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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

Bey



FILE: [REDACTED]
EAC 05 002 52921

Office: VERMONT SERVICE CENTER

Date: NOV 30 2007

IN RE: Petitioner: [REDACTED]

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.

Robert P. Wiemann

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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner did not establish her good moral character.

On appeal, the petitioner's former counsel¹ submitted a brief and copies of evidence previously submitted.

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 . . . (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 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-

¹ The term former counsel refers to [REDACTED] of the firm [REDACTED].

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.

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.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Poland. The petitioner entered the United States in July 1985 with permission to remain in the United States until January 1986. There is no evidence that the petitioner left the United States prior to the expiration of the period of her authorized stay. On August 17, 2002, the petitioner married J-H.², a lawful permanent resident of the United States, in Chicago, Illinois. The petitioner was served with a Notice to Appear on October 7, 2003.

The petitioner filed this Form I-360 on September 30, 2004. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of evidence establishing the requisite good moral character and abuse. As it relates to the petitioner's good moral character, the director notified the petitioner of evidence of an undercover investigation which indicated that the petitioner engaged in fraud in an attempt to obtain lawful permanent status. The petitioner, through former counsel, responded to the NOID on June 26, 2006. The director denied the petition on October 16, 2006, finding that the petitioner failed to establish that she is a person of good moral character. The petitioner, through former counsel, appealed the decision on November 17, 2006.

² Name withheld to protect individual's identity.

On appeal, former counsel argues that the director abused his discretion in finding that the petitioner had failed to establish her claim of abuse. Former counsel's argument appears to be misplaced as the director made no finding in his denial that the petitioner failed to establish a claim of abuse. Rather, the sole ground for denial was based upon the director's finding that the petitioner failed to establish that she is a person of good moral character.

As it relates to the petitioner's good moral character, former counsel argues that the petitioner has established her good moral character through the submission of a police clearance and three personal affidavits and contends that the director "did not acknowledge the supporting affidavits or address their contents." Former counsel further argues that the director "failed to account for the favorable evidence and to carefully weigh said evidence against the single negative factor in Applicant's case – the 'single lapse' which occurred years before the date of filing her self-petition and which had no relation whatsoever to the underlying basis of said petition." We are not persuaded by former counsel's arguments.

First, we do not dispute that the act in question occurred more than three years prior to the filing of the petition. However, contrary to counsel's argument, the statute relevant to this case, section 204(a)(1)(A)(iii)(II)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(bb), places no limitation on the time period during which the self-petitioner must demonstrate his or her good moral character. Similarly, while the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires a police clearance, criminal background check or similar report from the appropriate authority of each locality where the self-petitioner resided for six or more months during the three-year period immediately preceding the filing of the self-petition, the three-year period is not a limit on the inquiry into the petitioner's good moral character, but rather a limit on the evidence that is required of a petitioner. In many jurisdictions, police records are destroyed after a certain amount of time. The three-year period contained in the regulation is a merely a practical consideration of this fact. The provision relieves a petitioner from being placed in the position of being required to obtain clearances that no longer exist. Thus, while a petitioner is not required to produce evidence of more than three years prior to filing, the regulation does not provide any limit on the temporal scope of CIS's inquiry into the petitioner's good moral character. It is important to note CIS has emphasized that it may investigate a petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See Preamble to Interim Regulations*, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996).

Second, we are not persuaded by counsel's characterization of the petitioner's "single lapse" of character or that the positive statements made on the petitioner's behalf outweigh the negative considerations. Former counsel describes the petitioner's actions as follows:

. . . her single lapse was her unwitting involvement in a fraud scheme through which she attempted to obtain legal permanent resident status in the United States. She did not suspect that the officer who issued the I-551 stamp to her was not authorized to do so. Furthermore, when she was instructed to represent that she had obtained her "green card" through her USC sister, she understood this to mean that she did in fact receive the stamp by virtue of

her relationship with her sister. Applicant's sister was a citizen of the United States at the time that she appeared before the officer who stamped her passport. When the officer represented to her that she was entitled to this stamp by virtue of her sister's legal status, she trusted that this was true. At the time, she did not know enough about immigration law to doubt the assertion that she could immediately derive legal status through her sibling.

Contrary to counsel's characterization, however, as will be discussed, the record demonstrates that the petitioner knew and acknowledged the fact that her sister was a permanent resident, not a United States citizen. As such, counsel's contention that the petitioner "trusted" that she was entitled to receive her stamp through her relationship with her United States citizen sister is not persuasive. Moreover, in her personal statement, contrary to former counsel's explanation, the petitioner does not indicate that she believed she was eligible to obtain status through her sister. Rather, the petitioner explains that after she "visited many [A]merican attorney at law about possibility to obtain legal papers, but they [could not find] any way to help [her]," she then got information from friends about "some [P]olish travel agency [that] has connection with Immigration Officials and help people resolve problems with immigration status." We do not find it plausible that despite acknowledging that "many" attorneys indicated they could not assist her in obtaining her status legally, the petitioner did not suspect a fraud scheme when she heard through friends that she could go to a non-governmental travel agency that promised to obtain papers for her.

