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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



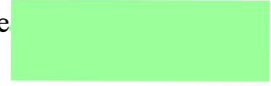
U.S. Citizenship
and Immigration
Services



Date: **JAN 14 2015**

Office: VERMONT SERVICE CENTER

File



IN RE: Self-Petitioner:



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:



Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

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

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the petition will be remanded to the director.

The petitioner seeks immigrant classification under 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 spouse, a lawful permanent resident of the United States.

The director denied the petition for failure to establish a qualifying relationship and the corresponding eligibility for immigrant classification, particularly that the petitioner did not submit evidence demonstrating the lawful termination of her prior marriage. On appeal, the petitioner submits a personal affidavit, a brief by counsel, and copies of excerpts from her asylum application, an immigrant visa petition filed on her behalf, and an immigration court transcript.

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 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 to be classified as an immediate relative 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 (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 evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are 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 . . . proof of the 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

Facts and Procedural History

The petitioner is a citizen of Guyana who applied for admission into the United States on February 28, 2005, at the [REDACTED] by presenting a fraudulent passport and falsely representing herself as a citizen of Trinidad and Tobago. On April 13, 2005, the petitioner pled guilty and was convicted in the United States District Court for the Southern District of Florida of knowingly using a false passport in violation of Title 18 U.S.C. Section 1543.

On May 5, 2005, the petitioner participated in a credible fear interview before the [REDACTED] after which she was placed into removal proceedings and filed a Form I-589 application for asylum, withholding of removal, and withholding of removal under the United Nations Convention Against Torture. On July 29, 2005, an immigration judge denied the application and ordered the petitioner removed to Guyana. On October 14, 2010, the Board of Immigration Appeals (BIA) sustained the petitioner's appeal to the extent it challenged the immigration judge's adverse credibility finding and remanded the case. The petitioner's removal proceedings were administratively closed by the immigration judge on November 8, 2013. On June [REDACTED] the petitioner married D-T-¹, a U.S. lawful permanent resident, in New York, while she was in removal proceedings.

On November 4, 2013, the petitioner filed the instant Form I-360 self-petition. Subsequent to the filing of the self-petition, the director issued two Requests for Evidence (RFEs) requesting, among other things, that the petitioner submit proof of the legal termination of her first marriage. 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.

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. Because the petitioner remains ineligible on other grounds, the matter will be remanded to the director for further action.

Qualifying Relationship and Corresponding Eligibility for Preference Immigrant Classification

The regulation at 8 C.F.R. § 204(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship. The petitioner initially submitted her marriage certificate showing that she and D-T- were legally married in New York, and a copy of D-T-'s lawful permanent resident card demonstrating his immigrant status. However, as explained in the second RFE, because the petitioner indicated on the Form I-360 petition that she has been married two times she is required to submit proof of the legal termination of her prior marriage. In response to the RFE, the petitioner did not address the director's request or submit proof of the termination of her first marriage.

¹ Name withheld to protect the individual's identity.

On appeal, counsel asserts that the petitioner has been married only once and the indication on the Form I-360 self-petition that she was married twice was merely a typographical error. Counsel further asserts that she never saw the second RFE because her office staff failed to present it to her or keep a copy and thus she was unaware that the director had requested proof that the petitioner's prior marriage had been legally terminated.

The petitioner states credibly on appeal that she was in a "common law relationship" with [REDACTED] from August 2000 to August 2004 and they had a religious ceremony to bless their union on August 17, 2000. She explains that she never entered into a civil union with Mr. [REDACTED] and that Ghana does not recognize common law marriage as a valid legal marriage. The petitioner adds that Mr. [REDACTED] is consistently listed as her "common law husband" on prior immigration-related documents and is referenced as such during her testimony before an immigration judge. On her Form I-589 asylum application, signed and dated by the petitioner on June 16, 2005, she listed her marital status as "single" and did not list a spouse. On the application's Supplement B narrative, the petitioner noted that she married Mr. [REDACTED] in a Hindu religious ceremony but they did not follow up with a civil ceremony and thus they were never legally married according to the laws of Guyana. A review of the complete transcript of the petitioner's July 29, 2005 removal hearing confirms that she referred to Mr. [REDACTED] as her common law husband and explained that they married in a religious ceremony but did not register their union with civil authorities. The Form I-130 Petition for Alien Relative, filed by D-T- on the petitioner's behalf, also indicated that she had no prior marriages.

