



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: OCT 07 2014

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner [REDACTED]

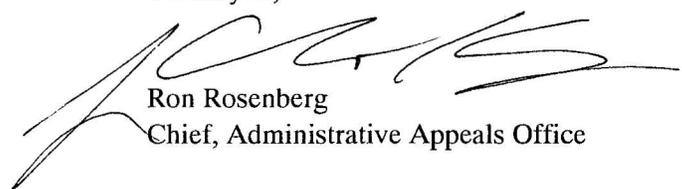
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 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.

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 married her husband in good faith. On appeal, counsel submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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, a citizen of Kenya, was paroled into the United States on November 25, 2008. She was previously in the United States as a non-immigrant student when she married her first husband, K-C¹, on November 23, 2004 in [REDACTED] Texas. The marriage was annulled on December 15, 2004. The petitioner married W-T², a U.S. citizen, on September 26, 2006 in Dallas, Texas. The petitioner filed the instant Form I-360 self-petition on December 17, 2012. The director subsequently issued a request for additional evidence (RFE) of the petitioner's good-faith entry into the marriage. The petitioner timely responded with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner's accredited representative timely appealed.

The AAO reviews 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 for the following reasons.

Entry into the Marriage in Good Faith

The petitioner has established by a preponderance of the evidence that she entered into her marriage in good faith. In her first affidavit, dated December 5, 2012, the petitioner recounted in detail how she met W-T- in April 2006, and went out to dinner with him that night. She described meeting W-T-'s sister and her children early in the relationship, and regularly spending time with W-T-. The petitioner submitted photographs of her, W-T-, and W-T-'s sister and nephew. The petitioner stated that she and W-T- were madly in love when he proposed in August 2006, and that they were married by judge in September 2006. The petitioner submitted a photograph of her and W-T- on the day of their wedding.

The petitioner stated that W-T- initially moved from [REDACTED] Texas into the petitioner's apartment in [REDACTED] Texas. The petitioner indicated that they then looked for a new apartment to rent together; however, when they applied for the new apartment, W-T-'s application was rejected based on his criminal history. The petitioner asserted that she rented the apartment in her name only, since W-T- was not approved. The petitioner's administrative record contains a copy of the lease for the first

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

[REDACTED] apartment, dated November 17, 2006, which is in her name only.³ With her initial Form I-360 submission, the petitioner provided the letter rejecting W-T- as a tenant at the [REDACTED] apartment, and numerous documents indicating that the petitioner and W-T- both lived at the residence, including a joint savings account statement covering the period of December 30, 2006 to March 30, 2007; a telephone bill for May 2007; correspondence from the Internal Revenue Service (IRS) dated June 25, 2007; and documents related to the petitioner's and W-T-'s dental insurance policy dated April 30, 2007. The petitioner also submitted a lease dated June 29, 2007 for a different apartment complex in the names of both the petitioner and W-T-, and documents indicating that W-T- was the beneficiary of the petitioner's life insurance policy.

In her first affidavit, the petitioner discussed the early days of her marriage, and discussed their shared activities and plans for the future. She indicated that she supported W-T-'s desire to advance his employment prospects and described her friendship with his sister. The petitioner stated that she was very close to her sister-in-law, but indicated that she is unable to request a statement from her in support of her self-petition. The petitioner recounted two occasions when contact with her sister-in-law ultimately resulted in W-T- finding her and escalating his abuse.

The director issued an RFE on August 5, 2013, citing various perceived inconsistencies in the record, and discounting much of the relevant evidence. The director requested additional traditional joint documentation to establish that the petitioner and W-T- commingled their finances. In response, the petitioner submitted a second affidavit, in which she credibly addressed the perceived inconsistencies noted in the RFE. She again asserted that she married W-T- because she fell in love with him and she wanted to start a family, and returned to him numerous times in spite of the abuse because she was in love with him and she hoped he would change. The petitioner indicated that she was unable to obtain additional documentary evidence without jeopardizing her safety. In addition, the petitioner submitted IRS transcripts of her and W-T-'s income tax returns for 2006, 2007, and 2008, which show a filing status of "Married Filing Joint." The petitioner provided a letter from her friend, [REDACTED] dated December 19, 2012. In the letter, Ms. [REDACTED] attested to visiting the petitioner and M-T- in their apartment in April 2010, and observing W-T-'s abusive treatment of the petitioner. She asserted that she advised the petitioner to leave W-T-, but the petitioner insisted that they were trying to work things out.

