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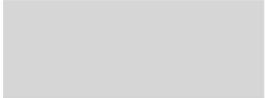
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

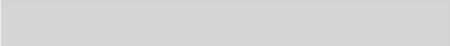


U.S. Citizenship
and Immigration
Services



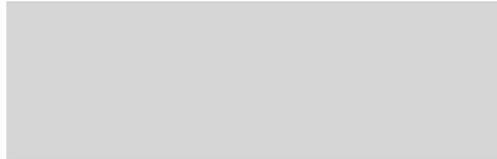
Date: **APR 10 2015**

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)

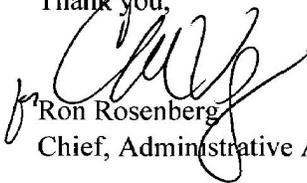
ON BEHALF OF PETITIONER:



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 Acting 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 on the basis of her determination that the petitioner failed to establish that she entered into marriage with her husband in good faith and that they resided together.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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.

Facts and Procedural History

The petitioner, a citizen of Romania, represents that she first entered the United States as a J-1 nonimmigrant visitor and last entered the United States on July 31, 2007, on parole. On [REDACTED] 2003, the petitioner married J-E-¹, a U.S. citizen, in Illinois, and filed the instant Form I-360 self-petition on November 15, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage and joint residence with her husband. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility and denied the petition. The petitioner timely filed an appeal. On appeal, the petitioner submits a brief and additional evidence.

We review these proceedings *de novo*. On appeal, a full review of the record establishes that the petitioner has overcome the director's grounds of denial. The appeal will be sustained for the following reasons.

Entry into the Marriage in Good Faith

The preponderance of the relevant evidence demonstrates the petitioner's entry into marriage with J-E- in good faith. In her personal affidavits, the petitioner gave a probative account of how she met J-E-

¹ Name withheld to protect the individual's identity.

their courtship, engagement, wedding ceremony, and shared experiences. She indicated that she met her husband when he helped her friend fix her car at the mechanic office where he worked, and he asked for her telephone number. She described their dates, the types of things they did together, J-E-'s marriage proposal, and their small wedding ceremony. She briefly described some of the good times they had together after they were married and her feelings for her husband. The petitioner also explained that due to J-E-'s bad credit, they did not open accounts in his name but that they did have a joint checking account. The petitioner indicated that, unlike J-E-, she had steady employment, so she paid the majority of the bills.

The petitioner also submitted affidavits from friends that described her marital relationship. [REDACTED] indicated that the petitioner told her about J-E- and that the petitioner was upbeat and excited about their future together at first. [REDACTED] stated that the petitioner and J-E- were in love and a happy couple, and described several times that she and her boyfriend joined the petitioner and J-E- in different activities. [REDACTED] recalled that the petitioner talked about J-E- frequently and wanted to spend more time with him. In addition, the petitioner submitted photographs of herself and her husband on various occasions, proof of a joint health insurance policy, joint checking account statements, a U.S. Treasury check made out to both the petitioner and her husband, and evidence of life insurance policies.

In her decision denying the petition, the director concluded that many of the documents were dated after the petitioner and J-E- separated, and that the other relevant evidence was insufficient to show that the petitioner married her husband in good faith. On appeal, counsel asserts that the petitioner's affidavits were detailed and probative, that the director gave insufficient weight to the non-testimonial evidence such as insurance policies and joint checking statements, and submits additional evidence. On appeal, the petitioner submits more affidavits from family and friends. [REDACTED] indicates that he lived near the petitioner and J-E-, and that often he saw them together holding hands, or with their arms around each other. [REDACTED] states that the petitioner talked about J-E- and her love for him. She also indicates that she met J-E- when he and the petitioner came into the restaurant where the petitioner and Ms. [REDACTED] worked, and that J-E- also stopped by on other occasions to visit with the petitioner. [REDACTED], the petitioner's mother, recounts that the petitioner told her all the things that the petitioner did to keep J-E- happy. [REDACTED] states described occasions on which she and her boyfriend spent time with the petitioner and J-E-. [REDACTED] the petitioner's sister, also confirms that the petitioner talked to her about J-E-, and called her the day after J-E- proposed to her to report the happy news. Ms. [REDACTED] further states that she spoke with J-E- via telephone and through online video, and observed the petitioner and J-E- being affectionate with each other. [REDACTED] indicates that she lived in the petitioner and her husband's building and that she observed the petitioner and her husband holding hands and calling each other loving nicknames when they were all spending time together. On appeal, the petitioner also submits additional documentary evidence, such as proof that she and her husband were listed as each other's beneficiaries on their life insurance, photographs of the petitioner and J-E- together, and copies of the petitioner's and J-E-'s pay statements noting their status as "married."

Upon *de novo* review of the relevant evidence submitted below and on appeal, the petitioner has established her good-faith entry into the marriage. The petitioner submitted detailed affidavits from friends and family describing her activities with her husband, her feelings for him, and their

interactions, as well as her own affidavits in which she also reported details of their meeting, courtship, wedding ceremony, and marriage. The health insurance, Treasury check, payment stubs, and numerous photographs in the record support the petitioner's claims. She has therefore established that she entered into marriage with J-E- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also demonstrates that the petitioner resided with her husband. On the Form I-360 self-petition, the petitioner stated that she lived with her husband from 2003 until 2008 and that their last joint address was on Illinois. In denying the petition, the director discounted much of the relevant evidence due to a discrepancy in the addresses on evidence submitted with the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status. The director concluded that the evidence submitted in support of the petitioner's joint residence was insufficient to show that she and her spouse resided together. However, in response to the RFE, the petitioner submitted a detailed affidavit addressing the discrepancy and additional evidence of the couple's joint residence.

The record contains substantial documentation indicating that the petitioner and J-E- resided together. In her affidavits, the petitioner described the couple's first apartment, and indicated that they moved in together after their wedding. She submitted mail and bills addressed to her and her husband both jointly and separately at their joint addresses, as well as pay statements, a letter from the Social Security Administration, letters regarding insurance, and a copy of J-E-'s driver's license listing their joint address.

On appeal, the petitioner submits a copy of her and J-E-'s lease for their apartment on . She also submits several affidavits. indicates that he saw the petitioner and her husband at their apartment together. The petitioner's mother states that she was aware that the petitioner and her husband moved into their own apartment about a year after their marriage and briefly described the apartment. both indicate that they visited the petitioner and her husband at their apartment, and describe their activities together. As supplemented on appeal, the record establishes by a preponderance of the relevant evidence that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has established that she resided with her U.S. citizen husband and married him in good faith. Having overcome all of the director's grounds for denial, 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. The appeal will be sustained and the petition will be approved.

(b)(6)



NON-PRECEDENT DECISION

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