

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: NOV 05 2014

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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)

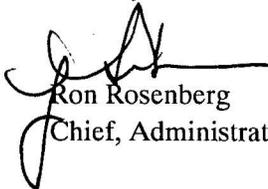
ON BEHALF OF PETITIONER:

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 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 on the basis of her determination that the petitioner failed to establish that she entered into marriage with her husband in good faith.

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

Applicable Law

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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 Kenya who entered the United States on June 8, 2002 as a nonimmigrant visitor. On January [REDACTED] the petitioner married a U.S. citizen in [REDACTED] North Carolina. The petitioner filed the instant Form I-360 self-petition on June 7, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility and denied the petition accordingly. The petitioner filed a timely appeal. On appeal, the petitioner submits a brief, additional affidavits, and the results of a polygraph test.

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 for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence demonstrates the petitioner's entry into her marriage in good faith. In her affidavits, the petitioner gave a probative and credible account of how she first met her husband, their courtship, shared residence, experiences, and her marital intentions. She indicated that she met her husband in May, 2005, at a party and that they became romantically involved. She indicated that they broke up, but began dating again in 2009 after a chance encounter. She described the types of activities they participated in together, and stated that they moved in together, got engaged, and had a small wedding ceremony.

The petitioner also submitted affidavits from friends that described her marital relationship. [REDACTED] indicated that she was invited to the petitioner and her husband's wedding, and that she visited the petitioner and her husband at their home on several occasions. She described how the petitioner and her husband talked to her about their future plans together. [REDACTED] stated that he visited their home on two occasions and that he took pictures at their wedding. He also described their interactions with each other and noted that they seemed excited about their future life together. [REDACTED]

recalled that the petitioner and her husband seemed like a happy couple, and that he attended their wedding ceremony, visited their home, and saw them together at different events.

The petitioner also submitted pictures of herself and her husband, email messages exchanged between them, and evidence of the petitioner's attempts to permanently move to North Carolina. She submitted evidence of trips to visit her husband, and joint checking account statements sent to their address in North Carolina.

In denying the petition, the director concluded that the affidavits provided by [REDACTED] were inconsistent with the petitioner's submitted statements, and that the other relevant evidence was insufficient to show that the petitioner married her husband in good faith. On appeal, counsel and the petitioner explained the perceived inconsistencies and our review of the evidence does not reveal the contradictions in the evidence noted by the director. Also on appeal, the petitioner submitted additional affidavits from [REDACTED] as well as the petitioner's son and mother.¹ When viewed in its totality, the relevant evidence establishes, by a preponderance of the evidence, the petitioner's good faith entry into her marriage, 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.

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 and the appeal is sustained.

ORDER: The appeal is sustained.

¹ The petitioner also submitted the results of a polygraph test, including the examiner's credentials, to support her claim; however, "the polygraph has not yet been accepted . . . as a scientifically reliable method of ascertaining truth or deception." *United States v. Gloria*, 494 F.2d 477 (5th Cir. 1974).