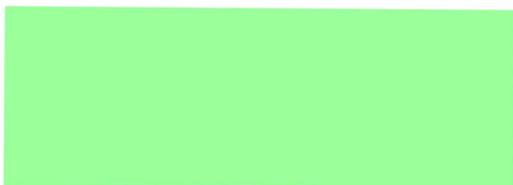




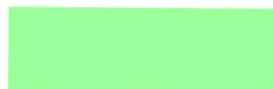
U.S. Citizenship
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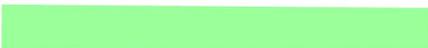


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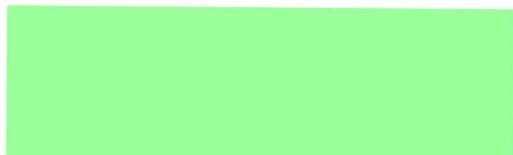


IN RE: Self-Petitioner:



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 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 lack of evidence of the petitioner’s husband’s U.S. citizenship. On appeal, the petitioner submits a legal memorandum and additional evidence.

Applicable Law

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 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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse]. . .

* * *

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 citizenship of the United States citizen. . . . It must also 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

In regards to verifying an abuser's immigration status, the regulation at 8 C.F.R. § 103.2(a)(17)(ii) states:

Assisting self-petitioners who are spousal-abuse victims. If a self-petitioner filing a petition under . . . section 204(a)(1)(A)(iii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, [U.S. Citizenship and Immigration Services] USCIS will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration . . . status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

Facts and Procedural History

The petitioner is a citizen of Mexico who claims to have last entered the United States in 1980 without inspection, admission or parole. On [REDACTED], in Arizona, the petitioner married H-D-¹, whom she stated was born in [REDACTED] Arizona. On March 22, 2013, the petitioner filed the instant Form I-360 self-petition. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's spouse's U.S. citizenship status. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. A full review of the record establishes the petitioner's eligibility for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The relevant evidence establishes the petitioner's eligibility. As proof of H-D-'s citizenship, the petitioner initially submitted her husband's 2002 state income tax forms. However, non-U.S. citizens may also file taxes, and there is no indication on his tax forms that H-D- is a U.S. citizen.

¹ Name withheld to protect the individual's identity.

In response to the RFE, the petitioner submitted an affidavit in which she stated that to the best of her knowledge, her husband was born in Arizona, but that she is unable to get a copy of his birth certificate or passport. In addition, she submitted a copy of his Arizona identification card.

On appeal, the petitioner reiterates her claims that H-D- is a U.S. citizen and that she has met her burden of proof in this case. She also asserts that if the self-petitioner is unable to produce primary evidence of her spouse's status, the burden shifts to USCIS to investigate the status of the abuser.² The petitioner also submits additional evidence including a self-affidavit and statements from others. The petitioner again indicates that her husband told her that he was born in Arizona and that she is unable to obtain a copy of his birth certificate.

all submit statements in which they state their belief that the petitioner's husband is a U.S. citizen.

During our appellate review, additional record checks were made which show that H-D- is a United States citizen. These records are consistent with the relevant evidence submitted by the petitioner regarding H-D-'s name, date and place of birth. The petitioner has thus established that she has a qualifying spousal relationship with a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Conclusion

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. at 128. Here, that burden has been met and the appeal is sustained.

ORDER: The appeal is sustained.

² Although USCIS is responsible for attempting to verify his status, the burden does not shift to USCIS. There is no language to support such a conclusion in the statute or regulations, and Section 204(a)(1)(A)(iii) of the Act indicates that the burden is on the petitioner to demonstrate her eligibility. See 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).