The director denied the self-petition, finding that the petitioner was not credible based on minor inconsistencies in the record and that she did not provide sufficient evidence to establish that she entered into her marriage with W-T- in good faith. The director accorded diminished weight to much of the submitted relevant evidence. On appeal, the petitioner's representative submits a brief asserting that the director failed to consider all the relevant, credible evidence, and failed to apply the correct standard of proof. She further asserts that the director inappropriately discounted the petitioner's statements, and other relevant evidence.

The petitioner must establish by a preponderance of the evidence that she is eligible for the benefit sought. Section 291 of the Act, 8 U.S. C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO

³ The record reflects that the petitioner and W-T- departed the [REDACTED] apartment complex in 2007, but moved back into a different apartment at the same complex in 2008.

2010). In evaluating whether the petitioner has met that burden, the director must consider "any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. §1154(a)(1)(J). The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. §1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i).

De novo review of all of the relevant evidence establishes the petitioner's good-faith entry into the marriage. The director erred in discounting the petitioner's statements as not credible. A review of the entire record reveals that the petitioner's statements are internally consistent, and consistent with the circumstances of the abuse that she suffered. The petitioner credibly addressed the inconsistencies noted by the director in an affidavit dated October 23, 2013, submitted in response to the RFE. In her decision, the director found that discrepancies remained regarding the dates during which the petitioner and W-T- resided together. However, the director determined that the petitioner established her joint residence with W-T-, and it is not at issue on appeal.

De novo review also resolves other issues raised by the director. In the RFE, the director indicated that the petitioner should have provided IRS transcripts, but then discounted them when the petitioner did provide them. Although the petitioner submitted telephone bills in her and W-T-'s names, the director also discounted them because it was "unclear who used this account and who paid on this account." The director did not explain why utilization or payment of the account was in doubt, and appears to have applied a higher standard of proof than the requisite preponderance of the evidence standard. See *Matter of Chawathe*, 25 I&N Dec. at 375. The joint income tax transcripts and telephone bills both support the petitioner's claim.

The director also questioned the petitioner's leases, two of which were in her name only as W-T- was not approved as a tenant. The petitioner submitted a letter from the apartment complex stating that W-T- was rejected for residence at the complex based on his criminal record. The director nonetheless relied on a USCIS officer's interview related to W-T-'s immigrant visa petition filed on the petitioner's behalf. The officer spoke with a building manager who reportedly stated that the petitioner resided in the apartment alone. Based on this information alone, the director concluded that the petitioner lacked credibility for stating that W-T- resided with her, despite substantial documentary evidence indicating that W-T- indeed resided at the complex and was absent at the time of the interview consistent with the documented cycle of W-T-'s abuse.⁴ The USCIS officer's visit to the petitioner's residence occurred after the abuse had escalated, and the petitioner credibly recounted in her December 5, 2012 affidavit how W-T- would be absent from their home for days after incidents of abuse. The petitioner's claim is consistent with the March 2010 police report and the letter from the Friends of the Family domestic violence shelter, which confirms her stays in 2010 and April and May 2011.

The director emphasized traditional forms of joint documentation both in the RFE and in her decision. 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-

⁴ The director found a copy of the joint lease from a different complex problematic because it did not contain a signature for the lessor's authorized representative, and accorded it no evidentiary weight. However, a review of the administrative record reveals a fully executed copy of this document.

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). Here, the petitioner's affidavits contain credible statements regarding her and W-T-'s courtship, wedding, shared residence and experiences, as described above. Numerous documents also support the petitioner's assertions regarding her good-faith entry into her marriage with W-T-, including IRS joint income tax return transcripts from 2006, 2007, and 2008; residential leases; documentation regarding shared dental and life insurance; joint telephone bills; a joint savings account statement; and photographs. The director inappropriately discounted much of this evidence. The petitioner has established by a preponderance of the evidence that she married her husband 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); *Matter of Chawathe*, 25 I&N Dec. at 375. *De novo* review of the record reveals that the petitioner has met this burden. 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.