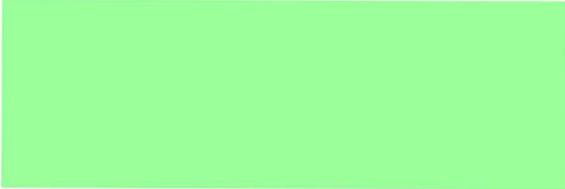




U.S. Citizenship
and Immigration
Services

(b)(6)



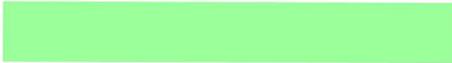
Date: JUL 25 2014

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)

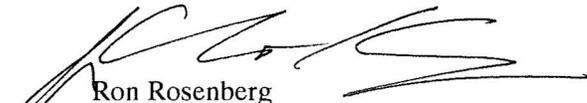
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 Vermont Service Center director (“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.

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 her former spouse, a United States citizen, in good faith. On appeal, the petitioner, through 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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)(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.

Facts and Procedural History

The petitioner, a citizen of Kenya, last entered the United States on November 2, 2001 as a B-2 temporary visitor. The petitioner married C-R-¹, a U.S. citizen, on August 14, 2009 in Georgia and they were divorced on October 14, 2010. Prior to their divorce, the petitioner filed the instant Form I-360 on May 15, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's entry into the marriage with her former spouse in good faith. The petitioner timely responded with further evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to show the requisite good-faith entry into the marriage and counsel timely appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's ground for denial as follows.

Entry into the Marriage in Good Faith

The preponderance of the relevant evidence submitted below and on appeal demonstrates the petitioner's entry into her marriage with C-R- in good faith. In her initial affidavit, dated April 4, 2012, the petitioner recounted how she and C-R- met at a 2008 wedding, immediately hit it off, exchanged numbers and kept in touch regularly despite him living Augusta and her in Marietta. She explained that C-R- visited her often, they "officially" began dating in April 2009, and when he took her to meet his parents they did not accept her or approve of him dating an African woman. The petitioner recalled that she was touched when C-R- stood up to his parents on her behalf, and by May 2009 they were very much in love, he requested a transfer to Marietta, and he proposed to her on June 11, 2009. The petitioner stated that she was excited to wed C-R-, and because his parents would not approve they

¹ Name withheld to protect the individual's identity.

decided to marry at the local court house. She indicated that after two months of marriage, C-R- began to drink in excess and exhibit abusive and controlling behaviors.

The petitioner's cousin, [REDACTED] also attested to her good-faith entry into marriage. He recalled how in early 2009, the petitioner called and told him that she had met a man she really liked, in June 2009, he and his wife visited the petitioner and C-R- with whom he was impressed, in July 2009, he was very happy when she told him they were getting married, and he happily gave her his blessing as he thought that she and C-R- were a good match. He explained that though he was unable to attend the former couple's wedding, he called the petitioner shortly thereafter to check in with her, but when she did not return a series of calls and her brother was unable to verify her wellbeing, he made a trip to visit the petitioner only to be turned away by C-R- at the door.

The director nonetheless determined that the petitioner did not marry her former spouse in good faith, citing internal inconsistencies in her July 2013 affidavit and finding that some of the joint financial documents, including bank, credit card and insurance statements, reflect dates subsequent to her separation from C-R-. On the initial Form I-360 petition, the petitioner indicated that she resided with her former spouse until January 2010. In response to the RFE, the petitioner submitted a revised page 4 on which the date was amended to June 2010. In her second affidavit, dated July 17, 2013, the petitioner explained that while their relationship was on and off and C-R- was in and out of the apartment from January to June 2010, it was on June 11, 2010 that he left without explanation and never returned. The petitioner notes that the Complaint for Divorce, filed 21 months before the Form I-360 and submitted below, also indicates that the parties had been separated since June 11, 2010. Nevertheless, the director found that "simply changing the claimed date of separation is insufficient to resolve the discrepancies in the submitted evidence." The director did not acknowledge the petitioner's credible explanation, which along with the divorce complaint, sufficiently resolves the discrepancy.

The director noted that the residential lease submitted below was not signed by C-R-, and his name remained on the joint bank, credit card, and insurance statements after the former couple split in June 2010. In response to the RFE, the petitioner explained that C-R- "disappeared" one day, leaving for work in the morning but never coming home. She did not close the joint accounts because she always thought he would return. The petitioner stated that she divorced C-R- under pressure from her parents after months had passed without contact from him. She recalled being very depressed and still trying to hang on to the relationship, and she considered it a low priority to remove C-R's name from their joint accounts after he vanished from her life. She explained that she had been living in her apartment since March 2009, tried to add C-R- to the lease after they married in August 2009, but his poor credit rating resulted in the lender requiring that C-R- pay a monetary deposit which he refused. The petitioner stated that consequently, C-R- did not sign the lease but moved into the apartment anyway, residing with her four days each week and traveling to Augusta for work the other three. She submitted cellular telephone bills, dated October 2009 to May 2010, and addressed to C-R- at the petitioner's Marietta address. The director did not discuss the petitioner's explanation for the perceived inconsistencies in her response to the RFE or address the content of her affidavit and that of her cousin. Instead, the director determined the petitioner did not marry C-R- in good faith because the documents she submitted did not show joint accounts and purchases or a "commingling of resources." However, 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). On appeal, the petitioner credibly explains that she and her spouse did not have a lot of joint documents because they were not married long before he became abusive and they separated. The petitioner also previously explained that they maintained some individual accounts during their marriage because of C-R-’s poor credit rating, as documented in the record.

In her personal affidavits, submitted below and on appeal, the petitioner provided a credible, detailed account of how she met her former spouse, their courtship, engagement, joint residence and shared experiences before and during the marriage. Mr. [REDACTED] the petitioner’s cousin, also provided probative details concerning his observations of the relationship before and during the marriage. On appeal, the petitioner’s friends, [REDACTED] and Dr. [REDACTED] also provide probative credible details about her good-faith entry into marriage with her former spouse. Ms. [REDACTED] recalls when the petitioner first told her that she had met a really nice man, was looking forward to marrying him, and felt lucky to have met the man of her dreams and with whom she was “equally yoked.” She remembers the first gathering at which she met C-R-, whom she found at that time to be very pleasant and affectionate toward the petitioner, but how later he would seem to isolate the petitioner from her friends and family. Dr. [REDACTED] describes having the petitioner and C-R- in his home on several occasions before they married, how C-R- seemed to be a good, young man and the couple seemed to be happy together. He observed that C-R- was not very open to questions about his family or past, however, and explains that he wanted to caution the petitioner but hesitated. Dr. [REDACTED] explains that after the petitioner called his wife crying in February 2010, they invited her over and learned of the changes in C-R-’s behavior. Dr. [REDACTED] writes that he tried to reach out to C-R- who refused to meet with him or his wife. He provided further credible and detailed testimony concerning the petitioner’s love for C-R- despite his abuse, and her continued hopes that the marriage could be saved.

When considered cumulatively, the preponderance of the relevant evidence submitted below and on appeal, demonstrates that the petitioner married her former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). On appeal, the petitioner has met this burden. She has overcome the director’s ground for denial and demonstrated that she married her former spouse in good faith. Because she has established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.