director failed to apply the preponderance of the evidence standard when considering the petitioner’s evidence. Counsel contends that the director ignored evidence that pertains to the petitioner’s good faith entry into the marriage.

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 Poland who was admitted to the United States on April 28, 2001, as a nonimmigrant visitor. The petitioner married [REDACTED], a U.S. citizen in Chicago, Illinois [REDACTED] 2006. The petitioner filed the instant Form I-360 on August 16, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's entry into marriage with her husband in good faith. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to demonstrate 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 director determined that the petitioner's testimony and the testimony submitted on her behalf were insufficient to support a finding of her good faith entry into the marriage. In response to the RFE, the petitioner submitted a statement, dated July 11, 2011, in which she recalled that [REDACTED] was initially "a charming and caring person." She stated that her parents approved of their relationship, and they became engaged in 2006. The petitioner stated that they rented an apartment in Chicago that was close to [REDACTED] mother's house. She stated that [REDACTED] mother is handicapped, and he frequently helped her. The petitioner recounted that they wed in November 2006 and were initially "a happy and loving family." The director correctly concluded that the petitioner's statement did not provide specific details of how she first met [REDACTED] and how their early relationship developed.

¹ Name withheld to protect identity.

In response to the RFE, the petitioner submitted letters from her friends. The director correctly determined that the letters contained no probative information regarding the petitioner's intentions in marrying her spouse. The petitioner's friends all attested to knowing the petitioner and her husband as a married couple, but they did not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

The petitioner also submitted in response to the RFE photographs of herself and [REDACTED] during their wedding ceremony and at two unspecified locations. She submitted an Internal Revenue Service (IRS) transcript reflecting that she and [REDACTED] jointly filed a 2006 tax return. The director found that these documents were insufficient to establish that the petitioner married [REDACTED] in good faith.

On appeal, the petitioner submits another statement, dated November 21, 2011, in which she explains in detail how she first met [REDACTED]. The petitioner provides a probative account of their first date and subsequent period of courtship. She provides a detailed description of their shared residence. The petitioner also discusses in probative detail her shared experiences with [REDACTED] his proposal and their wedding ceremony. The petitioner submits letters from her friends, [REDACTED] who explain their connections with the petitioner and [REDACTED] and the basis for their personal knowledge of the petitioner's marital relationship. These individuals discuss in detail their observations of the petitioner's interactions with and feelings for [REDACTED] during their courtship and marriage. The petitioner provides a letter from PNC Bank stating that she and [REDACTED] had a joint checking account. The petitioner also provides a detailed and credible explanation of why she and [REDACTED] did not have additional, joint accounts.

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