



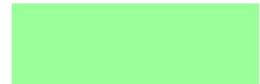
U.S. Citizenship  
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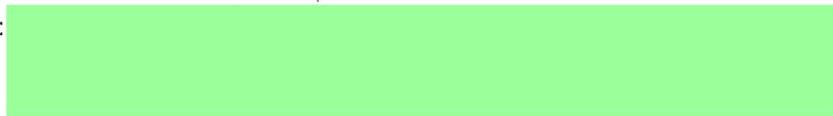


Date: MAR 23 2015

Office: VERMONT SERVICE CENTER File:

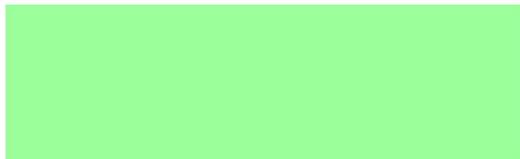


IN RE: Self-Petitioner:



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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before us on a motion to reopen. The motion will be granted and 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 failure to establish that the petitioner had a qualifying relationship with a U.S. citizen, that she married him in good faith, and was eligible for immediate relative classification. On appeal, the petitioner demonstrated her good-faith entry into the marriage, but failed to establish her qualifying relationship with a U.S. citizen.

On motion, 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).

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:

(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 . . . .

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Mexico, states that she last entered the United States in December of 1999 without inspection, admission, or parole by an immigration officer. The petitioner's administrative record reflects that she remains in the United States under a stay of removal. The petitioner married W-W-<sup>1</sup> on [REDACTED] 2008, in [REDACTED] Georgia. The petitioner filed the instant Form I-360 self-petition on August 7, 2012. The director subsequently issued a request for additional evidence (RFE) of the petitioner's qualifying relationship to a U.S. citizen and her good-faith entry into the marriage. The petitioner timely responded with further evidence, which the director found insufficient to establish her eligibility, and denied the petition. The petitioner timely appealed. On appeal, the petitioner established that she married W-W- in good faith; however, she failed to submit evidence of W-W-'s U.S. citizenship, and the appeal was dismissed on that ground. The petitioner submitted a timely motion to reopen.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Accordingly, the motion to reopen is granted and our September 30, 2014, decision is incorporated here.

*Qualifying Relationship and Eligibility for Immigrant Classification*

On motion, the petitioner submits a certified copy of W-W-'s Tennessee birth certificate. Accordingly, the petitioner has established that she has a qualifying relationship as the spouse of 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),(cc) of the Act. The portion of our September 30, 2014 decision finding to the contrary is hereby withdrawn.

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<sup>1</sup> Name withheld to protect individual's identity.

*Conclusion*

On motion, the petitioner has demonstrated that she has a qualifying spousal relationship with a U.S. citizen and is eligible for immediate relative classification. As she has overcome the remaining ground for denial of the self-petition, she is now 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.

**ORDER:** The motion is granted. The appeal is sustained and the petition is approved.