



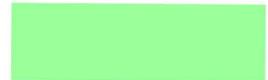
U.S. Citizenship  
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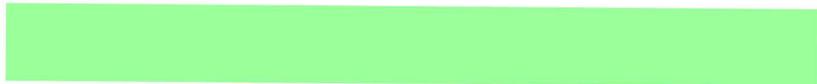


Date: SEP 05 2014

Office: VERMONT SERVICE CENTER File:

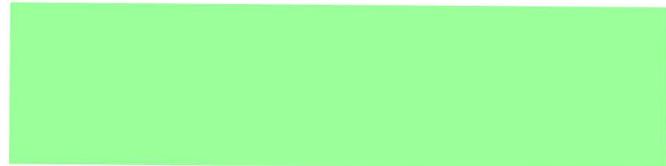


IN RE: Self-Petitioner:



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)

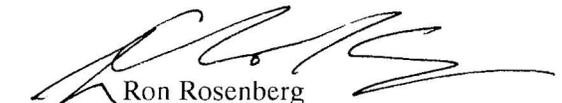
ON BEHALF OF PETITIONER:



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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the 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 resided with her former husband and married him in good faith. On appeal, counsel submits a brief and additional evidence.

*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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

\* \* \*

(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.

\* \* \*

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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 Mexico, was paroled into the United States on April 11, 2012. The petitioner married J-L-, a U.S. citizen, on July 2, 2010 in New York. The petitioner filed the instant Form I-360 on September 4, 2012. The director subsequently issued two requests for additional evidence (RFEs). The petitioner timely responded with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition for failure to establish the requisite joint residence and good-faith entry into the marriage. Counsel 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 grounds for denial for the following reasons.

#### *Joint Residence*

The petitioner has established by a preponderance of the evidence that she resided with her U.S. citizen spouse. In the Form I-360, the petitioner stated that she resided with her husband from July 2010 until March 2012, and last resided with him in [REDACTED] New York. In her first affidavit, dated August 6, 2012, the petitioner indicated that her husband moved into her apartment in [REDACTED] New York, noting that she was reluctant to begin living with him until they agreed to marry. She stated that she bought all the groceries and did all the cooking for the family, and that her husband provided child care for her son from a prior relationship. The petitioner stated that four months into the marriage, they moved to [REDACTED] New York on Long Island. She described how she relied on J-L- to drive her to her place of employment in [REDACTED] to avoid a two hour commute on public transportation. The petitioner also discussed when J-L- moved out of the home in March 2012.

In support of the initial Form I-360 submission, the petitioner provided a Family Offense Petition, filed against her husband on April 23, 2012, which indicates that she was residing at the [REDACTED] address. She also submitted a cable bill, dated May 2012, in her name and an electricity bill, dated June 2012, in her husband's name, with the [REDACTED] address. A joint federal tax return for 2010, in both her and her husband's names, bears an address in [REDACTED], New York.

The director found these documents insufficient to establish joint residence and issued an RFE. In response, the petitioner provided two notarized affidavits from acquaintances attesting that J-L- moved into the petitioner's apartment in [REDACTED] New York in December 2009, and that the petitioner and her husband moved to the [REDACTED] address after they married. The affidavits state that the couple resided together until J-L- moved out in March 2012. In addition to the affidavits, the petitioner provided tax return transcripts for 2010 and 2011, which indicate that the petitioner and her husband filed jointly using an address in [REDACTED] New York. An approval notice of the alien relative petition filed by the petitioner's husband on her behalf also bears the [REDACTED] New York address. In addition, the petitioner submitted a car insurance bill in her and her husband's names, with an [REDACTED] New York address.

The director determined that the evidence did not establish that the petitioner resided with her spouse. The director noted that several of the documents are dated subsequent to the period the petitioner claims she resided with her husband. Further, the director found that the addresses on the tax returns and car insurance bill did not match the addresses that the petitioner listed on the Form G-325A, Biographic Information Sheet, submitted in support of her Form I-485, Application to Adjust Status. The director found the reliability of the sworn affidavits "diminished" by the different addresses.