The Marriage Act of Guyana is contained at Chapter 45:01 of the Laws of Guyana. Part V, Section 56 states that a religious ceremony may be added to a civil marriage after it is contracted at the superintendent registrar's office. There is no provision recognizing a religious ceremony alone as conferring a legal marriage upon the parties. In July 2012, Guyana's [REDACTED] introduced legislation to recognize for the first time as lawfully married, spouses in common law unions. However, at the time of the petitioner's June [REDACTED] marriage to D-T-, neither Guyana nor New York law recognized common law marriage. The relevant evidence in the record is sufficient to show that the petitioner was never legally married to Mr. [REDACTED] and thus her June [REDACTED] marriage to D-T- in New York was and remains lawful.

On appeal, the petitioner has overcome the director's stated grounds for denial as a preponderance of the relevant evidence establishes that the petitioner has a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for preference immigrant classification based on that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.

The Petition Must be Remanded

Although the petitioner has overcome the director's grounds for denial on appeal, the petition cannot be approved because the petitioner married her current spouse while in removal proceedings and is subject to section 204(g) of the Act which bars approval unless the petitioner establishes the bona fides of her marriage by clear and convincing evidence. Section 245(e)(3) of the Act. 8 U.S.C. § 1255(e)(3). The director correctly determined that the petitioner established that she entered into her marriage with D-T- in good faith as they have a son together and the evidence in the record demonstrated her good-faith marital intentions toward her husband. However, the bona fide marriage exception at section

245(e)(3) of the Act imposes a heightened burden of proof than that required to establish a good faith entry into marriage under section 204(a)(1)(B)(ii)(II)(aa) of the Act. While identical or similar evidence may be submitted to establish the bona fide marriage exception at section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3), the director did not apply the mandatory requirements of section 204(g) of the Act to the instant self-petition, and the petition must therefore be remanded.

In addition, beyond the director's decision, the record indicates that the petitioner's conviction for knowingly using a false passport under 18 U.S.C. § 1543 may constitute a crime involving moral turpitude, automatically barring a finding of her good moral character under section 101(f)(3) of the Act. The petitioner's conviction for knowingly using a false passport under 18 U.S.C. § 1543 may constitute a crime involving moral turpitude, automatically barring a finding of her good moral character under section 101(f)(3) of the Act. Although the petitioner was ultimately sentenced to only a brief period of time served, one year of supervised release and a nominal fine, the maximum sentence of imprisonment for a conviction under 18 U.S.C. § 1543 is ten years imprisonment. Thus, the so-called "petty offense exception" under section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II) would not apply. Pursuant to section 204(a)(1)(C) of the Act, a petitioner will not be barred from a finding that she is a person of good moral character if the conviction was waivable and connected to her spouse's battery and extreme cruelty. In the present matter, however, it appears that the petitioner's conviction long pre-dates her marriage to her abuser. Because the director did not consider whether the petitioner is so barred, the petition must be remanded. We thus remand the matter to the director for consideration of the self-petition under the requirements of sections 204(g) and 101(f)(3) of the Act, and issuance of a new decision.

Conclusion

The petitioner has established that she has a qualifying relationship as the spouse of a U.S. lawful permanent resident 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. However, as the petition is not approval pursuant to sections 204(g) and 101(f)(3) of the Act based on the present record, it will be remanded to the director for further action.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action and issuance of a new decision. If the new decision is adverse to the petitioner, it shall be certified to the AAO for review.