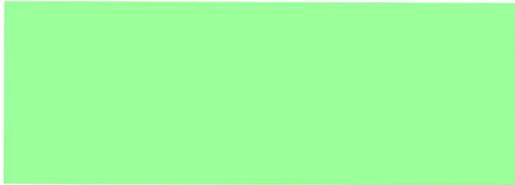




U.S. Citizenship
and Immigration
Services

(b)(6)



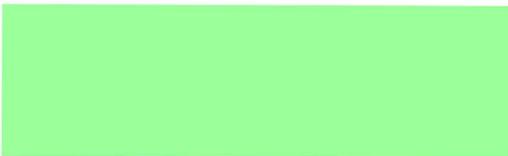
Date: **FEB 20 2013** Office: VERMONT SERVICE CENTER

FILE:

IN RE: Self-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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The prior decision of the AAO will be withdrawn and the appeal will be sustained.

The petitioner seeks immigrant classification under 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 a United States citizen.

On November 28, 2011, the director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith, resided with his wife, and that she subjected him to battery or extreme cruelty during their marriage. In its August 15, 2012 decision dismissing the appeal, the AAO concurred with the director's determination that the petitioner failed to establish his entry into the marriage in good faith, but withdrew the director's findings that he had not established that he resided with his wife and that he was subject to extreme cruelty.

On motion, counsel submits a third affidavit by the petitioner and other evidence that the petitioner entered into the marriage in good faith. Counsel's submission does not meet the requirements for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). The motion to reopen will be granted because counsel submits new evidence. See 8 C.F.R. § 103.5(a)(2).

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) 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.

Good-Faith Entry Into Marriage

The director determined that the petitioner's testimony and the testimony submitted on his behalf were insufficient to support a finding of his good-faith entry into the marriage. In his original affidavit, the petitioner indicated that he met his wife at a banquet in China at the home of their mutual friends. After his wife returned to the United States, they communicated frequently over the telephone, where they shared their mutual concerns and feelings. Their feelings developed and his wife came to China and they were married on February 6, 2007. Later they held a wedding banquet attended by several of their relatives and friends. The ceremony included traditions such as worshipping ancestors, his wife wearing a wedding gown, and taking wedding photographs which his wife later confiscated from the petitioner. After a tearful goodbye, his wife returned to the United States, and approximately a year later the petitioner came to the United States to be with his wife. In his affidavit on appeal, the petitioner added information about his and his wife's intimate relations.

The petitioner also submitted letters from friends and relatives. The director and the AAO correctly determined that the letters submitted below contained no probative information regarding the petitioner's intentions in marrying his spouse as they did not describe the petitioner's intentions or interactions with his wife in probative detail. The petitioner also submitted unspecified photographs of himself and his wife with relatives and at their wedding ceremony, but the director and the AAO found that these documents were insufficient to establish that the petitioner married his wife in good faith.

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On motion, the petitioner submits another statement in which he explains in detail how he first met his wife. The petitioner provides a probative account of their first meeting and subsequent period of courtship. The petitioner also discusses in probative detail his feelings and hopes for a future with his wife, and describes shared experiences after their wedding. The petitioner submits a letter from his friend, [REDACTED], who explains his connection with the petitioner and his wife and the basis for his personal knowledge of the petitioner's marital relationship. He discusses in detail his interactions with the petitioner and his wife, and his observations of their interactions with and feelings for each other during their courtship and marriage. The petitioner also previously provided a detailed and credible explanation of why he and his wife did not have joint accounts or other documentary evidence often provided to show entry into the marriage in good faith.

De novo review of the record establishes that the petitioner married his spouse in good faith. When viewed in the totality, the preponderance of the relevant evidence submitted below and on motion demonstrates that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, the petitioner is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met his burden. The prior decision of the AAO will be withdrawn, the appeal will be sustained and the petition will be approved.

ORDER: The August 15, 2012 decision of the Administrative Appeals Office is withdrawn. The appeal is sustained and the petition is approved.