On appeal, the petitioner submits an affidavit, dated November 8, 2013, in which she credibly explains the use of the various addresses. The petitioner states that the [REDACTED] address is the home of her father-in-law and the address where her husband was living when she met him. She explains that the individual that assisted them with their immigration paperwork recommended using that address for their documents since it was established and permanent. They also used the address for their taxes, but they never resided together at that address. She also explains that the [REDACTED] address is her husband's current address, and that she is still listed on her husband's car insurance as her divorce has not been finalized. She states that she has never lived at that address, and obtained the bill from her husband's sister, with whom she maintains communication.

The preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner resided with her husband during their marriage. The petitioner's affidavits provide a credible account of her and her husband's joint residence. They are supported by notarized affidavits from acquaintances, and bills indicating that they were both listed on accounts at the [REDACTED] address. The petitioner's affidavit on appeal clarifies the utilization of the other addresses on some of the couple's joint documentation. The petitioner's explanations are consistent with her claim that she resided first with her husband in [REDACTED] and then in [REDACTED]. In her sworn statement on appeal, the petitioner's cousin also confirms the former couple's marital residence in [REDACTED] where she visited them frequently. When viewed in the aggregate, the relevant evidence shows that the

petitioner resided with her former husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*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, the petitioner recounted how she met her former husband online in February 2008, and maintained online and telephone contact before meeting him in person for the first time. She described their courtship, seeing each other on weekends because he lived in Long Island and she lived in [REDACTED]. The petitioner addressed the couple's regular routine, stating that she would do the grocery shopping and cooking, and her husband would watch her son. She discussed the family moving to Long Island, where she relied on her husband for transportation to her work in [REDACTED]. The petitioner also provided copies of joint bank account statements, the petitioner and her husband's joint 2010 federal income tax filing, photographs of the couple's wedding, and photographs of several family outings and trips.

In response to the second RFE, the petitioner provided tax transcripts, which show that she and her husband filed jointly in 2010 and 2011. The petitioner also submitted a car insurance bill showing that she and her husband have been insured on the same policy since February, 2011, and two affidavits from acquaintances, previously described, which attest that the petitioner and her husband resided together between December 2009 and March 2012.

The director determined the checking account statements did not support the petitioner's claim because they appeared to reflect transactions made by only one debit card. However, review of the checking account statements provided by the petitioner reveals an active account with deposits and withdrawals from at least two different cards.

Because of the varying addresses on certain documents, the director also questioned the credibility of all of the evidence relevant to the petitioner's good faith in entering her 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. The director erred in discounting all the relevant evidence because of perceived inconsistencies in the petitioner's marital addresses. As discussed in the preceding section, the petitioner has provided on appeal a reasonable and credible explanation for the former's couple's use of different addresses for some of their joint accounts and she has established that they resided together during the marriage. While the director acknowledged that the petitioner submitted a personal statement and supporting affidavits, the director discounted this evidence due to perceived discrepancies with the addresses in the record. For petitions submitted pursuant to section 204(a)(1)(A)(iii) of the Act, 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 submits a personal affidavit clarifying the use of the various addresses, discussed above, and numerous additional labeled photographs of the petitioner, her husband, and her

son at a variety of locations throughout their marriage prior to their separation. The petitioner also provided a detailed affidavit from her co-worker, [REDACTED] regarding J-L-'s courtship of the petitioner. Ms. [REDACTED] recounts that she covered the petitioner's shift at work so that the petitioner could go out with J-L-. She describes J-L- sending flowers to the petitioner at work, and picking her up at 2:00 a.m. at the end of her shift. The petitioner also provided an affidavit from her cousin, [REDACTED]. In her affidavit, Ms. [REDACTED] attests that the petitioner and J-L- attended Christmas and birthday parties at her house and that she frequently visited the petitioner and J-L- at their home in [REDACTED]. She also recounts taking trips with them to other states, and that they attended her twenty-first birthday party in January 2012. Her affidavit is accompanied by photographs of the petitioner and J-L- at Ms. [REDACTED] twenty-first birthday party.

The affidavits, photographs, and joint documentation submitted below and on appeal establish by a preponderance of the evidence that the petitioner 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). On appeal, the petitioner has met this burden. She has overcome the director's grounds for denial and demonstrated that she resided with her husband during their marriage and that she married him 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.