



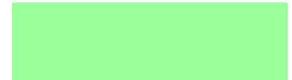
U.S. Citizenship
and Immigration
Services

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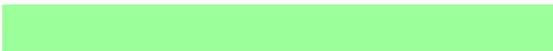


Date: SEP 15 2014

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 entered the marriage 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 explained in 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 explained in 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 is a citizen of Jamaica who entered the United States on November 1, 1994, as a nonimmigrant visitor. The petitioner married J-W-,¹ a U.S. citizen, on January 6, 2010, in New Jersey. The petitioner filed the instant Form I-360 on July 6, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. The petitioner timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has overcome the director's ground for denial. The appeal will be sustained for the following reasons.

Entry into the Marriage in Good Faith

Counsel contends that the evidence in the aggregate clearly establishes that the marriage was entered into in good faith. Counsel asserts that evidence the director did not consider, including police reports and letters from J-W- to the petitioner, should be given appropriate weight. After a careful review of the entire record, a preponderance of the relevant evidence demonstrates the petitioner entered into her marriage in good faith.

The petitioner gave a probative, credible, and detailed account of how she first met J-W-, their courtship, shared residence and experiences. The petitioner initially submitted a letter describing how she met J-W- at her apartment complex in October 2009 and the specific content of their first conversation. She recounted the dates they went on and their activities with her three children. She described how J-W- moved in with her and her children, his marriage proposal in December 2009, and their wedding in January 2010. She identified who attended the wedding and explained who else was unable to come. The petitioner also recounted how they celebrated with family and friends after the wedding. The petitioner described in detail how the family later moved into a four-bedroom house in

¹ Name withheld to protect the individual's identity.

February 2010 and the record contains a copy of the one-year lease for this home. In response to the RFE, the petitioner submitted a sworn statement credibly explaining why she does not have any documentation of shared assets with J-W-.

In her declaration, the petitioner's roommate, [REDACTED] stated that she has known the couple since before their wedding and lived with them both before and after their wedding. She expressed in probative detail her observations of the petitioner's interactions with J-W- during their courtship and the early part of their marriage, describing the couple as loving, affectionate, and inseparable. Ms. [REDACTED] declaration provides a detailed, personal account of the petitioner's shared residence and experiences with J-W-.

The record also includes handwritten apologies from J-W- to the petitioner, expressing his desire to live together as a happy family and his promise, dated February 22, 2010, not to threaten the petitioner again, consistent with her account of the first incident of abuse and her acceptance of his contrition afterwards. Letters from the petitioner's parents and several friends described that the petitioner was happy and in love prior to getting married and numerous photographs picture the couple together at their wedding and on other occasions during their marriage. Approximately three months after the couple's wedding, copies of police reports document several incidents of domestic violence that occurred at the couple's marital residence and reflect their shared and troubled life, consistent with the petitioner's statements. These reports show not only the couple's joint residence, but also that J-W- had all of his belongings at the couple's home. One report also documents an occasion when the petitioner allowed J-W- to stay at their home despite his earlier abusive behavior because he had no other place to go, again consistent with the petitioner's description of this incident. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with J-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has established that she entered into the marriage in good faith. She is consequently eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.

ORDER: The appeal is sustained.