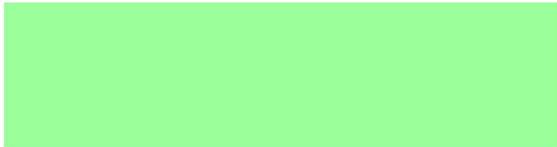


(b)(6)

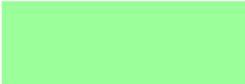
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service:
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

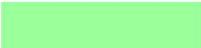


U.S. Citizenship
and Immigration
Services



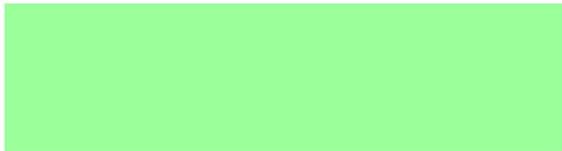
Date: **AUG 02 2013**

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)

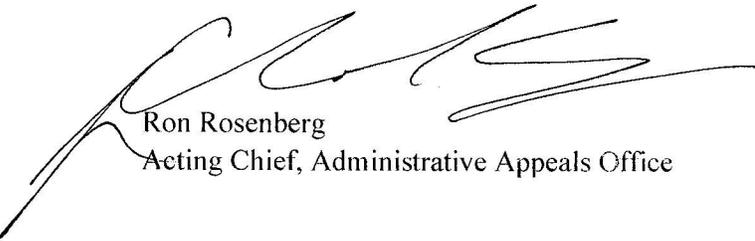
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

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 former husband in good faith.

On appeal, counsel asserts the petitioner’s eligibility and 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:

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 China who married her second husband, H-J¹, a U.S. citizen, on November 19, 2008 in Sichuan Province, China. She entered the United States on June 21, 2010 with a K-3 visa as the spouse of a U.S. citizen. Her marriage to H-J- was terminated in a divorce on May 6, 2011. The petitioner filed the instant Form I-360 on July 1, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's entry into the marriage in good faith. The petitioner responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed. On June 18, 2013, the AAO issued an RFE for a copy of the divorce decree from the petitioner's first marriage. The petitioner timely responded with evidence that her first marriage was terminated in a divorce on September 8, 2008.

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, including the evidence submitted on appeal, establishes the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal overcome the director's ground for denial and 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: a personal declaration; United States Uniformed Services identification cards; electronic mail and messaging correspondence between the petitioner and H-J-; and 35 photographs. In her declaration, the petitioner gave a probative, credible and detailed account of how she first met H-J-, their engagement, courtship, shared residence and experiences. The photographs submitted by the petitioner show the couple's wedding ceremony, their travel in China, and their attendance at gatherings with friends and family members. The United States Uniformed Services identification cards reflect that they were issued for the petitioner and her daughter

¹ Name withheld to protect the individual's identity.

as the respective spouse and stepchild of H-J-, a military veteran. In response to the RFE, the petitioner submitted a letter from her 22-year-old daughter who resided with her in China and moved with her to the United States. The petitioner's daughter lived with H-J- and the petitioner during the couple's joint residence in Alabama. In her declaration, the petitioner's daughter described in probative detail her observations of the petitioner's interactions with and feelings for H-J- during their courtship and marriage. She also gave a detailed, personal account of the petitioner's shared residence and experiences with H-J-.

In denying the petition, the director found that the petitioner failed to provide evidence of jointly held accounts or other documentation of financial commingling of funds. On appeal, counsel asserts that the petitioner's evidence that H-J- visited her in China and registered her and her daughter under his military benefits demonstrates the petitioner's good-faith entry into the marriage. Counsel further asserts that there was limited comingling of finances and joint documents because the petitioner separated from H-J- 40 days after she entered the United States. Counsel contends that it is unreasonable to expect that the petitioner would have joint documents prior to the receipt of a social security number. Counsel submits: flight itineraries for H-J-'s travel to China both before and after the couple's marriage; additional electronic mail correspondence between the petitioner and H-J-; and evidence of H-J-'s remittances to the petitioner when she resided in China.

Evidence of commingled finances is not required to demonstrate a self-petitioner's good-faith entry into a marriage, 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. Here, the petitioner has submitted: her own detailed and credible statement; numerous photographs of herself with H-J-; extensive electronic mail and messaging correspondence between herself and H-J-; evidence that H-J- included her and her daughter on his military benefits; and a detailed statement from her daughter who has 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 visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.