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U.S. Citizenship  
and Immigration  
Services



B9

FILE:   
EAC 03 158 52721

Office: VERMONT SERVICE CENTER

Date: MAR 19 2007

IN RE: Petitioner: 

PETITION: Petition for 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:

SELF-REPRESENTED

INSTRUCTIONS:

**PUBLIC COPY**

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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under 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 a United States citizen.

The director denied the petition because the petitioner did not establish her good-faith entry into marriage with her husband and her good moral character.

On appeal, the petitioner submits a statement and copies of documents previously submitted.

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).

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 further 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 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.

\* \* \*

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary 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. . . . 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.

\* \* \*

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Peru who entered the United States on February 1, 1999 without inspection. On March 7, 2001, the petitioner married V-M<sup>1</sup>, a U.S. citizen. The petitioner filed this Form I-360 on April 28,

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

2003. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character and good-faith entry into marriage with her husband. The petitioner responded with further documentation. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of sufficient evidence of the petitioner's good moral character and her good-faith entry into marriage with her husband. The petitioner timely responded to the NOID with additional evidence. On August 25, 2006, the director denied the petition on the grounds cited in the NOID and the petitioner timely appealed.

On March 31, 2005, U.S. Immigration and Customs Enforcement served the petitioner with a Notice to Appear for Removal proceedings charging her as removable pursuant to section 212(a)(6)(A)(i) of the Act, as an alien present in the United States without having been admitted or paroled. The petitioner remains in proceedings before the Newark, New Jersey Immigration Court and her next hearing is scheduled for April 23, 2007.

#### *Good Faith Entry into Marriage*

The petitioner submitted the following evidence relevant to her alleged good faith entry into marriage with her husband:

- The petitioner's statements dated September 7, 2004 and July 29, 2006;
- The September 7, 2004 joint statement of the petitioner's friends, [REDACTED] and [REDACTED];
- The July 8, 2006 letter of the petitioner's friend, [REDACTED];
- The July 8, 2006 letter of the petitioner's brother, [REDACTED];
- Letters dated January 25, 2002 and November 15, 2003 from Hudson United Bank, which state that the petitioner and her husband maintained a savings account at the bank since April 18, 2001;
- Telephone bills, rent receipts and other correspondence addressed individually to the petitioner's husband at the former couple's marital residences;
- Joint leases for the former couple's two marital residences; and
- Photographs of the petitioner and her husband.

In her statements, the petitioner reports that she met her husband at her cousin's birthday party on an unspecified date. The petitioner states that she began dating her husband and that he proposed to her on her birthday, then called her parents in Peru and that the former couple was married the following March. The petitioner indicates that at the beginning of their marriage, she and her husband "understood each other very well," had a joint savings account and made plans together, but that her husband soon began to change. In her July 29, 2006 statement, the petitioner explains, "We decided to get married because we thought that life could only get better the way we were with each other. . . . I was very sure that I was going to succeed in my marriage being that I was in love and he loved me." The petitioner does not describe how she met her husband, their courtship, wedding, shared residences and experiences in any further detail.

██████████ and ██████████ state that they attended the petitioner's wedding and that the former couple "seemed to be very happy." ██████████ and ██████████ report that they often visited the former couple and went out with them. They provide no probative details regarding the petitioner's courtship, her decision to marry, the former couple's marital residences, or any particular occasions when the two couples went out together. The petitioner's brother and ██████████ also fail to provide probative details to support the petitioner's claim. The petitioner's brother states that the petitioner's husband "made sure that she believe[d] he really loved and respected her." ██████████ further states that he and his relatives observed the petitioner's husband abusing her and they "tried to help but she was so in love that [they] couldn't do much." ██████████ simply states that the petitioner "loved [her husband] more than anyone in her life" and "was always trying to please [him]."

The remaining, relevant evidence also fails to establish the petitioner's good-faith entry into marriage with her husband. The letters from the bank establish that the petitioner and her husband had a joint savings account, but they do not provide any evidence of the account's usage by both the petitioner and her husband. Although the record indicates that the balance of their account was withdrawn on December 13, 2002 pursuant to a child-support order against the petitioner's husband, the petitioner submitted no evidence that both she and her husband contributed to or used the account prior to that date. The telephone bills and other correspondence sent to the former couple's marital residences are addressed to the petitioner's husband alone. In her July 29, 2006 statement, the petitioner explains, "There were bills that were in his name and my name but he was the one who controlled the bills." The petitioner does not further explain how her husband's controlling behavior prevented her from documenting their shared financial responsibilities. The residential leases and photographs indicate that the former couple lived together and were photographed together on some occasions, but these documents alone do not establish the petitioner's good-faith entry into marriage with her husband.

The relevant evidence fails to provide a substantive, detailed account of how the petitioner met her husband, their marriage, marital residences and shared experiences, apart from her husband's abuse. Consequently, the petitioner has failed to establish that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Good Moral Character*

The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that "[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." The petitioner does not discuss her moral character in either of her statements submitted below. The petitioner submitted a clearance letter from the Union City, New Jersey Police Department, but the letter indicates that the search of the department's records was based on the petitioner's married name. In both the RFE and the NOID, the director advised the petitioner, "if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s)" (emphasis in original). The record shows that the petitioner has used her maiden name in the United States. However, she failed to submit a police clearance based on a search of both her married and maiden names. On appeal, the petitioner states, "I did request for the police clearance letter under both

of my alias [sic], unfortunately I could not obtain them, because I had no picture ID carrying those names to give to the police department to identify me as the same person." The petitioner submits no documentation from the Union City Police Department to corroborate her claim that the Department requires identification under each alias in order to conduct a search under other names that an individual has used.

In their letters, [REDACTED] and the petitioner's brother attest to the petitioner's good character. However, their testimony alone is insufficient to establish the petitioner's good moral character. The petitioner has not submitted her own statement attesting to her good moral character and she has not submitted evidence, or a sufficient explanation, that a clearance under all of her aliases is unobtainable from the Union City, New Jersey Police Department; or that she is unable to obtain a criminal background check from the appropriate state authority in New Jersey based on her fingerprints or a search of all her aliases. Accordingly, the petitioner has failed to establish her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v).

The record fails to demonstrate that the petitioner entered into marriage with her husband in good faith and that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.