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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



Date: **FEB 28 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)

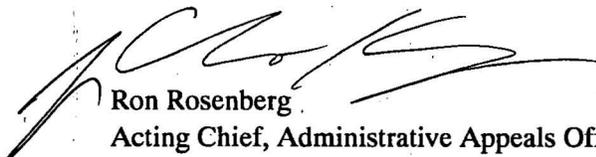
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 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 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.

The director denied the petition for failure to establish that the petitioner entered into marriage with his wife in good faith.

On appeal, the petitioner submits a supplemental brief and additional evidence.

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.

Facts and Procedural History

The petitioner is a citizen of Guyana who entered the United States on November 22, 1997, with a C1 transit visa. The petitioner married a U.S. citizen in New York on February 22, 2002. The petitioner filed the instant Form I-360 on February 1, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. The petitioner, through counsel, 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.

On appeal, counsel submits a supplemental brief and additional affidavits from the petitioner's friends and family members, as well as copies of previously submitted photographs.

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 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 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 restaurant and they exchanged telephone numbers. A week later his wife contacted him and they went out together. They then saw each other almost every weekend for a year. The petitioner decided he wanted to settle down with his wife so he proposed to her at the restaurant where they met. Later they had a small ceremony at the office of the city clerk and then went out to lunch. In his affidavit in response to the RFE, the petitioner added information about his and his wife's intimate relations.

The petitioner also submitted letters from friends and relatives. The director correctly determined that the letters 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. In his initial filing, the petitioner submitted a joint lease for his and his wife's residence. The petitioner also submitted photographs of himself and his wife, but the director found that these documents were insufficient to establish that the petitioner married his wife in good faith.

On appeal, 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 date, first kiss and subsequent period of courtship. The petitioner also discusses in probative detail his feelings for his wife, and describes shared experiences after their wedding. The petitioner submits affidavits from four friends who explain the basis for their personal knowledge of the petitioner's marital relationship. The affiants discuss in detail their interactions with the petitioner and his wife, and their observations of the petitioner and his wife's interactions with and feelings for each other during their courtship and marriage.

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 appeal 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 director will be withdrawn, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.