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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B9

FILE:

EAC 06 216 50391

Office: VERMONT SERVICE CENTER

Date: **JUL 22 2008**

IN RE:

Petitioner:

PETITION: Petition for Immigrant Abused 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:

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 classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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, noting the petitioner's failure to respond to the director's Notice of Intent to Deny (NOID), and finding that the petitioner failed to submit a civilly registered marriage certificate and to establish that she entered into her marriage in good faith.

The petitioner submits 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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 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.

* * *

(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 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.

(ii) *Relationship.* A self-petition file by a spouse must 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 . . .

* * *

(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.

* * *

(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 provides the following pertinent facts and procedural history of this case. The petitioner is a native and citizen of Mexico who indicates on the Form I-360 that she entered the United States on an unspecified date in 1990, without inspection. On April 26, 2001, the petitioner married R-E-¹ a United States citizen in Nevada. The petitioner filed the instant petition on July 17, 2006. On August 2, 2006, the director issued a Request for Evidence (RFE) to establish that the petitioner and R-E- entered into a legally recognized marriage. Specifically, the director stated:

The marriage certificate that you submitted is not sufficient to show that you and [R-E-] entered into a legal marriage. The document you submitted appears to have been altered, and it is not civilly registered.

Submit a **certified original** marriage certificate that has been civilly registered for the marriage of you and [R-E-]. An appropriate civil authority should issue a marriage certificate. **In order for the marriage to be considered valid for immigration purposes, it must have been registered with a civil authority from the location where the marriage took place.**

[Emphasis in the original].

In addition, the director requested further evidence to establish that the petitioner entered into her marriage in good faith. The petitioner responded to the director's RFE on August 23, 2006 by submitting a copy of her marriage license and her child's birth certificate. After considering the evidence submitted by the petitioner in response to the RFE, the director issued a NOID on October 3, 2006. In his NOID, the director acknowledged the petitioner's submission of her marriage *license* but reiterated his request for a *certified original marriage certificate* that had been registered with the civil authority where the petitioner's marriage took place. Additionally, the director acknowledged the petitioner's submission of her child's birth certificate but indicated that the certificate did not list R-E- as the child's father. The director then reiterated his request for further evidence to establish that the petitioner entered into her marriage in good faith. The petitioner failed to respond to the NOID and the director denied the petition on February 21, 2007, based upon the grounds cited in the NOID.

The petitioner submits a timely appeal. On appeal, the petitioner submits new evidence as well as copies of documents that were previously submitted. The petitioner provides no explanation for her failure to submit such evidence before the director, despite his specific request in the NOID. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). As the record demonstrates that the petitioner was properly notified of

¹ Name withheld to protect individual's identity.

the deficiencies in the record, was requested to provide specific evidence, such as her marriage certificate, and failed to respond to that notice, the AAO may not accept the evidence submitted on appeal. In instances such as this one, where a petitioner has been put on notice of deficiencies in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

As will be discussed, upon review of the record as it was constituted before the director, we concur with the finding of the director that the petitioner failed to establish that she had a legal marriage with R-E- and that she entered into her marriage in good faith.

Qualifying Relationship and Eligibility for Immediate Relative Classification

In his RFE and NOID, the director questioned the authenticity of the marriage certificate submitted by the petitioner as evidence of her legal marriage to R-E-. Accordingly, on August 2, 2006 and October 3, 2006, the director requested the petitioner to submit a certified, original certificate issued by the civil authority in Nevada.² Although the petitioner submitted a copy of her marriage license in response to the RFE, she failed to submit an original, certified copy of her marriage certificate as specifically requested by the director in both the RFE and NOID. In fact, as previously indicated, the petitioner failed to provide any response to the director's NOID. As such, we concur with the finding of the director, based upon the record before him at that time, that the petitioner failed to establish that her marriage to R-E- was legal. Based upon her failure to submit the requested evidence, the petitioner failed to establish that she had a qualifying relationship with R-E- and that she was eligible for immigrant classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act. While we acknowledge the petitioner's submission of a certified copy of her marriage certificate from the clerk of Clark County, Nevada on appeal, the petitioner has provided no explanation for her failure to submit this document in response to the director's NOID. The AAO, therefore, will not accept its submission at this late date. *Matter of Soriano* at 766, *Matter of Obaigbena* at 537.

