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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

[Redacted]

DATE: JUN 25 2015

[Redacted]

IN RE: Petitioner: [Redacted]

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:

[Redacted]

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 Acting Director, Vermont Service Center (the director), denied the petition. 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 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 the petitioner's failure to establish a qualifying spousal relationship with a U.S. citizen, eligibility for immediate relative classification based on this relationship, and entry into the relationship in good faith.

On appeal, the petitioner submitted additional evidence with the Form I-290B Notice of Appeal or Motion and, in response to a Request for Evidence (RFE) issued by the AAO on May 11, 2015, the petitioner provided additional evidence regarding the dissolution of her first marriage.

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).

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:

(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].

* * *

(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 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

* * *

(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 Mexico, represents that she entered the United States in 1992 without inspection, admission, or parole by an immigration officer. The petitioner, who was previously married to J-T-¹ and who is the father of her four children, married D-E- on [REDACTED] in Las Vegas, Nevada. The petitioner filed the instant Form I-360 self-petition on June 21, 2013. The director subsequently issued an RFE on December 17, 2013 requesting evidence to establish the petitioner's good-faith entry into the marriage with D-E-. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought and denied the petition. The petitioner timely appealed.

¹ Names withheld to protect identities.

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

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

De novo review of the record reveals that the director correctly found, based on the evidence presented at the time of the director's decision, that the petitioner did not establish a qualifying relationship to a U.S. citizen. The petitioner indicated on her Form I-360 self-petition that she has been married two times. On appeal, the petitioner submitted birth certificates for her oldest three children, H-T-, M-T-, and Y-T- and a baptismal certificate for her youngest child, I-T-. Only the birth certificate for the oldest child, H-T-, who was born on [REDACTED] indicates that the petitioner was married to J-T-, although the other birth certificates and the baptismal certificate are in a different format than H-T's birth certificate and, unlike that birth certificate, do not have a space on the certificates to indicate the marital status of the parents.

In response to the RFE on appeal, the petitioner provided a certified copy, dated June 9, 2015, of a Notice of Entry of Judgment, dated December 7, 2007, from the Superior Court of California, [REDACTED] County, indicating that J-T- was served with process and that the effective date for the dissolution of their marriage will be [REDACTED]. In the decision, the director correctly noted that the petitioner's administrative record lacked evidence of her divorce from J-T-, which is required to demonstrate that her marriage to D-E- was legally valid. However, the petitioner submitted documentation of her divorce from J-T- on appeal and, as a result, the director's finding as to the legal validity of her marriage to D-E- is withdrawn.

Good-Faith Entry into the Relationship

On appeal, the petitioner has established by a preponderance of the relevant evidence that she entered into her marriage with D-E- in good faith. In her initial undated affidavit, submitted with the Form I-360 self-petition, the petitioner provided minimal information regarding her relationship with D-E- beyond a description of the abuse. In response to the RFE dated December 17, 2013, she submitted a lease, dated May 5, 2009, showing that she and D-E- resided together in an apartment on [REDACTED]. She also provided a sales receipt in her and D-E-'s names for the purchase of furniture in August 2012. In addition, she provided several unlabeled photographs of her and D-E- on various occasions. In the decision, the director correctly concluded the petitioner had submitted insufficient evidence to establish that she married D-E- in good faith.

On appeal, the petitioner submits an additional personal affidavit in which she describes activities that the couple did together during their courtship and experiences that they shared after they were married. The petitioner also provides affidavits from her four children. Each of her children provides detailed accounts of his or her observations of the petitioner's and D-E-'s relationship prior to and during the marriage.



When considered in its totality the preponderance of the relevant evidence establishes that the petitioner married D-E- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The portion of the director's decision with a finding to the contrary is withdrawn.

Conclusion

The record reflects that the petitioner's marriage to D-E- was legally valid and that she entered into her intended marriage with D-E- in good faith. Consequently, the petitioner is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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 for the above-stated reasons.

ORDER: The appeal is sustained.