



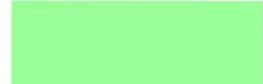
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



Date: **SEP 26 2014**

Office: VERMONT SERVICE CENTER File:

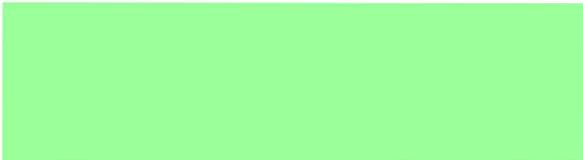


IN RE: Self-Petitioner:



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)

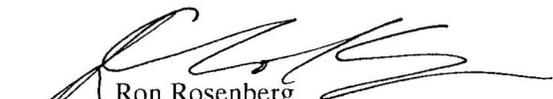
ON BEHALF OF PETITIONER:



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 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)(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 a United States citizen.

The director denied the petition for failure to establish that the petitioner had a qualifying relationship with her former spouse, a United States citizen, that she was eligible for immediate relative classification based on their relationship, and that she married him in good faith. On appeal, the petitioner, through 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).

An alien who has divorced an abusive United States citizen 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 United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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)(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.

(ii) *Relationship*. A self-petition filed by a spouse must 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 ....

\* \* \*

(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.

### *Facts and Procedural History*

The petitioner is a citizen of Mexico who married C-T<sup>1</sup> in Mexico on October 1, 1983.<sup>2</sup> She indicated that she entered the United States without inspection in 2002. The petitioner stated that C-T- later revealed he had been lying about his identity the entire length of their relationship and was actually born R-S-<sup>3</sup>, a United States citizen. The petitioner explained that he told her they had to remarry in the United States, which they did on July 11, 2006 in California. Their California marriage certificate names him as R-S-. They divorced on April 28, 2010 in Oklahoma and the petitioner filed the instant Form I-360 self-petition on April 9, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's entry into the marriage with her former spouse in good faith. The petitioner timely responded with further evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to establish a good-faith entry into marriage and also for failure to establish that the petitioner had a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification because the petitioner did not show that C-T- and R-S- were the same person. The director did not raise this last issue in the RFE or at any time prior to the denial. The petitioner, through counsel, timely appealed.

---

<sup>1</sup> Name withheld to protect the individual's identity.

<sup>2</sup> Although the English translation of the petitioner's Mexican marriage certificate lists the date of marriage as October 1, 1986, it is clear from the original document that the marriage date thereon is October 1, 1983.

<sup>3</sup> Name withheld to protect the individual's identity.

We review 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 as follows.

*Qualifying Relationship and Corresponding Eligibility for Immigrant Classification*

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship. The petitioner submitted initially and in response to the RFE, marriage certificates for her October 1, 1983 marriage to C-T- in Mexico and her July 11, 2006 marriage to R-S- in California, two personal affidavits, and birth certificates for their two children. In her first affidavit, the petitioner stated that when she was 17 years old and helping in her father's store, an older man in his 40s named C-T- would buy seeds but also showed interest in her. She recalled how C-T- attended gatherings at her home during which they spoke, they began to date secretly, and her feelings for him grew as he made her feel unique and loved. The petitioner recounted how after a year of dating, C-T- proposed marriage, they wed in 1983 before all her family and friends, and she gave birth to their daughter, [REDACTED] on September 15, 1984 and their son, [REDACTED] on November 6, 1986. She recalled that they began having financial difficulties after [REDACTED] birth, and C-T- moved to the United States promising to return for the petitioner and their children. Instead, years passed and the petitioner realized she knew very little about her husband.

The petitioner stated that one day in 1996, she returned home from work and learned from her mother that C-T- had suddenly taken the children away. C-T- later called from the United States saying he wanted the children to have a better future and would return for her too. The petitioner stated that six years later in 2002, C-T- returned and took her to the United States. She explained that shortly thereafter, C-T- began humiliating her verbally in front of family and friends and later started abusing her physically and sexually. She recounted how in 2006, C-T- said he was having problems with the U.S. government over their Mexican marriage and that she must marry him again. The petitioner stated that during their July 2006 wedding ceremony, conducted in English, a language in which she could not communicate, she heard for the first time her husband referred to as R-S-. The petitioner explained that as a result of years of abuse, she filed for divorce in 2010.

