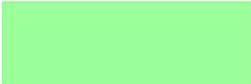


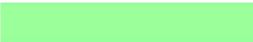


U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 02 2013**

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

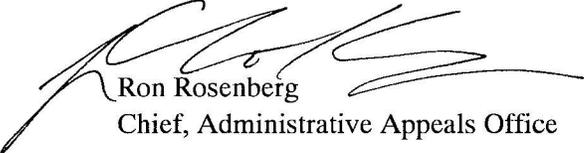
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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”) 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 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 former spouse, a United States citizen.

The director denied the petition for failure to establish that the petitioner entered into her marriage in good faith. On appeal, counsel submits a brief and additional evidence.

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:

(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:

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of the Ukraine who entered the United States on November 27, 2009 as a B-2 visitor. The petitioner married R-K-¹, a U.S. citizen, on July 7, 2010 in [REDACTED] Nevada. The two were divorced on June 7, 2011. The petitioner filed the instant Form I-360 on April 28, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into her marriage. The petitioner, through former 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.

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, the petitioner has overcome the director's ground for denial. 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 marriage in good faith. The record contains the petitioner's affidavits, a copy of their residential lease, a bank account statement, photographs of the petitioner and R-K-, a copy of a property settlement, and letters from family and friends. The director properly addressed the deficiencies of the lease, bank account statement, property settlement, and affidavits submitted by the petitioner's friends.

Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). In her first affidavit, the petitioner stated that she met R-K- in [REDACTED] Nevada sometime in January of 2010. She stated that she is a personal trainer by trade and that R-K- asked her to help him train. She stated that they spent a lot of time together, began dating, and then moved in together. The petitioner recounted that after about six months of dating, she agreed to marry R-K-

¹ Name withheld to protect the individual's identity.

but did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the abuse. However, in her second affidavit submitted in response to the RFE, the petitioner provided probative information regarding when she first met R-K- and how their friendship developed into a romantic relationship. She recounted how R-K- enjoyed spending time not only with her but with her son, whom he took to many places and events. The petitioner credibly described in probative detail her relationship with R-K- and her good faith intentions upon marrying him. In his letter, the petitioner's father, [REDACTED] further explained that the petitioner was happy to have found a man who cared about her and her son. He stated that he was introduced to R-K- by his daughter through an online video chat website. He stated that they spoke almost every day and that although he had some misgivings about their relationship, his daughter trusted R-K- and that the two had already decided to get married.

On appeal, counsel asserts that the director erred because as an abused spouse, the petitioner cannot be expected to produce evidence which one would expect to see in a normal marital relationship. The petitioner submits additional letters from friends who credibly explain their connections with the petitioner and R-K- and establish their knowledge of the relationship. In addition, the record contains extensive photographs of the petitioner, R-K- and their sons, which are labeled to show the many trips that the petitioner and R-K- took both before and during their marriage. De novo review of all of the relevant evidence submitted below and on appeal establishes the petitioner's good-faith entry into the marriage. When viewed in the totality, the preponderance of the relevant evidence demonstrates that the petitioner entered into marriage with R-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has overcome the director's determination that she did not enter into her marriage with R-K- in good faith. She is consequently eligible for immigrant classification based on her marriage to R-K- under section 204(a)(1)(A)(iii) of the Act.

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.

ORDER: The appeal is sustained.