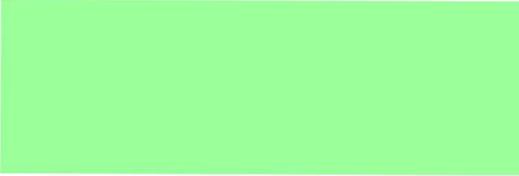


(b)(6)

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



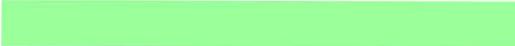
U.S. Citizenship
and Immigration
Services



Date: **OCT 02 2013**

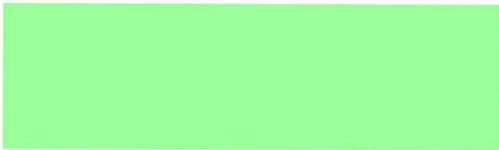
OFFICE: VERMONT SERVICE CENTER

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)

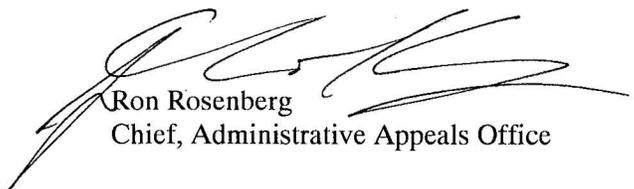
ON BEHALF OF PETITIONER:



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
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) revoked approval of the immigrant visa petition after properly notifying the petitioner and the Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. 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 revoked approval of the petition on the basis of his determination that the petitioner failed to establish a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification.

On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. . . .

Pertinent Facts and Procedural History

The petitioner, a citizen of Costa Rica, married D-W¹, a citizen of the United States, on September 9, 2006. She filed the instant Form I-360 on April 7, 2008 and it was approved on April 24, 2009. The director issued a Notice of Intent to Revoke (NOIR) approval of the self-petition on May 20, 2011 because U.S. Citizenship and Immigration Services (USCIS) learned that the petitioner stated she was married on her application for a nonimmigrant visa in 2002 which indicated she was not legally free to marry D-W-. The director stated that after a full review of the administrative record, the petitioner had failed to establish that she had a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification. The petitioner, through former counsel, submitted a response which the director found insufficient to overcome his proposed grounds for revocation. The director revoked approval of the petition on August 23, 2011. The AAO summarily dismissed the petitioner's appeal on February 7, 2013 because the AAO had not received the brief or additional evidence counsel indicated he would submit. The petitioner submitted a timely motion to reopen.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner, through counsel, asserts that the evidence submitted on appeal was not taken into consideration by the AAO in its summary dismissal decision. Counsel submits documentation that the additional evidence was timely filed and also resubmits the evidence previously filed on appeal. Accordingly, the motion to reopen is granted.

The AAO conducts appellate review on a *de novo* basis. 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 revocation. The appeal will be sustained and approval of the petition will be reinstated for the following reasons.

¹ Name withheld to protect individual's identity.

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Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages. The petitioner indicated on her Form I-360 that she was not previously married and later attested in a sworn statement before a USCIS officer on November 9, 2009 that she had never been previously married nor had she ever lied to obtain an immigration benefit. However, a review of the administrative record shows that in 2002, the petitioner submitted the Form DS-156 Application for a Nonimmigrant Visa in which she indicated that she was married and intended to travel to the United States with her husband and their son. When she filed her Form I-360, the petitioner did not submit any evidence that this marriage was terminated prior to her marriage to D-W-. Consequently, the director issued a NOIR because the record no longer demonstrated that the petitioner had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on that relationship. In response to the NOIR, the petitioner submitted a letter explaining that in Costa Rica, it is common for men and women who are living together to refer to each other as spouses. She stated that she referred to her son's father as her husband on her visa application because the two were living together at the time but were not legally married. The petitioner submitted search results of the Costa Rican Civil Registry showing that she does not have any registered marriages in Costa Rica. In his decision revoking the approval of the Form I-360, the director stated that if the petitioner had a common law marriage with legal effect in Costa Rica, she had failed to submit evidence that her common law marriage was terminated prior to her marriage with D-W-. The director further determined that regardless of whether or not the petitioner was in fact married at the time she submitted her Form DS-156, she indicated on a government document that she was married and therefore failed to establish that she was legally free to marry D-W-.

In his appellate brief resubmitted on motion, counsel asserts that although the petitioner was involved in a common law marriage in Costa Rica, Costa Rican family law dictates that their union was not legally recognized since it was not timely registered with the Costa Rican Civil Registry. In support of his argument, counsel submits an affidavit from a Costa Rican attorney, [REDACTED] who submits a report summarizing Costa Rican family law regarding common law marriages and an analysis about the petitioner's specific case. Common law marriages in Costa Rica are governed by Title Seven, single chapter of the Family Code, which was added by Law No. 7532 on August 8, 1995. *See* L. 5476, Cod. Fam. (Costa Rica) and L. 7532, agosto 8, 1995 (Costa Rica). Article 242 of Chapter Seven of the Family Code states that a man and a woman with the legal capacity to get married who live together for at least three years in a public, and stable relationship, are afforded the same legal rights as a formal and legal marriage. *Id.* However, Article 243 states that upon termination of the "union in fact" by death or separation, the common law marriage must be registered with the Civil Registry within two years in order to have the same legal rights as indicated in Article 242. *Id.* In his affidavit, Mr. [REDACTED] states that the petitioner terminated her relationship with her common-law husband and did not register it with the Costa Rican Civil Registry within the requisite two-year period. The record indicates that the petitioner's relationship with her common-law husband ended over two years prior to her marriage to D-W-. Therefore the petitioner's previous relationship was not legally recognized and was not an impediment to her subsequent

marriage to D-W- in 2006. Additionally, the petitioner, in her affidavit, credibly explained that she indicated that she was married at the time she filed her Form DS-156 because it is common for Costa Ricans living together to consider themselves married. Accordingly, the petitioner has established that she had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

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. Accordingly, the appeal will be sustained and approval of the petition shall be reinstated.

ORDER: The motion is granted. The appeal is sustained.