In her second affidavit, the petitioner reiterated her earlier statements. She also explained that her children's birth records in Mexico were registered under the surname [REDACTED] a combination of the middle name C-T- went by in Mexico and her own middle name. The petitioner reiterated the battery and extreme cruelty she suffered at R-S-'s hands, and that they divorced in 2010. Birth certificates for [REDACTED] confirm the combined surname and list the petitioner as their mother and C-T- as their father. The director discounted the petitioner's credible statements concerning the dual identity of her former spouse because she failed to submit a divorce certificate naming C-T-, not R-S-, as her former husband and because C-T-'s age on their Mexican marriage certificate differs from the age R-S- would have been according to his U.S. birth certificate.

On appeal, the petitioner, through counsel, submits her third personal affidavit, affidavits from her former spouse and their two children, and a judicial name change order for both children. In her third affidavit, the petitioner credibly reiterates facts detailed in her earlier affidavits, and adds that

she first learned during her 2006 wedding that C-T- was also known as R-S-, and his dual identity was the reason they had to remarry in the United States. The petitioner states that when her former spouse filed for certificates of citizenship for their children, he had their names legally changed and both have now adopted R-S-'s surname. She reiterates that she could not speak English at her [REDACTED] wedding or understand what was happening, and explains that she now understands and can communicate in English. The Order For Change Of Name, filed August [REDACTED] in the District Court of [REDACTED] State of Oklahoma, grants R-S-'s petition to change the surname of his minor children, [REDACTED] born in Mexico on September [REDACTED] and November [REDACTED] respectively, to the surname given to him at birth.

In his affidavit, R-S- states that he was born in California on August 14, 1937 with the name R-S-. He recounts how he moved to Mexico to avoid harassment from another former spouse and assumed the name C-T- without legally changing it. R-S- states that on October [REDACTED] he married the petitioner in Mexico using the name C-T- and he did not tell her that this was not the name given to him at birth. R-S- recalls that he and the petitioner lived together as man and wife, had two children, [REDACTED] and he later remarried her in the United States on July 11, 2006 using his birth name, R-S-. R-S- states that he and the petitioner never filed for divorce from their first marriage as they remained married, and that he believed they needed to legalize their marriage under U.S. laws using his real birth name. R-S- explains that when he applied for certificates of citizenship for [REDACTED] his identity as their father was called into question by the U.S. Citizenship and Immigration Services (USCIS) Field Office in Oklahoma City. R-S- recounts how he provided Deoxyribonucleic acid (DNA) test results for himself and his children to confirm his paternity and to confirm that C-T- and R-S- are the same person, him. R-S- adds that the paternity results are available in USCIS's immigration records for him and his children.

In their affidavits, the petitioner's daughter, [REDACTED] and her son, [REDACTED] state that the petitioner is their mother and R-S-, also known as C-T-, is their father. Both explain that their father was using the name C-T- when they were born and previously when he married their mother, and that he brought them to the United States around 1996 when they were 12 and 10 years old respectively. [REDACTED] state that R-S- was their father's given name when he was born in the United States, and when he applied for certificates of citizenship on their behalves in 2001, he had to change their names in an Oklahoma court to adopt his real surname. [REDACTED] explain that they believe R-S- submitted DNA test results to USCIS to establish that he and the petitioner are their birth parents. They both state that their parents married each other a second time in [REDACTED] with their father using his birth name, R-S-.

