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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUN 19 2015

FILE #:
PETITION RECEIPT #:

IN RE: 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:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition. 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 her United States citizen spouse.

The director denied the petition, finding that the petitioner did not establish that she entered into the marriage with her former spouse in good faith. On appeal, the petitioner 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 U.S. 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.
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> (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 Mongolia, entered the United States on June 7, 2002, as an F-1 nonimmigrant student. She married R-F-[1], a U.S. citizen, on 2010, in Colorado. The marriage ended in divorce on 2011, and the petitioner filed the instant Form I-360 self-petition on December 11, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage. 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 timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has overcome the director's ground for denial. The appeal will be sustained for the following reasons.

Good-Faith Entry into the Marriage

The preponderance of the relevant evidence demonstrates that the petitioner entered into her marriage with R-F- in good faith. In her initial Form I-360 submission, the petitioner provided a personal affidavit in which she described first meeting R-F- in September of 2007 when she moved to Colorado to join her then boyfriend, B-D-[2], who was renting a room in R-F-'s home. The petitioner indicated that R-F- did not spend much time in the home and stated that she found R-F- attractive, but did know him well at that time. The petitioner recounted being unhappy in her intermittent relationship with B-D-, moving out of the house in December of 2007 after an argument, and later reconciling with B-D- and moving into an apartment together.

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

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

The petitioner stated that in March 2008, she ran into R-F- at a friend's home where she was attending a party without B-D-. The petitioner recounted sitting outside talking at length with R-F-, enjoying his company greatly, and ultimately spending the night with him. She recalled feeing ill the next day and learning that she was pregnant with B-D-'s child. The petitioner indicated that during her pregnancy, she ceased being intimate with B-D-, wanting to be with R-F- instead. She stated that she gave birth to her son in September 2008, and B-D- moved out of the home for good in June 2009. The petitioner explained that R-F- wanted to live with her, but she felt she was not ready because her son was so young, and that he ultimately moved into her apartment in February 2010. The petitioner described experiences they shared in their home while courting, including a special meal R-F- prepared for her and the evening of his marriage proposal. She also recounted how R-F- treated her and her son with kindness. The petitioner discussed the former couple's wedding ceremony, which was performed by a pastor in their apartment. She stated that she was initially very happy in the marriage, and discussed activities they engaged in together, before describing the deterioration of their relationship on account of R-F-'s abusive behavior. Among the various incidents of abuse the petitioner discussed in detail, she recounted how R-F- burned their family photo album in the bathroom sink.

In her initial Form I-360 submission, the petitioner provided a letter from an automobile insurance company confirming that she and R-F- were covered on the same policy between July 2010 and December 2010. The petitioner also submitted a letter from an energy provider indicating that both the petitioner and R-F- were listed on the account between June and November 2010, and a bank letter indicating that R-F- was an authorized user on the petitioner's credit card account.

In the RFE, the director requested additional evidence to demonstrate commingling of assets and shared financial ties. In response, the petitioner submitted an affidavit in which she explained her various attempts to obtain further traditional joint documentation. She provided further evidence of her joint automobile insurance, and a letter from her apartment complex management confirming that R-F- applied to be added to the petitioner's lease, but was ineligible, along with a list of eligibility criteria that included criminal offenses as a disqualifying factor.

In her decision, the director found the traditional joint documentation of record insufficient to establish the petitioner's good-faith entry into marriage, and denied the petition. On appeal, the petitioner submits a supplemental statement again detailing the documentation she submitted in support of her petition and explaining why further documentation is unavailable. She also submits a printout of R-F-'s criminal record.

De novo review of the entire record, as supplemented on appeal, establishes the petitioner's good-faith entry into her marriage with R-F-. The director erred in requiring traditional forms of joint documentation to establish the petitioner's marital intent, and by failing to consider the petitioner's personal affidavit. Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). In lieu of traditional joint documentation, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and

experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). Here, the petitioner submitted a detailed personal affidavit in which she credibly described elements of her courtship with R-F-, their wedding ceremony, and shared experiences. In addition to the affidavit, the petitioner submitted evidence that she and R-F- shared insurance and a utility account, and that he was an authorized user on her credit card account. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into the marriage with R-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The portion of the director's decision finding to the contrary is hereby, withdrawn.

Conclusion

On appeal, the petitioner has overcome the director's sole ground for denial, establishing that she married her U.S. citizen former spouse in good faith. In these proceedings, the petitioner bears the burden of proof to establish 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). Here, the petitioner has met her burden and 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.