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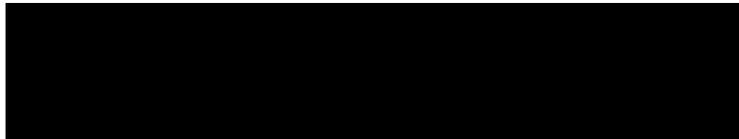


FILE: [REDACTED]  
EAC 04 255 53002

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:



PETITION: Petition for 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:



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.

*Mauro Deadrick*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The December 19, 2006 decision of the director will be affirmed, with partial amendment, and the petition will be denied.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of 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 preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further 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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty*. For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

\* \* \*

(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)(B)(ii) 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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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 pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who married M-C<sup>1</sup>, a lawful permanent resident of the United States, on July 18, 1997 in California. The petitioner filed this Form I-360 on September 10, 2004. On April 6, 2005, the director issued a Request for Evidence (RFE) of the petitioner's residence with her husband, her husband's battery or extreme cruelty, her good moral character and her entry into the marriage in good faith. Having received no response to the RFE, the director initially denied the petition on July 27, 2005 on the grounds cited in the RFE. On August 8, 2005, the petitioner untimely submitted evidence in response to the RFE. On August 29, 2005, counsel timely appealed the director's July 27, 2005 decision and stated that the petitioner mistakenly believed she had 120 days to respond to the RFE.

On appeal, the AAO concurred with the director's determination that the petitioner did not establish her eligibility. Specifically, the AAO determined that the petitioner failed to establish the requisite good-faith entry into the marriage, joint residence and good moral character. The AAO did find, however, that the petitioner had established the requisite battery or extreme cruelty. In the July 6, 2006 decision, the AAO remanded the petition because the director failed to issue a Notice of Intent to Deny (NOID) before denying the petition, as required by the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Upon remand, the director issued a NOID for lack of the requisite good-faith entry into the marriage,

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

good moral character and joint residence. The director also cited lack of sufficient evidence of battery or extreme cruelty as an intended ground for denial despite the AAO's finding that the petitioner had satisfied that requirement. Neither counsel nor the petitioner responded to the NOID. On December 19, 2006, the director denied the petition on the grounds cited in the NOID, including battery or extreme cruelty, and certified the decision to the AAO for review. On certification, neither counsel nor the petitioner submits a brief or additional evidence.

We concur with the director's determination that the petitioner has not demonstrated the requisite good-faith entry into the marriage, joint residence and good moral character. However, we affirm the *determination made in the July 6, 2006 decision of the AAO that the petitioner has demonstrated that her husband subjected her to battery and extreme cruelty during their marriage.* Consequently, the contrary portion of the director's December 19, 2006 decision will be withdrawn.

*Battery or Extreme Cruelty*

In her December 19, 2006 decision, the director did not address the relevant evidence of abuse submitted by the petitioner on August 8, 2005. Although the petitioner submitted the evidence in response to the RFE after the response period had expired and after the director issued his initial denial, the AAO considered the evidence on appeal and has again reviewed the evidence upon certification.

The petitioner's RFE response included a certified copy of the Case History Report for the Temporary Restraining Order/Domestic Violence case filed by the petitioner against her husband in the Family Law Division of the Los Angeles County, Northeast District, Superior Court of California. The report shows that the petitioner was granted a temporary restraining order against her husband on July 9, 1999 and that the court, after a hearing, issued a restraining order on July 30, 1999 that was effective until July 30, 2002. The report states that on November 8, 1999, a conciliation agreement and court order regarding child custody and a parenting plan was entered, but that on April 26, 2000, the court issued a second temporary restraining order against the petitioner's husband. After a hearing on May 17, 2000, the court entered a restraining order against the petitioner's husband that was effective until May 17, 2003.

The petitioner also submitted certified copies of her July 9, 1999 and April 11, 2000 applications for restraining orders against her husband. In the July 9, 1999 application, the petitioner declares that in May 1999, her husband became angry with her, cursed her and slapped her, causing her to fall onto the bed. The petitioner states that her husband told her that was only the beginning and then went into the bathroom with their daughters. When the petitioner tried to get her daughters out of the bathroom, she reports that her husband pushed her and threw her up against the wall causing her to hit the wall and the floor. The petitioner states that her sister called the police, her husband was arrested and spent three days in jail for domestic violence against her. After that incident, the petitioner declares that her husband continued to harass her, threaten to hit her and curse her in front of their children. The petitioner explains that she asked her husband to leave their home, but he refused. At the end of June,

1999, the petitioner states that her husband told her that if he was forced to leave, he would take their daughters with him. The petitioner further declares that her husband drinks alcohol and uses drugs on a daily basis and loses control and becomes verbally and physically abusive towards her when he is drunk.

In her April 11, 2000 application, the petitioner explains that in January 2000, her husband moved back into her home and they attempted to reconcile. However, the petitioner states that on March 31, 2000, her husband was drunk and using drugs and threatened that he was going to beat her up. When the petitioner replied that she would call the police, the petitioner reports that her husband said he would beat her and take her children away before he was arrested. The petitioner states that she called the police, but they told her that because she was now living with her husband, there was nothing they could do until she received a new restraining order. The petitioner reports that after the March 31, 2000 incident, her husband refused to leave and told her that she will pay for what she has done and that he will leave when he is ready and take the children with him.

The case history report shows that the court granted the petitioner two, three-year restraining orders against her husband pursuant to her July 9, 1999 and April 11, 2000 applications. The case history report shows that the petitioner's husband filed documentation with the court in connection with the 1999 restraining order and that he personally appeared and testified at the May 17, 2000 hearing, upon conclusion of which the court issued a three-year restraining order against him for the protection of the petitioner and her children.

The case history report and the petitioner's applications for restraining orders are sufficient to establish that the petitioner's husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act. The contrary portion of the director's December 19, 2006 decision is hereby withdrawn.

*Remaining Grounds for Denial*

Again, we concur with the director's determination that the petitioner has not demonstrated the requisite good-faith entry into the marriage, joint residence and good moral character. The evidence, or lack thereof, submitted below that is relevant to each of those three issues was discussed in the July 6, 2006 decision of the AAO, which is incorporated here by reference. The petitioner submitted no further evidence in response to the NOID and submits no brief or evidence on certification. Consequently, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act; that she resided with her husband, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act; and that she is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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. Accordingly, the petition is denied and the December 19, 2006 decision of the director, as amended, is affirmed.

**ORDER:** The petition is denied. The December 19, 2006 decision of the director, as amended by the foregoing decision of the Administrative Appeals Office, is affirmed.