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: JAN 2 6 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 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 and the petition will be approved.

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 a United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that he: (1) has a qualifying relationship with a U.S. citizen; (2) is eligible for immigrant classification based upon that relationship; and (3) entered into the marriage with his spouse in good faith.

On appeal, the petitioner reasserts his eligibility and submits 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 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 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> (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:
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> * * *
>
> (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].

* * *

(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 standard and 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:

(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. . . .

* * *

(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 was born in Mexico and last entered the United States in November of 2006 without inspection. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on October 15, 2013. On the Form I-360, he asserted that he had lived with I-M-[1], a U.S. citizen, from January 2011 to July 2011, in Colorado and that they shared a common-law spousal relationship. The director issued a request for evidence (RFE) that, among

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

other things, the petitioner shared a common-law spousal relationship with I-M- under Colorado state law and was therefore eligible for immediate relative classification based on that relationship. The director also sought evidence of the petitioner's good-faith entry into the common-law marriage. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility on these grounds. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, sufficiently establishes the petitioner's eligibility.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

On his Form I-360 petition, the petitioner indicated that he had been married twice and that he and I-M- "lived as common-law spouses in Colorado." The petitioner initially provided a personal statement dated February 20, 2013 that focused primarily on the abuse to which I-M- subjected him. The petitioner also submitted a personal statement dated September 22, 2013, in which he explained that I-M- had destroyed his photos and documents and therefore he did not have much evidence. The petitioner included a letter from a bonding service explaining that I-M- had told them she was the petitioner's wife when she posted his bond on June , and a copy of the Immigration Bond Application and Agreement reflecting this claim. The petitioner also provided affidavits from various individuals including friends and acquaintances, who attested that the petitioner had introduced I-M- to them as his wife and otherwise presented himself as married to her.

In response to the director's RFE, the petitioner clarified that he had only been married once and I-M- was his sole common-law spouse. He also submitted additional affidavits from friends and acquaintances who confirmed that the petitioner introduced I-M- to them as his wife.

On appeal, the petitioner asserts that he is still in a common-law marriage with I-M- and that the marriage is valid under Colorado state law. The petitioner references the website for the Colorado Attorney General, which indicates that Colorado recognizes common-law marriages, and lists four elements of a valid common-law marriage.[2]

Primary evidence of a qualifying relationship with a U.S. citizen spouse includes a marriage certificate issued by civil authorities, and proof of the legal termination of any prior marriages of the self-petitioner. 8 C.F.R. § 204.2(c)(2)(ii). A marriage must be valid under the laws of the jurisdiction of the place where the marriage is celebrated. *Matter of Gamero*, 14 I&N Dec. 674 (BIA 1974). In this case, the petitioner has established that the state of Colorado recognizes common-law marriages and the affidavits from his friends and acquaintances are sufficient to establish that he and I-M- represented to the public that they were married for purposes of the state requirements. *See* section 14-2-104(3) of the Colorado Revised Statutes. In *People v. Lucero*, the Supreme Court of Colorado determined that "[a]

[2]Available at http://www (last visited Jan. 13. 2015).

common law marriage occurs where the parties consent to be husband and wife and there is a mutual and open assumption of a marital relationship." 747 P.2d 660, 663 (Colo. 1987). The court stated that conduct in the form of mutual public acknowledgment of the marital relationship is essential to establish a common law marriage. *Id.* at 663-64. The court noted that for purposes of proving common law marriage, the parties' consent may be proven by, or presumed from, evidence of cohabitation as husband and wife and general repute as husband and wife. *Id.* at 664-65.

The preponderance of the evidence submitted below and on appeal demonstrates that the petitioner shares a qualifying common-law spousal relationship with I-M-, a U.S. citizen, and is eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Good-Faith Entry into Marriage

The petitioner initially submitted a personal statement dated February 20, 2013, in which he indicated that he met I-M- at the restaurant where he worked and that she "seemed to be a good person." After they exchanged phone numbers and began to date, the petitioner indicated that "she treated me so well, I thought she is the woman that I was looking for to get married." The petitioner explained that after some months passed, I-M- began to act extremely jealous. The remainder of the petitioner's affidavit focuses on the abuse to which I-M- subjected him. The petitioner provided a second affidavit with his self-petition in which he stated that he did not "have much evidence or documents belonging to me and [I-M-] because she ripped everything she could including photos, all types of documents so that I would struggle to prove all this." In a third affidavit dated October 1, 2013, the petitioner responded to two specific questions on the Form I-360 self-petition, and stated that he lived with I-M- in a common-law marriage. The petitioner did not provide an account of his good-faith entry into the marriage, such as details of his courtship, his intentions and feelings for I-M- before and after they entered into a common-law marriage, and their shared time together in any of the three affidavits.

The petitioner provided a copy of a bond agreement showing that I-M- posted bond for him on June 7, 2011, and listed herself as his wife. Although this document shows that I-M- claimed a marital relationship with the petitioner, it does not establish the petitioner's own good-faith entry into the marriage.

In response to the director's RFE of shared emotional, economic or domestic bonds, the petitioner submitted two additional personal statements both dated March 3, 2014. In one statement, the petitioner focused on describing the abuse to which I-M- subjected him. In the other statement, the petitioner stated that he was working as a singer in a restaurant when he met I-M-, that she "began to flirt with me and she began to tell me nice things and we exchanged phone numbers." The petitioner explained that they began to date and "even went out to dance...and one day she told me if I would like to live with her and she would treat me so nicely well I told her yes but that lasted very little." The petitioner again indicated that I-M- "destroyed everything with which I could prove many things." The petitioner did not provide a description of his intentions before and after marriage to I-M-. Although

the petitioner submitted additional letters from friends, they also focused on describing I-M-'s abusive behavior. Two friends provided general descriptions of the petitioner's marriage. indicated that the petitioner made "efforts to have a loving marriage," but she did not describe those efforts. also described the petitioner as "a good husband" and "a very lovable husband he will always refer to his wife as my love," but she did not provide any probative information regarding the petitioner's relationship with I-M- to establish the petitioner's good-faith entry into the marriage.

On appeal, the petitioner provided a new affidavit in which he provides additional, probative details regarding his good-faith entry into a common-law marriage with I-M-. He describes initially being attracted to her assertive and extroverted personality, meeting her children a few weeks after their first date, their decision to be married, their shared routines, and how happy he was to develop a relationship with her children. The petitioner's relevant and credible appellate statement is sufficient to establish by a preponderance of the evidence that the petitioner entered into a common-law marriage with I-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has demonstrated that he entered into a valid common-law marriage with I-M- in good faith. He is consequently eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish his 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 (AAO 2010). Here, the petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.