



U.S. Citizenship
and Immigration
Services

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BOA

FILE:

[REDACTED]
EAC 04 226 51875

Office: VERMONT SERVICE CENTER

Date: OCT 13 2006

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director (Director), Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of 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 because the record did not establish the petitioner's good moral character.

On appeal, the petitioner submits additional evidence.

Section 204(a)(1)(B)(ii) 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 he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, 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 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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vii) *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 . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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 or 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 of the community.

* * *

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

The record reflects that the petitioner married J-G¹, in Mexico on July 14, 1979. The petitioner's spouse became a lawful permanent resident of the United States on December 1, 1990. The petitioner's Form I-360 indicates that she entered the United States without inspection on December 23, 2001. On August 2, 2004, the petitioner filed the instant Form I-360 with supporting documentation. The director subsequently issued a Request for Evidence (RFE) for further evidence of the petitioner's good moral character. The petitioner responded to the request on June 6, 2005. On January 6, 2006, the director denied the petition because the petitioner failed to establish that she is a person of good moral character. On appeal, the petitioner submits additional evidence but fails to overcome the director's ground for denial. Nonetheless, the case will be remanded because, prior to denying the petition, the director did not issue a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

As it relates to her good moral character, with the initial filing, the petitioner submitted a letter from Fidel Perez Velazquez, who wrote of the petitioner's honesty. In the RFE, the director indicated that evidence of good moral character could be established by the submission of an affidavit from the petitioner accompanied by a police clearance from each place the petitioner resided for at least six months during the three-year period prior to the filing of the petition. In response to the RFE, the petitioner submitted a letter indicating that she needed an additional 60 days to respond with a police clearance. Although the director afforded the petitioner additional time, when no further evidence of her good moral character was submitted, the director determined that she had failed to establish her good moral character. In his denial, the director noted the petitioner's claim that additional documentation had been submitted but indicated that this additional documentation was not

¹ Name withheld to protect individual's identity.

contained in the file. On review, we note that this evidence is now contained in the file.² The evidence consists of a letter from the petitioner, a letter from a friend of the petitioner, [REDACTED] who asserts that the petitioner is “honest, friendly, hardworking, and trustworthy. . . .,” and copies of documents already submitted. In her letter, the petitioner claims that she had previously submitted a “letter from the police telling that my record is clean in United States” The record, however, does not contain any letter from the police department as claimed by the petitioner.

On appeal, the petitioner submits a personal statement and a letter from her church. The petitioner also resubmits the letter from [REDACTED] that was previously submitted. The petitioner’s letter does not address her good moral character and she fails to provide a police clearance or further information regarding her prior submission of the police clearance. The regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner’s good moral character is *an affidavit from the petitioner accompanied by a police clearance* from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. While the petitioner has submitted letters from her church and from two friends regarding her good moral character, this secondary evidence cannot take the place of the required primary evidence unless the petitioner demonstrates that required clearance does not exist or cannot be obtained.³ In this instance, the petitioner does not claim that the clearance is unavailable. Further, the petitioner has failed to address her good moral character in an affidavit. Accordingly, the petitioner has failed to establish that she is a person of good moral character.

Although the petitioner has failed to overcome the director’s grounds for denial, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

² It appears that the evidence was received by the director on November 3, 2005.

³ See the regulation at 8 C.F.R. § 103.2(b)(2) for the requirements for the submission of secondary evidence and affidavits.