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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: MAY 07 2015

[Redacted]

IN RE: Petitioner: [Redacted]

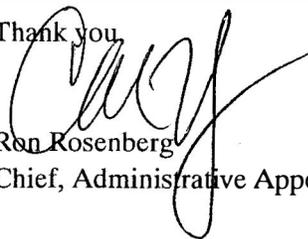
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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 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 pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident spouse.

The director denied the petition based on the petitioner's failure to establish that she resided with her lawful permanent resident spouse, and that she entered into marriage with him in good faith.

On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under . . . 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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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)(B)(ii) 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. . . .

* * *

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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, a citizen of Russia, represents that she entered the United States on June 12, 2007, as a nonimmigrant visitor. The petitioner married V-G-¹, a citizen of Turkmenistan and lawful permanent resident of the United States, on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on July 19, 2012. The director subsequently issued a Request for Evidence (RFE) of joint residence with V-G-, and the petitioner's good-faith entry into marriage, among other issues. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought. The director denied the petition, and the petitioner timely appealed, submitting a personal affidavit and additional evidence.

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

Joint Residence

The preponderance of the relevant evidence establishes that the petitioner resided with V-G- during the marriage. In her Form I-360 self-petition, the petitioner indicated that she resided with V-G-

¹ Name withheld to protect the individual's identity.

from September 2011 until March 2012 at an apartment on [REDACTED] Utah. In response to the director's RFE, the petitioner submitted a personal affidavit in which she attested to moving into V-G-'s apartment and residing with him until April 2012 when she moved in with a friend to escape V-G-'s abuse. The petitioner provided the lease for the [REDACTED] apartment, showing that she was added on September 29, 2011, along with documentation signed by the property manager showing that the petitioner was added to the lease on September 29, 2011, and officially released from the agreement on May 23, 2012. The petitioner also submitted a copy of the couple's 2011 jointly filed federal income tax return, prepared by a commercial tax preparer on February 3, 2012, showing the couple's address as the [REDACTED] apartment. In addition, the petitioner submitted affidavits from friends [REDACTED] and [REDACTED] both of whom attested to visiting the petitioner at the apartment that she shared with V-G-.

In his decision, the director found that the relevant evidence was insufficient to establish that the petitioner resided with V-G- during their marriage. In so finding, the director improperly discounted relevant documentation, including the joint lease and other documentation signed by the property manager. On appeal, the petitioner submits a letter from the property manager of the [REDACTED] apartment, confirming the petitioner's residency at the shared address. The petitioner also provides additional affidavits from friends attesting to helping the petitioner move into V-G-'s apartment, and visiting the petitioner at the [REDACTED] residence. Further, the petitioner submits an Internal Revenue Service (IRS) transcript of the couple's 2011 jointly filed income tax return listing the [REDACTED] address; her 2011 Form W-2, Wage and Tax Statement, showing the same address; a cancellation notice for her car insurance, dated December 7, 2011, showing the [REDACTED] address; and a personal affidavit, dated January 7, 2014, indicating that she moved into V-G-'s apartment where the utility bills were already under his sole name. Accordingly, the preponderance of the relevant evidence, submitted below and on appeal, establishes that the petitioner resided with V-G- during their marriage as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act. The director's finding to the contrary is hereby withdrawn.

Good Faith Entry Into the Marriage

The preponderance of the relevant evidence establishes that the petitioner entered into marriage with V-G- in good faith. The petitioner initially failed to submit probative relevant evidence of her good-faith entry into marriage with her Form I-360 submission. In response to the director's RFE, the petitioner provided a personal affidavit, in which she indicated that she dated V-G- for approximately four years before the couple married. However, the petitioner did not substantively discuss the couple's courtship, wedding ceremony, or shared experiences beyond the details of the abuse. The petitioner submitted affidavits from two friends, which also focused primarily on V-G-'s abuse of the petitioner. Although the petitioner submitted a lease indicating that the couple resided together, and a 2011 federal tax return showing that the couple jointly filed their taxes, the director did not err in finding that, when viewed in the totality, the relevant evidence submitted below was not sufficient to establish that the petitioner married V-G- in good faith.

On appeal, the petitioner provides an additional detailed personal affidavit, dated January 7, 2014, in which she substantively describes the couple's four-year courtship, recounting numerous

experiences that she and V-G- shared prior to marriage. She discusses the couple's decision to marry, and additional experiences that the couple shared after they married and moved in together. The petitioner also submits an affidavit from her friend [REDACTED] who discusses the party where the petitioner and V-G- met, and activities that [REDACTED] shared with the couple while they were dating. In addition, the petitioner provides an affidavit from friend [REDACTED] who lived in the same apartment building as the petitioner and V-G-, and describes attending the couple's courthouse wedding and restaurant reception. The petitioner submits an IRS transcript confirming that the couple jointly filed their taxes in 2011, and a letter from the property manager of their apartment building confirming their joint residence. The petitioner also provides numerous photographs of her and V-G- on several different occasions. When viewed in the aggregate, the preponderance of the relevant evidence, as supplemented on appeal, establishes that the petitioner married V-G- in good faith, as required by 204(a)(1)(B)(ii)(I)(aa) of the Act. The director's finding to the contrary is hereby withdrawn.

Conclusion

On appeal, the petitioner has established that she resided with V-G- during their marriage, and that she married him in good faith. She has therefore overcome both of the director's grounds for denial of the self-petition, and is consequently eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

In these proceedings, the burden of proof 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.

ORDER: The appeal is sustained. The petition is approved.