U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: SEP 08 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting 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 petition will be approved.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident spouse.

The director denied the petition because the petitioner had not demonstrated that she resided with her lawful permanent resident spouse.

On appeal, counsel submits additional evidence.

Applicable Law

Section 204(a)(1)(B)(ii)(I) 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). An alien who has divorced an abusive lawful permanent resident 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 lawful permanent resident spouse." Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

> (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.
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> * * *
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> (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.

Facts and Procedural History

The petitioner is a citizen of Mexico who claims to have entered the United States without inspection in October 1989. The petitioner married J-S-[1], a lawful permanent resident of the United States, on February 14, 1996. She stated that they separated in 2002, and submitted documents evidencing their divorce on October 29, 2010. The petitioner filed the instant Form I-360 on September 4, 2012. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's joint residency with J-S-. The petitioner responded with additional evidence that the director found insufficient, and the director denied the petition.

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.

Joint Residence

The petitioner initially submitted a statement in which she made no reference to her residence with J-S. In response to the RFE, the petitioner submitted a letter from as evidence of joint residence with her former spouse. Mr. stated that he was a former neighbor of the petitioner and her former husband, and that the couple lived at for 12 years. The petitioner also provided birth certificates which show that J-S- is the father of her children, and that her children were born on August 15, 1993, and August 25, 2000. The petitioner's oldest child stated in her affidavit that whenever her father was abusive towards her mother, she would "run to [her] grandma's room and try to call the cops." In denying the petition, the director stated that the evidence failed to establish that the petitioner resided with J-S- during their marriage.

On appeal, the petitioner submits an additional letter in which she states that she met J-S- in high school in 1991, and that they began living together in 1992 and remained so until they separated in 2002. the petitioner's former mother-in-law, states that she rented a room to her son

[1] Name withheld to protect individual's identity.

and the petitioner from January 1992 to January 2000. The petitioner explains why she does not have traditional forms of joint documentation, and counsel states that the evidence on appeal of an affidavit from the petitioner's former mother-in-law, and school records for the petitioner's oldest child establish that the petitioner lived with J-S- during their marriage. The elementary school records of the petitioner's oldest child show as her address when she attended kindergarten and the second grade. A box on the school record is marked to indicate that the child resided with both of her parents at this address. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). A self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). The petitioner's child recounted living with her parents and grandmother. The statements of the petitioner's neighbor, former mother-in-law, and child are credible and are supported by the elementary school records which demonstrate that the petitioner and her husband resided together. When viewed in the aggregate, the relevant evidence shows that the petitioner resided with her husband during their marriage, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Conclusion

The petitioner has established that she resided with her husband during their marriage. The AAO concurs with the director's determination that the petitioner meets all the remaining statutory requirements. She is consequently eligible for immigrant classification based on her marriage under section 204(a)(1)(B)(ii) of the Act.

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. 369, 375 (AAO 2010). Here, that burden has now been met.

ORDER: The appeal is sustained. The petition is approved.