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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

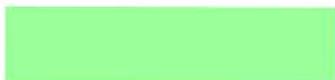


Date: **MAY 31 2013**

Office: VERMONT SERVICE CENTER File:

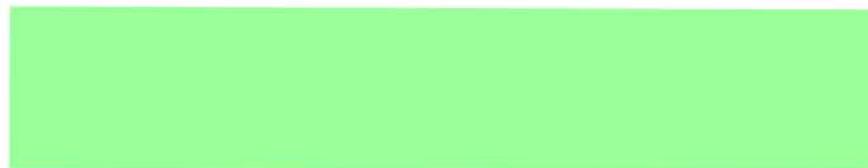


IN RE: Petitioner:



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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and affirmed the decision in a subsequent motion to reopen. 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 husband in good faith and they resided together.

On appeal, counsel asserts the petitioner’s eligibility.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 Zambia who entered United States as a nonimmigrant visitor on April 5, 2001. The petitioner married L-T¹, a U.S. citizen, in Orlando, Florida on December 4, 2003. The petitioner's marriage to L-T- terminated in a divorce on September 24, 2008. The petitioner and L-T- remarried on April 8, 2010. The petitioner filed the instant Form I-360 on November 23, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's entry into the marriage in good faith and their joint residence. 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 filed a motion to reopen. The director granted the motion, but affirmed the grounds for denial. Counsel timely appealed.

¹ Name withheld to protect the individual's identity.

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 establishes the petitioner's eligibility. The director's grounds for denial have been overcome 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 that the petitioner entered into her second marriage with L-T- in good faith. In her initial personal statement, the petitioner focused on the abuse and briefly recounted how she first met L-T- and their courtship prior to their first marriage. She submitted the following joint documents issued during their first marriage: two joint tax returns; a utility bill; a telephone bill; a furniture store invoice; a letter from the Internal Revenue Service; and a rental agreement. She also submitted two joint utility bills issued during their second marriage as well as photographs of herself and L-T- and greeting cards and letters from L-T-.

In response to the RFE, the petitioner provided a probative, detailed and credible account of how she reunited with L-T-, their courtship prior to their second marriage, and their joint residence and shared experiences during their second marriage. She submitted a letter from her friend, [REDACTED] who attested to her personal knowledge of the petitioner's relationship with L-T-, including the couple's separation after their first marriage and reconciliation prior to their second marriage. She also submitted evidence of having joint automobile insurance with L-T- during their first marriage.

In denying the petition, the director stated that the record contained insufficient historical and emotional documentary evidence and a lack of accounts showing a commingling of funds or shared responsibilities. With the motion to reopen, the petitioner submitted: an additional personal statement; supporting letters from L-T-'s family members, including his mother, [REDACTED] his brother, [REDACTED] his sister-in-law, [REDACTED] and his sister, [REDACTED] a letter from her friend [REDACTED] a letter from [REDACTED] a maintenance worker at her apartment building; a letter from [REDACTED], a licensed marriage and family therapist; and several photographs of herself with L-T- and his family members.

In her third personal statement, the petitioner further discussed her courtship with L-T- and their shared experiences during their second marriage. L-T-'s family members discussed their personal knowledge of the couple's relationship through time spent with the couple during family gatherings and their visits to the couple's residence. The petitioner's friend, [REDACTED] also briefly attested to spending time with the petitioner and L-T- at the couple's residence and [REDACTED] a maintenance worker at the petitioner's apartment building, discussed witnessing the petitioner and L-T- living together. [REDACTED] a licensed therapist who previously conducted two psychological evaluations of the petitioner, opined that the petitioner remarried L-T- because she was caught in the cycle of violence and at the time pregnant with his child.

In affirming the decision to deny the petition, the director reiterated that the record failed to show commingling of finances and shared responsibilities to establish the petitioner's bona fide marriage to L-T-. On appeal, counsel asserts that the director failed to properly consider the petitioner's evidence.

The regulation 8 C.F.R. § 204.2(c)(2)(vii) provides that all credible, relevant evidence will be considered, including affidavits from individuals who have personal knowledge of the relationship. Here, the petitioner has submitted her own detailed statements, two joint utility bills, statements from several of L-T-'s family members, statements from her friends, a statement from a maintenance worker at her apartment building, a letter from her therapist, and several photographs of herself with L-T- and his family members. The preponderance of the evidence demonstrates that the petitioner entered into the second marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also demonstrates that the petitioner resided with L-T-. On the Form I-360, the petitioner stated that she lived with L-T- from March 2, 2010 to April 10, 2010 and that their last joint address was an apartment on [REDACTED] in Orlando, Florida. In response to the RFE, the petitioner explained that L-T- moved into her apartment on [REDACTED] and they then wed in April 2010. She recounted that they resided together until January 2011, with periods of brief separations when L-T- would "disappear." She stated that only her name was on the lease because of issues with L-T-'s credit and criminal history. On the previous motion, counsel asserted that she made a typographical error on the Form I-360 when she listed the period of joint residence as ending on April 10, 2010. She stated that the petitioner and L-T- had a brief separation on April 10, 2010, but they reunited and continued to reside together throughout the remainder of 2010.

In denying the petition, the director found that the petitioner submitted no evidence to establish her shared residence with L-T-. The director affirmed this finding in response to the petitioner's motion to reopen. A full review of the record reflects that the petitioner has submitted sufficient evidence of her joint residence. In her statements, the petitioner discussed in probative, credible detail her period of shared residence with L-T- during their second marriage. [REDACTED] a maintenance worker at the petitioner's apartment building on [REDACTED] attested to her personal knowledge of the petitioner's joint residence with L-T-. The petitioner's friend, [REDACTED] stated that she spent time with the petitioner and L-T- at the couple's residence. L-T-'s family members, including his mother, [REDACTED] his brother, [REDACTED] and his sister-in-law, [REDACTED] also discussed having visited the petitioner and L-T- at their joint residence during the couple's second marriage. The petitioner also submitted two joint utility bills issued during their second marriage. Accordingly, the record establishes by a preponderance of the evidence that the petitioner resided with her husband during their second marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has established that she entered into the marriage in good faith and resided with her husband. She is consequently eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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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 will be sustained.