

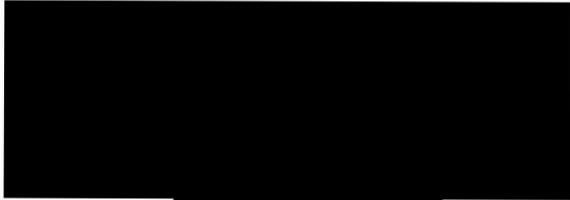
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U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 06 2006
EAC 04 212 52190

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered 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]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

2 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant 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 the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel for the petitioner submits a brief.

The regulation at 8 C.F.R. § 204.2(c)(1), in effect at the time the self-petition was filed, states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant 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) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part:

Good moral character. A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into

account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part:

For the purposes of this Act. – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under the Act.

The record reflects that the petitioner wed [REDACTED] a lawful permanent resident of the United States, in 1992 in Mexico. According to the petitioner's Form I-867A, Record of Sworn Statement in Proceedings, she attempted to enter the United States without inspection on March 27, 1999 by presenting a counterfeit Mexican passport bearing a counterfeit nonimmigrant visa. The petitioner was processed for expedited removal from the United States for misrepresentation of a material fact and as an immigrant without a visa. The petitioner subsequently reentered the United States without inspection and on May 10, 2004, the petitioner was placed into removal proceedings.

On July 12, 2004, the petitioner filed a Form I-360 self-petition, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her lawful permanent resident spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. The petitioner submitted an affidavit as primary evidence of her good moral character. She also submitted a police clearance from the San Diego County Sheriff's Department.

Because the record contains information that the petitioner was charged with misrepresentation of a material fact, she was requested on June 27, 2005, in a notice of intent to deny (NOID), to submit any evidence that she believed would overcome the stated reason for denial. The petitioner responded to the NOID. The director found the evidence insufficient to overcome the basis for his intent to deny the petition; hence, he denied the petition.

On appeal, counsel for the petitioner raises several arguments. He asserts that because the petitioner's conduct "occurred outside of the three-year period for which she must show good moral character," it should not be considered. The statute does not state a time period during which the self-petitioner must demonstrate his or her good moral character. *See* Section 204(a)(1)(B)(ii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(bb). The regulation's designation of the three-year period preceding the filing of the petition does not limit the temporal scope of the inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996).

Citing the Preamble to Interim Regulations, counsel for the petitioner asserts that in instances where the person has not been convicted of the offense but admits to the commission of an act that could show a lack of good moral character, the Service can take into consideration the circumstances surrounding the act to determine if it should find a lack of good moral character. In the instant case, the petitioner stated that the reason she left the United States for Mexico was to search for her husband. Seeking re-entry into the United States, she presented false documents and stated under oath that her true name was [REDACTED]. These circumstances do not warrant a discretionary finding of good moral character.

Counsel further asserts that the good moral character bar does not apply when there is a connection between the battery or extreme cruelty and the morally turpitudinous act. However, the petitioner failed to establish there was a connection between the abuse and giving false testimony when she attempted to reenter the United States. The evidence does not show that the abuse experienced by the petitioner compelled or coerced her to misrepresent a material fact in order to gain a benefit under the Act.

Finally, counsel asserts that the Service "should handle the issues in this case in an ameliorative manner." The Service has generously interpreted the Act and pertinent regulations. In the absence of evidence of a connection between the abuse and the morally turpitudinous act, the director did not err by denying the instant petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.