



**U.S. Citizenship
and Immigration
Services**

(b)(6)

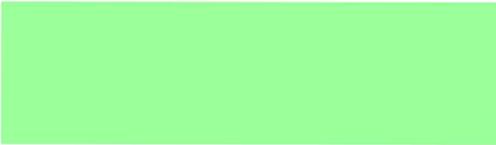
Date: **OCT 28 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

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

ON BEHALF OF PETITIONER:

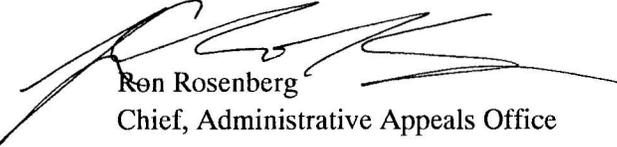


INSTRUCTIONS:

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,


Ren 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her spouse, a lawful permanent resident of the United States.

The director denied the petition for lack of evidence of the petitioner’s husband’s U.S. lawful permanent resident status. On appeal, the petitioner, through counsel, submits a legal memorandum and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B) 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)(B)(ii) of the Act are 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by . . . proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

In regards to verifying an abuser's immigration status, the regulation at 8 C.F.R. § 103.2(a)(17)(ii) states:

Assisting self-petitioners who are spousal-abuse victims. If a self-petitioner filing a petition under ... section 204(a)(1)(B)(ii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, USCIS will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration ... status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

Facts and Procedural History

The petitioner is a citizen of Mexico who indicates that she last entered the United States in 1988 without inspection, admission or parole. On January [REDACTED] in Arizona, the petitioner married R-W¹, whom she stated was born in Mexico, came to the United States as a child and received his immigrant status through his parents. On August 20, 2012, the petitioner filed the instant Form I-360 self-petition. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's spouse's U.S. citizenship or lawful permanent resident status. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has overcome both of the director's grounds for denial as follows.

Qualifying Relationship and Corresponding Eligibility for Preference Immigrant Classification

The relevant evidence submitted below and on appeal as well as U.S. Citizenship and Immigration Services (USCIS) records establish the petitioner's eligibility and overcome the director's grounds for denial. The petitioner submitted a marriage certificate demonstrating that she and R-W-lawfully married on January [REDACTED] in Arizona. In her first affidavit, the petitioner stated that R-W- was a "legal permanent resident" when she married him. In her second affidavit, the petitioner stated that she was unable to obtain her husband's lawful permanent resident card or his alien registration number because she was no longer residing and had no contact with him. In her third affidavit, the petitioner stated that R-W- told her he came to the United States as a baby in [REDACTED], his parents got "immigration papers" for all their children, and he was better than her because he had papers and she did not. The petitioner recalled that she never saw her husband's "green card" and did not believe he ever showed it to anyone else either.

¹ Name withheld to protect the individual's identity.

In his affidavit, the petitioner's son, stated that R-W- told him he came to the United States sometime in [REDACTED] his mother was born in the United States, filed immigration papers on his behalf, and he secured either U.S. permanent residence or citizenship through her as a child. The petitioner's son stated that R-W- receives an employment pension as well as Medicaid, Medicare and Social Security Disability as a result of a workplace injury in the 1990s. Counsel also asserted that R-W-'s claimed receipt of Supplemental Social Security Income (SSI) was secondary evidence that he was a lawful permanent resident or U.S. citizen.

On appeal, counsel reiterates her claims that R-W- is a U.S. citizen or lawful permanent resident and she submits additional evidence including a copy of R-W-'s immigration arrival manifest dated January 16, 1951, which identifies R-W-'s father as a U.S. citizen and R-W-'s purpose for entry as to reside permanently in the United States.

USCIS records show that R-W- is a lawful permanent resident of the United States. R-W- was admitted to the United States on January 16, 1951 as a nonquota immigrant under section 4(c) of the Immigration Act of 1924. He was inspected and admitted as an immigrant at the [REDACTED] Arizona port of entry pursuant to his U.S. Immigration Visa and Alien Registration when he was one year old. These records are consistent with the relevant evidence submitted by the petitioner regarding R-W-'s name, date and place of birth, parentage and entry into the United States. USCIS records do not indicate that R-W- has ever lost his lawful permanent resident status.

The petitioner has thus established that she has a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for preference immigrant classification based upon that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). On appeal, the petitioner has met this burden. She has established her eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act. The appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.