In her personal affidavits, submitted below and on appeal, the petitioner provided a credible, detailed account concerning her former spouse's dual identity, his decades' long deception related thereto and how the man she knew as C-T- and married in 1983 is the same individual she married in [REDACTED] learning only on their second wedding day that he is also R-S-, the name she now knows was given to him at his birth in the United States. The petitioner credibly recounted how in 1996, her former husband abducted their two children from Mexico, brought them to the United States, encountered difficulty applying for certificates of citizenship on their behalves because the name on his U.S. birth certificate differs from that listed as their father on their Mexican birth certificates,

and he subsequently had both their names legally changed to adopt his legal surname. In their personal affidavits, the petitioner's former spouse and children provide further probative details concerning his dual identity and deception, the manner in which he came to change [REDACTED] and [REDACTED] surname, and how he additionally submitted DNA test results to USCIS to establish his paternity and that C-T- and R-S- are the same individual. The birth certificates of the petitioner's son and daughter confirm that their father is listed as C-T-, and the Oklahoma district court order confirms that the court recognized R-S- as the father of [REDACTED] and granted his petition to legally change their surnames to the surname given to him at birth.

The relevant USCIS files for R-S-, [REDACTED] contain DNA test results establishing R-S-'s paternity. In the DNA Parentage Test Reports, prepared by DNA Diagnostics Center, [REDACTED] Ohio and dated August 24, 2000, R-S-'s Probability of Paternity for both [REDACTED] is 99.94 percent.

The preponderance of the relevant evidence demonstrates that C-T- and R-S- are the same individual, a U.S. citizen born in the United States that the petitioner married and later divorced within two years before she filed her self-petition. In addition, the petitioner has demonstrated a connection between their divorce and her former spouse's battery or extreme cruelty, as required under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Accordingly, the petitioner has established that she had a qualifying relationship as the former spouse of a U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

#### *Entry into the Marriage in Good Faith*

The preponderance of the relevant evidence submitted below and on appeal also demonstrates the petitioner's entry into marriage with her former spouse in good faith and overcomes the director's remaining ground for denial. In her first affidavit, the petitioner recounted in probative detail how she met her former spouse, their courtship, engagement, wedding ceremony, and shared experiences. The petitioner described how after the birth of their daughter in [REDACTED] she and C-T- were so happy and enjoyed caring for their daughter together, how they remained happy after the birth of their son in 1986, but due to financial difficulties C-T- moved to the United States. The petitioner likewise recounted in probative detail how C-T- abducted her children in 1996, brought them to the United States, she followed in 2002 and married him a second time in July [REDACTED] after he said he was having problems with the U.S. government and they were legally required to marry again in the United States.

In response to the RFE, the petitioner submitted a second affidavit in which she provided further probative detail of her good-faith entry into marriage. The director nonetheless determined that the petitioner did not marry her former spouse in good faith because she indicated that she and R-S- have two children in common but the children's birth certificates list their father as C-T-, not R-S-. The director further found that a discrepancy in R-S-'s age according to his birth certificate and C-T-'s age listed on his and the petitioner's Mexican marriage certificate calls into question that C-T- and R-S- are the same person. The director also found without explanation that income tax transcripts showing that the petitioner and R-S- filed jointly in 2009 did not demonstrate that they

comingled their finances or shared other common marital responsibilities. Contrary to the director's conclusions, *de novo* review of the relevant evidence the petitioner submitted below and the DNA test results in USCIS's records shows that the petitioner and her former spouse have two children together and had a bona fide marriage of nearly 27 years.

On appeal, the petitioner submits a third affidavit in which she provides further credible probative information of her good-faith entry into the marriage. The record supports the petitioner's claims. The probative affidavits of the petitioner, her former spouse and both their children, the children's birth certificates, the judicial order granting name changes to R-S- for the two children he fathered with the petitioner, and DNA parentage test reports all establish R-S-'s identity and the petitioner's good-faith in marrying him. When considered cumulatively, the preponderance of the relevant evidence demonstrates that C-T- and R-S- are the same individual, the petitioner's former spouse, and that she married him 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. 369, 375 (AAO 2010). On appeal, 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.