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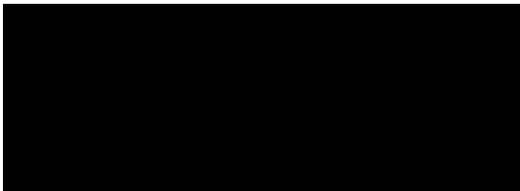
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 06 044 53125

Office: VERMONT SERVICE CENTER

Date: AUG 15 2008

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Abused 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (“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 finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she was eligible for preference classification based upon that relationship.

The petitioner, through counsel, submits a timely appeal.

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 the alien demonstrates that he or she entered into the marriage with the 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 a preference immigrant 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, 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 corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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.

* * *

(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 contained 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.

* * *

(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 Pakistan who entered the United States on December 11, 2004 as a B-2 nonimmigrant visitor. On May 21, 2005, the petitioner married C-A-¹ in New York. The petitioner filed the instant Form I-360 on November 28, 2005. On December 8, 2008, the director requested further evidence of the petitioner's good moral character. The petitioner submitted additional evidence on January 4, 2006. On May 1, 2007, the director requested additional evidence regarding C-A-'s immigration status. The petitioner responded to the request on June 25, 2007. The director denied the petition on September 10, 2007, finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she was eligible for preference immigrant classification based upon that relationship. The petitioner, through counsel, submitted a timely appeal.

On appeal, counsel submits additional information regarding C-A-'s immigration status and requests that the AAO treat her appeal as a motion to reconsider. While there is no regulatory provision which allows counsel to "move" from an appeal to a motion to reconsider, as will be discussed, a review of the additional evidence submitted on appeal persuasively overcomes the director's stated grounds for denial. However, as we find additional grounds that preclude approval of the petition, the case must be remanded to the director for further consideration.

Qualifying Relationship and Eligibility for Preference Immigrant Classification

After considering the evidence submitted by the petitioner regarding C-A-'s biographical information and conducting an "extensive search of USCIS records," the director determined that the petitioner failed to establish that C-A- was either a citizen or lawful permanent resident of the United States. On appeal, counsel submits further information that establishes that C-A- is a lawful permanent resident of the United States. We, therefore, withdraw the director's determination and find that the petitioner has established that she has a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she is eligible for preference immigrant classification based upon that relationship, as required by sections 204(a)(1)(B)(ii)(II)(aa)(AA) and (cc) of the Act.

Beyond the decision of the director, however, we find two additional grounds that preclude approval of the petition.

¹ Name withheld to protect identity.

Residence

On the Form I-360, the petitioner claimed that she resided with C-A- from May 2005 until July 2005 and that they last resided together at "[REDACTED]" in South Riding, Virginia. In her November 21, 2005 affidavit, the petitioner states that on May 22, 2005, she "moved into [C-A-'s] apartment in Arlington, Virginia." The petitioner does not indicate the address of this claimed residence or provide any description of the apartment or any other probative information which demonstrates her residence with C-A- at this address. Although the petitioner also claims to have "changed the address of [her] bank account to C-A-'s Arlington/Montecello [sic] Garden address," she does not submit a copy of any bank statements or cancelled checks from this time period or other documentary evidence to support her claim of a residence at C-A-'s apartment. We note that on their marriage license, dated May 20, 2005, two days before the petitioner claims to have moved into C-A-'s apartment, C-A- listed his address as "[REDACTED]" in Falls Church, Virginia, with no reference to "Arlington" or "Montecello [sic] Garden," as indicated by the petitioner.

The petitioner then states that she and C-A- moved to an unidentified address in South Riding, Virginia on some unspecified date. She claims that on or about July 8, 2005, C-A- and his sister "convinced [the petitioner] to sign the paperwork to become financially responsible for the lease ... of the apartment in exchange for being provided with rent, food and medical care." The petitioner states that although she signed the paperwork to delete C-A-'s name from the lease, he never provided her with the assistance promised. As documentary evidence to support her claim of residence with C-A- at [REDACTED] (the place where the petitioner claimed on the Form I-360 that she last resided with C-A-), the petitioner submitted a utility bill from Northern Virginia Electric Cooperative (NVEC) addressed to "[REDACTED]," not the petitioner or C-A-² and C-A-'s automobile insurance identification card, effective July 1, 2005. The petitioner submitted no probative information regarding the address at [REDACTED] in her affidavit and provided no documentary evidence to demonstrate her residence with C-A- at this address. Although we acknowledge the petitioner's submission of a lease agreement dated July 8, 2005 (the date referenced in the petitioner's affidavit), and other documents from a management company related to the lease agreement, the documents reference an apartment located at "[REDACTED] [REDACTED]" an address not listed by the petitioner on her Form I-360 or identified in her affidavit.

Based upon the scant documentary evidence, the vague statements regarding her residence with C-A-, and incomplete information regarding the petitioner's specific addresses and dates of residence with C-A-, we find the petitioner has failed to establish that she resided with C-A-, as required by 204(a)(1)(A)(iii)(II)(dd) of the Act. We, therefore, withdraw the director's finding on this issue.

² While counsel has provided numerous variations of C-A-'s name, "[REDACTED]" is not one of those listed.

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. At the time of filing, the petitioner submitted no affidavit regarding her good moral character and no police clearance or state-issued criminal background check. In response to the director's December 8, 2005 request for evidence, the petitioner submitted a copy of a police clearance from the Danbury, Connecticut police department based only upon a search of the name [REDACTED]. The record reflects, however, that the petitioner has also used the name "[REDACTED]." In addition to the information in the record which shows the petitioner's address in Virginia and Connecticut, we note that in the letter submitted in conjunction with the police clearance, counsel stated that the petitioner moved to New York in October 2005 and that the petitioner's marriage license lists a residence in New York in May 20, 2005.

Given the petitioner's failure to submit an affidavit regarding her good moral character that contains complete information regarding her exact addresses and dates of residence in Virginia, New York, and Connecticut during the three-year period immediately preceding the filing of her petition, the single clearance from Connecticut, based upon only one of the two names used by the petitioner, is not sufficient 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.

In accordance with the above discussion, we withdraw the director's determination and find that the petitioner has established that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and that she is eligible for preference immigrant classification. In addition, however, we withdraw the director's affirmative finding that the petitioner resided with her spouse and that she is a person of good moral character.

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).

This matter will be remanded for further consideration in accordance with the above discussion. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the

petition is remanded to the director for further action in accordance with the foregoing of the entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.