The evidence in the record consists of a videotape and a Memorandum of Investigation (Memo) regarding a joint investigation of the Federal Bureau of Investigation (FBI), the Office of the Inspector General for the Social Security Administrator (OIG/SSA) and the former Immigration and Naturalization Service (INS). The Memo documents events that occurred on Wednesday, September 22, 1999, whereby the petitioner paid \$5000 to receive a stamp in her passport indicating that she had obtained lawful permanent resident status and that she "indicated that she understood that if she was ever questioned about how she obtained her status, *she would falsely state* that she obtained it through her sponsor, her United States citizen sister [emphasis added]." In the videotape, the petitioner asks what she is supposed to say in the event that she is questioned about how she obtained her status. She is told to answer that she obtained her status through her United States citizen sister. The petitioner does not question this statement, despite her previous acknowledgment on videotape that her sister is not a United States citizen, but rather, a lawful permanent resident.³

The record contains the following description of the investigation:

The investigation revealed that certain Subjects in the U.S. and abroad were involved in among other things: (1) manufacturing and selling fraudulent documents, including but no limited to: social security cards, entry/departure records (Form I-94), alien registration cards (Form I-551), U.S. and foreign passports, drivers' licenses, birth certificates, and titles to cars,etc.; (2) paying bribes to an INS

³ Service records show that the petitioner's sister was naturalized in May 2004.

UCA [undercover agent] (\$860,000 to date) to have their clients processing for LPR status; (3) selling stolen property including automobiles, electronics equipment, cigarettes, etc.; (4) selling illegal drugs including cocaine; (5) money laundering; and (6) printing and selling counterfeit U.S. currency.

* * *

The clients paying bribes are from numerous countries, including: republics (Ukraine, Russia, etc.) under the former U.S.S.R., Poland, China, India, Bulgaria, etc. These Subject clients appear to live in various locations both inside and outside the U.S. and have traveled to Chicago, Illinois from their home residences located not only in the Chicago area but: the state of Washington, Oregon, California, Washington D.C. area, New York and New Jersey areas, and foreign countries including Russia, solely to have the UCA process their cases for LPR status.

* * *

Subject brokers and their clients have told the CPI and UCA that with the LPR stamps which they have received from the UCA for a bribery payment, they have traveled in and out of the United States by presenting the stamps to U.S. INS inspectors upon their returns to the U.S. and have presented the LPR stamps to Social Security Administration officials to obtain "legal" social security numbers. Intelligence information from INS inspectors at O'Hare airport supports that these false stamps are being used to return to the U.S. from travel abroad.

To date, about 176 Subject clients (including men, women and children) have been processed for LPR status by the UCA for bribery payments totaling about \$860,000 cash. Each adult client has paid about \$5000 and each child has paid about \$1500 in order to be processed . . . To date, about four of these clients have been issued their LPR cards by mail from the INS office at Lincoln, Nebraska.

As it pertains to the petitioner, the Memorandum of Investigation states:

From about 5:32 p.m. until about 7:02 p.m., Subject [R-W-]⁴ met with the UCA and CPI at the store. His three clients: (1) [REDACTED] (A77 776 310) . . . were all processed by the UCA for LPR status for a total payment of \$15,000 (\$5,000 per client). Subject [R-W-] also gave the CPI a \$2,500 "gift payment, for a grand total of \$17,500 paid by Subject to the UCA and CPI on this date.

* * *

⁴ Name withheld for privacy concerns.

[REDACTED] was processed by the INS UCA for LPR status (Class F4-6). [REDACTED] indicated that she understood that if she was ever questioned about how she obtained her status, she would falsely state that she obtained it through her sponsor, her United States citizen sister.

We have considered the evidence that the petitioner contends demonstrates her present good moral character and have weighed the petitioner's evidence against the negative factors. The petitioner's evidence consists of a police clearance, personal affidavits, and supporting affidavits from the petitioner's sister, pastor, doctor, friends and employer. The petitioner's employers describe the petitioner as a "responsible and loving" caregiver to their two children. The petitioner's sister describes the petitioner as a "very good, honest and hard working person individual." The petitioner's friends, pastor and doctor characterize the petitioner as "smart and kind," having "good advice," "always help[ing] less fortunate people," and as a "devoted mother and daughter." We are not satisfied, however, that through these positive statements, the petitioner has established her good moral character in the face of her past acts. As discussed above, we do not find that the petitioner was an innocent victim with no knowledge of the fraudulent scheme. Rather, the record supports a finding that the petitioner knew that her sister was not a United States citizen and that she was not entitled to receive the stamp indicating that she adjusted her status as the sister of a United States citizen. Further, the petitioner willingly agreed to continue this fraud if asked in the future about how she obtained her status. In addition to the fraud, we note the petitioner's continued disregard for federal immigration laws. As previously indicated, the record reflects that when the petitioner was admitted to the United States on July 3, 1985, she was authorized to remain in the United States until January 2, 1986. However, the petitioner did not leave the United States as required and has remained here without authorization for over 20 years.

Accordingly, we find that the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. 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.