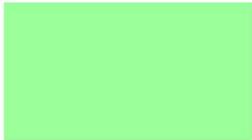


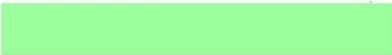
(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **AUG 19 2013**

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

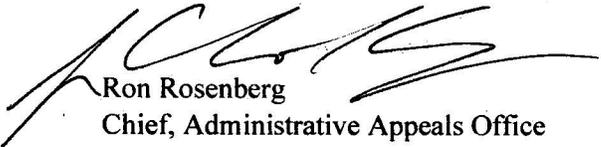
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director, (“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 under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish that the petitioner had a qualifying relationship as the spouse of a U.S. lawful permanent resident and was eligible for immigrant classification based upon that relationship because her intended spouse committed bigamy.

On appeal, the petitioner submits additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act allows the spouse of a lawful permanent resident of the United States to self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Under subsection 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act, an alien whose intended spouse committed bigamy may still self-petition under these provisions if she or he:

believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States[.]

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 clause (ii) or (iii) of subparagraph (B) 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)(B)(ii) of the Act are 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by . . . proof of the immigration status of the lawful permanent resident abuser. 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, if any, of . . . the self-petitioner

Facts and Procedural History

The petitioner is a citizen of Morocco who claims she entered the United States on September 13, 2007 as a nonimmigrant visitor. She claimed to have married [REDACTED], then a lawful permanent resident of the United States and currently a U.S. citizen, on September 5, 2010 in a traditional Muslim ceremony conducted in [REDACTED]. The petitioner filed the instant Form I-360 on May 26, 2011 without a marriage certificate. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's marriage to A-B-. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner, through counsel, timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has overcome the director's grounds for denial. The appeal will be sustained for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

To establish a qualifying relationship as the intended spouse of a lawful permanent resident, the petitioner must, pursuant to section 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act, show that (1) an actual marriage ceremony took place, (2) she believed she had married A-B-, and (3) the marriage was invalid solely because of A-B-'s bigamy. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) also requires that the petitioner submit evidence of the marital relationship. On her Form I-360, the petitioner listed "divorced" as her marital status and later explained in her self-declaration that it was only after she separated from A-B- that she found out her marriage to him was invalid because he had not yet divorced his prior wife. In denying the petition, the director found that the submitted evidence was insufficient to demonstrate that the petitioner and A-B- were ever married and determined that the petitioner did not establish that she had a qualifying relationship with a lawful permanent resident of the United States.

Self-petitioners are not required to submit preferred primary evidence and U.S. Citizenship and Immigration Services (USCIS) must consider any credible evidence relevant to the self-petition.

¹ Name withheld to protect the individual's identity.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.1(f)(1). In her declaration submitted below, the petitioner stated that she believed she married [REDACTED] because they had a traditional Muslim ceremony performed by an Imam that took place at [REDACTED] parent's home on September 5, 2010. She explained why she was not aware that [REDACTED] was still married to his prior wife at that time and how she later came to know of his bigamy. She credibly described the wedding ceremony that was performed and provided reasonable explanations for her lack of documentation of the marriage. The petitioner submitted other relevant evidence including electronic mail messages, letters from family and friends, photographs of the petitioner and [REDACTED], and research articles explaining marriage and divorce under Muslim tradition and laws. The petitioner also submitted a copy of [REDACTED] divorce decree showing that he married his prior wife on May 29, 2009 and they were not divorced until February 18, 2011, five months after he engaged in the marriage ceremony with the petitioner.

On appeal, the petitioner submits a personal letter and letters from her mother and two sisters who witnessed the ceremony through a video feed on the internet. In her letter, the petitioner again describes the day that she married [REDACTED] and the wedding ceremony that was arranged by [REDACTED] parents. She provides probative details about the ceremony itself and the events afterwards that resulted in her not being able to contact the Imam who performed the ceremony or obtain a marriage certificate. In her letter, the petitioner's mother, [REDACTED], states that her daughter's wedding day coincided with the 27th day of Ramadan and that she and the petitioner's family watched the marriage ceremony after breaking the fast in Morocco. She provides a detailed, probative, and credible description of the wedding ceremony. In their letters, the petitioner's two sisters, [REDACTED], also credibly describe viewing the wedding ceremony on their computer, recount their whereabouts while watching the wedding formalities take place, and discuss the ceremony itself in detail.

The preponderance of the evidence submitted below and on appeal demonstrates that an actual wedding ceremony was performed for the petitioner and [REDACTED] the petitioner believed they were married, and the sole reason the marriage was not legitimate was because [REDACTED] was still married to his prior wife. Accordingly, the petitioner has established that she had a qualifying spousal relationship with a lawful permanent resident of the United States and was eligible for preference immigrant classification based on such a relationship as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act. Because [REDACTED] naturalized on June 13, 2011, the petitioner is now eligible for reclassification as a self-petitioning immediate relative pursuant to section 204(a)(1)(B)(v)(II) of the Act.

Conclusion

In visa petition proceedings, it is the petitioner's burden to establish eligibility by a preponderance of the evidence. 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. The appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.