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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 28 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 motion. 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 his U.S. citizen spouse.

The director denied the petition based on her determination that the petitioner failed to establish that he resided with his U.S. citizen spouse and entered into the marriage in good faith. We dismissed the petitioner's subsequent appeal and the petitioner filed the instant motion.

On motion, the petitioner submits a brief and 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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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, the following:

(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)(A)(iii) of the Act are further discussed 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 Ghana, last entered the United States as a nonimmigrant visitor on July 22, 2003. He married C-A-¹, a U.S. citizen, on [REDACTED] and filed the instant Form I-360 self-petition on April 5, 2013. The director subsequently issued a request for additional evidence (RFE) of, among other things, the requisite good-faith entry into marriage and joint residence. 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 appealed. On appeal, we determined that the petitioner failed to overcome the director's grounds for denial. The petitioner timely filed the current motion.

Upon *de novo* of the full record, including the evidence submitted on motion, the petitioner has established his eligibility. Our prior decision will be withdrawn, and the appeal will be sustained for the following reasons.

Joint Residence

On motion, the petitioner submits a supplemental affidavit in which he reiterates that he resided with C-A- and requests that we review his previously submitted evidence. In addition, the petitioner

¹ Name withheld to protect the individual's identity.

submits an affidavit from C-A- discussing their various joint residences, their eviction, and their ultimate separation. Upon review of these affidavits and other relevant evidence in the record, including a lease, eviction documents, a letter from the petitioner and C-A-'s former landlord, the petitioner's affidavits, a state certificate of rent paid, and documentation of joint utilities, the petitioner has established by a preponderance of the relevant evidence that he resided with his wife during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Marriage

On motion, the petitioner submits a supplemental affidavit in which he describes experiences that he shared with C-A- while they were married. In addition, the petitioner submits an affidavit from his wife recounting aspects of their courtship, their wedding ceremony, and activities they engaged in together. Other relevant evidence of record includes the petitioner's prior personal affidavits, evidence of his and C-A-'s joint residence, and affidavits of friends and family members. When viewed in the totality, the preponderance of the relevant evidence demonstrates that the petitioner entered into the marriage with his U.S. citizen wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On motion, the petitioner has overcome both of the director's grounds for denial which we affirmed on appeal. 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, the petitioner has met this burden and established his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, the appeal will be sustained, and the petition will be approved.

ORDER: The motion is granted. The October 30, 2014 decision of the Administrative Appeals Office is withdrawn. The appeal is sustained and the petition is approved.