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U.S. Citizenship  
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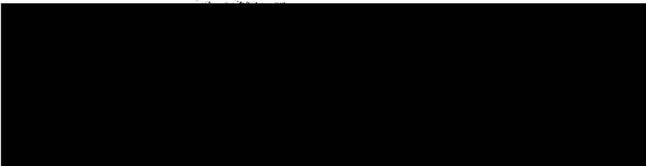
Office: VERMONT SERVICE CENTER

Date: JAN 18 2007

IN RE: Petitioner: [Redacted]

PETITION: Petition for Special Immigrant Battered 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:



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 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 seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her United States citizen spouse.

The director denied the petition because the record failed to establish that the petitioner had a qualifying relationship with her former husband, that she is eligible for classification based upon that relationship, and that she is a person of good moral character.

The petitioner, through counsel, submitted a timely appeal.

Section 204(a)(1)(A)(iii) 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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. 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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. 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 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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 petitioner in this case is a native and citizen of Ecuador who entered the United States on or around May 1996 without inspection. On February 26, 1997, the petitioner married [REDACTED] a U.S. citizen, in Manhattan, New York and a Form I-130 was subsequently filed on the petitioner's behalf by her citizen spouse. The petitioner was placed in removal proceedings on October 29, 2000. Her Form I-130 was subsequently approved on February 1, 2002. The petitioner's marriage to her citizen spouse was dissolved in June 2003 by order of the Supreme Court of the State of New York, County of New York. The petitioner filed this Form I-360 on October 31, 2005. On January 25, 2006, the director issued a request for evidence (RFE) of *inter alia* further evidence of the petitioner's qualifying relationship and her good moral character. On March 16, 2006, the petitioner, through counsel, requested additional time in which to respond to the RFE. On June 9, 2006, the petitioner submitted additional evidence. The director issued a Notice of Intent to Deny (NOID) on April 11, 2006. The petitioner responded to the NOID on June 7, 2006. After reviewing all of the evidence, including the evidence submitted in response to the RFE and NOID, the director denied the petition, finding that the petitioner had failed to establish that she had a qualifying relationship with her former husband and

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<sup>1</sup> Name withheld to protect individual's identity.

was eligible for classification based upon that relationship due to the dissolution of their marriage over two years before the petition was filed. Additionally, the director determined that the petitioner failed to establish that she was a person of good moral character. The petitioner filed a timely appeal on August 28, 2006. Upon review, as will be discussed, we concur with the determination of the director and further find that the petitioner has failed to overcome this determination on appeal.

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

The record shows that the petitioner's marriage to her former U.S. citizen spouse was legally terminated on June 2, 2003<sup>2</sup>, over two years before this petition was filed on October 31, 2005. On appeal, counsel does not contest the fact that the petitioner's divorce became final more than two years prior to the filing of the Form I-360 petition. However, counsel argues that the petitioner has "maintained her relationship not only after their marriage was terminated but up to the present time because [she] was summoned by her former husband throughout modification of an order of [child] support . . . ." We are not persuaded by counsel's argument. Section 204(a)(1)(A)(iii) of the Act requires either that the petitioner be married to his or her citizen spouse at the time of filing, or if no longer married at the time of filing, that the petitioner demonstrate a connection between the legal termination of the marriage *within the past 2 years* and battering or extreme cruelty by the United States citizen spouse. As discussed above, the petitioner was not married to her spouse at the time of filing and her divorce took place more than two years prior to the filing of the Form I-360 petition. The fact that the petitioner has remained in contact with her former spouse for the purpose of modifying their prior child support order does not cure the petitioner's failure to file the Form I-360 within the two year period following the dissolution of her marriage. Accordingly, the petitioner has failed to establish that she has a qualifying relationship as the spouse or former spouse of a United States citizen and that she is eligible for classification based upon that relationship.

*Good Moral Character*

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 3-year period immediately preceding the filing of the self-petition. With the initial submission of her petition, the petitioner submitted a police clearance from the City of New York police department dated April 2004. In his RFE, the director indicated that the document was "out-dated" and requested an updated clearance. As the petitioner failed to submit any further documentation regarding her good moral character in the time allowed following the RFE and the NOID, the director correctly determined that the petitioner failed to establish that she was a person of good moral character.

On appeal, the petitioner submits an updated police clearance, dated August 2006. As noted above, the petitioner was put on notice of the evidence necessary to establish her good moral character and was given a reasonable opportunity to provide the additional evidence before the visa petition was adjudicated. The petitioner submits no explanation on appeal for her failure to submit this evidence when previously requested to do so by the director. Further, given that the clearance is dated nearly one month *after* the issuance of the director's decision, there is no indication that the petitioner even attempted to obtain the clearance prior to the director's decision. Accordingly, the AAO will not consider this evidence for any purpose on appeal. *See*

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<sup>2</sup> The director's decision mistakenly referenced the petitioner's date of divorce as June 20, 2003. However, the Form UD-11, Judgment of Divorce, indicates that while the judgment was filed with the Clerk of the Court on June 20, 2003, the judgment was signed on June 2, 2003.

*Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director which did not contain the requested evidence. As the record as it was constituted before the director lacked evidence of the petitioner's good moral character, the director's determination that the petitioner failed to establish her good moral character was correct.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.