



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-I-A-M-

DATE: SEPT. 1, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner, a citizen of Mexico, seeks immigrant classification as an abused spouse of a U.S. citizen. See Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center (the Director), denied the petition. The matter is now before us on appeal. The appeal will be sustained.

I. 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 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 explained further 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:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. spouse].

(b)(6)

The evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 or proof of immigration status of the lawful permanent resident abuser. 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

In regards to verifying an abuser's immigration status, the regulation at 8 C.F.R. § 103.2(b)(17)(ii) states:

Assisting self-petitioners who are spousal-abuse victims. If a self-petitioner filing a petition under section 204(a)(1)(A)(iii) . . . of the Act is unable to present primary or secondary evidence of the abuser's status, [U.S. Citizenship and Immigration Services (USCIS)] will attempt to electronically verify the abuser's citizenship or immigration status from information contained in the Department's automated or computerized records. Other Department records may also be reviewed at the discretion of the adjudicating officer. If USCIS is unable to identify a record as relating to the abuser, or the record does not establish the abuser's immigration or citizenship status, the self-petition will be adjudicated based on the information submitted by the self-petitioner.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

The Petitioner indicates that she last entered the United States around February 2005 without admission, inspection, or parole by U.S. immigration officials. On [REDACTED], she married F-L,¹ who she asserts is a citizen of the United States, born on [REDACTED] in [REDACTED] Missouri. The Petitioner filed the instant petition on July 1, 2014. The Director denied the petition finding the record insufficient to establish that the Petitioner has a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification on the basis of such relationship. The Petitioner, through counsel, filed the instant appeal.²

¹ Name withheld to protect the individual's identity.

² Part 1, Information about Attorney or Accredited Representative on Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative dated February 3, 2015, indicates that the "name of law firm or recognized organization" is [REDACTED]. However, Part 1, Information about Petitioner/Applicant on Form I-290B, Notice of Appeal or Motion dated February 6, 2015, indicates that the Petitioner's mailing address is "in care of name," [REDACTED].

(b)(6)

We review these proceedings on a *de novo* basis. A full review of the record, including the relevant evidence submitted on appeal, establishes the Petitioner's eligibility, and we will sustain the appeal for the following reasons.

III. QUALIFYING RELATIONSHIP AND ELIGIBILITY FOR IMMIGRANT CLASSIFICATION

On appeal, the Petitioner asserts that the Director erred by improperly applying the evidentiary standards required of a self-petitioner in establishing the immigration status of the abuser, and that although she initially bears the burden of establishing her eligibility for any benefits sought, the burden shifts to USCIS to investigate the immigration status of the abuser; her spouse. She also asserts that she has been unable to submit primary evidence of her spouse's immigration status without endangering her wellbeing, and thereby, she has submitted credible secondary evidence as permitted by the regulations at 8 C.F.R. §§ 204.1(f) and 204.1(g).

To demonstrate F-L-'s immigration status, the Petitioner initially submitted a personal statement dated June 12, 2014 and a statement from her nephew dated May 18, 2014. In response to a Request for Evidence, the Petitioner supplemented the record with another personal statement dated September 22, 2014 and a boilerplate Affidavit for Marriage License in ██████████ Arizona. In support of her appeal, the Petitioner supplements the record with F-L-'s Application for Change of Name for an Adult and the corresponding Order dated October 20, 2014.

In her statements, the Petitioner indicated that F-L- always told her that he was a U.S. citizen born in Missouri, and she recalled her mother-in-law relaying that F-L- was born in ██████████ Missouri. The Petitioner stated that when F-L- became angry, he would "yell about how he was a citizen and he belonged here when [she] did not." She also indicated that she has unsuccessfully attempted to obtain a copy of F-L-'s birth certificate because she has been unable to recall her mother-in-law's maiden name or the full name of F-L-'s father. She also stated that F-L- never filed with USCIS for any benefits on her behalf, and they were not required to provide their birthplaces when they applied for their marriage license.

In his statement, the Petitioner's nephew relayed that the Petitioner and F-L- would attend various family gatherings, at which F-L- "would constantly say to us that he was a [U.S.] citizen and that they couldn't do anything to him but that we would all have problems because we were all Mexicans [sic]."

Our review of the documents submitted by the Petitioner demonstrates that the Affidavit for Marriage License for ██████████ Arizona, requested information about the groom and bride's names as well as their dates of birth, social security numbers, residential addresses, and signatures. However, it did not indicate that the groom and bride were required to provide their birthplaces or immigration status. In addition, the Petitioner and F-L-'s Marriage Certificate identified the location and date of their marriage as well as various signatures, but it also did not identify their birthplaces or immigration status. The Application for Change of Name for an Adult, indicated that F-L- identified his birthplace as '██████████ MO'.

(b)(6)

The Petitioner correctly observes USCIS' obligation under the regulations to verify the immigration status of an abuser through a check of its records where possible.³ A review of automated and computerized records available to USCIS shows that F-L- was born in Missouri on [REDACTED] and accordingly, is a U.S. citizen. This information is consistent with the relevant evidence provided by the Petitioner.

The Petitioner has thus established by a preponderance of the evidence that she has a qualifying relationship as the spouse of a U.S. citizen and is eligible for preference immigrant classification based upon that relationship as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act. Accordingly, the Petitioner has overcome the Director's grounds for denial.

IV. Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). On appeal, the Petitioner has met this burden.

ORDER: The appeal is sustained.

Cite as *Matter of A-I-A-M-*, 13404 (AAO Sept. 1, 2015)

³ See 8 C.F.R. § 103.2(b)(17)(ii).