Good Faith Marriage

At the time of filing, the petitioner submitted the following relevant evidence:

- The petitioner's personal statement;
- A copy of an envelope addressed to the petitioner;
- Copies of two rent receipts noting the petitioner's spouse's name;
- A copy of a reminder notice to the petitioner from NEVHC-PACOIMA;
- Copies of two utility bills from Southern California Gas Company in the petitioner's spouse's name;
- A copy of a bill from Royal Prestige addressed to the petitioner;
- A copy of a bill from the Los Angeles Department of Water and Power addressed to the petitioner's spouse;

² The regulation at 8 C.F.R. § 103.2(b)(5) states that CIS may, at any time, require that the original document be submitted for review.

- A copy of the petitioner's car registration covering May 2005 to May 2006;
- A copy of a bill from Heilig-Meyers Furniture in the petitioner's spouse's name
- Six photographs; and
- A copy of the birth certificate for petitioner's child.

In her personal statement, the petitioner states that she met R-E- "sometime in 1996" at a nightclub. The petitioner indicates that they began dating "a few weeks" after their initial meeting and generally states that during their courtship, they fell in love. The petitioner claims that after a few months, they decided to live together and that in 2000 she found out that she was pregnant. After the birth of the child, the petitioner indicates that they decided to get married. The petitioner provides no further probative details of her relationship with R-E- except as it relates to the claimed abuse. Although the petitioner also submitted the above-listed documentary evidence, the evidence is not sufficient to establish that she entered into her marriage in good faith. The envelope, rent receipts, bills, notices and car registration submitted by the petitioner are either in the petitioner's name only or R-E-'s name only. None of the documents reflect the joint liability, use or ownership of, or access to the accounts. Similarly, the photographs submitted by the petitioner, while evidence that the petitioner and R-E- were together at a particular place and time, contain little probative value in establishing her good faith intent in marrying R-E-. The petitioner fails to describe the photographs, the individuals in the photographs, the importance of the events, or to provide any other information about the photographs to establish their relevance to her claim of a good faith marriage. Finally, we acknowledge the petitioner's claim that she and R-E- produced a child together in November 2000. However, the key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). Given the lack of probative testimonial evidence regarding her good faith marriage and documentary evidence of joint assets, as well as the petitioner's failure to provide an explanation for her failure to list R-E- on the child's birth certificate, the fact that the petitioner claims to have produced a child with R-E-, five months prior to her marriage to him, by itself, does not sufficiently establish that she intended to establish a life with R-E- at the time of their marriage and that she entered into her marriage in good faith.

Accordingly, we concur with the finding of the director, based upon the record before him at that time, that the petitioner failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Although the petitioner submitted additional evidence on appeal, because the petitioner failed to respond to the director's specific request in the NOID for further evidence of her good faith marriage, this additional evidence will not be accepted on appeal. *Matter of Soriano* at 766, *Matter of Obaighena* at 537.

Beyond the Director's Decision

Beyond the director's decision, we find that the petitioner has failed to establish that she is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks 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. Although the petitioner submitted a document from the Superior Court of California, County of Los Angeles, the document indicates that the search performed regarding the petitioner's criminal record concerned only "felony records" from that particular court. Moreover,

the search was based only upon the name [REDACTED] with a date of birth of May 20, 1977. The record of proceeding, however, indicates that the petitioner also uses the name [REDACTED] and the birth certificate for her youngest child shows that she has also claimed a date of birth as July 20, 1977. In the absence of a criminal record search from the state of California or the local police departments where the petitioner resided for at least six months during the three-year period prior to filing the petition which was based upon the petitioner's fingerprints, the petitioner's submission of a court search of only the "felony records" of that particular court, under the name [REDACTED]" with only one of the two claimed dates of birth is not sufficient to establish the petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for all of the reasons cited above, with each considered an independent and alternative basis for denial. 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 appeal is dismissed.