

identifying and related to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 06 2009
EAC 06 220 50301

IN RE: Petitioner: [REDACTED]

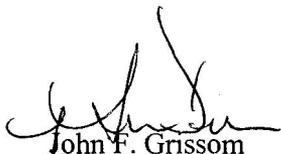
APPLICATION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF APPLICANT:
[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks immigrant classification 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.

On September 30, 2008, the director denied the petition, determining that the petitioner had not established that she is a person of good moral character.

On appeal, counsel submits a brief and re-submits previously provided documentation.

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 also explained 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. 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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

In addition and pertinent to this matter is section 101(f) of the Act, 8 U.S.C. § 1101(f), which states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); . . .

* * *

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Colombia who entered the United States on October 8, 2000 as a B-2 visitor. She married H-C-¹ a naturalized United States citizen, on August 9, 2003. The record includes a Marital Settlement Agreement for Dissolution of Marriage ([REDACTED]) signed by the petitioner and H-C- and filed with the Miami-Dade County Florida Family Division on September 8, 2004. On July 24, 2006 the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued a Notice of Intent to Deny (NOID) the petition on June 8, 2007. Upon review of the response to the NOID and the other documentation in the record, the director denied the petition on September 30, 2008.

The director determined that the petitioner had not established that she is a person of good moral based upon evidence in the record that the petitioner had been arrested and charged with violation of Florida State Statute 784.021, aggravated assault with a deadly weapon and Florida State Statute 784.03, simple battery on December 5, 2003. The record includes a court disposition of the criminal case showing that the prosecution determined that the public's best interest would be served by the prosecution's act of *nolle prosequi*, an act that is solely within the discretion of the state. Thus, the state did not proceed with prosecution of the case and the petitioner was not convicted of the charges filed against her pursuant to her arrest on December 5, 2003. On August 16, 2005, the Circuit Court of the Eleventh Judicial Circuit for Dade County, Florida ordered that the Miami Dade Police Department expunge its records concerning indicia or criminal history information regarding the petitioner and the December 5, 2003 arrest. Counsel for the petitioner asserts that as there was no conviction, section 101(f) of the Act does not preclude a finding of good moral character.

The AAO acknowledges that section 101(f)(8) would not require a finding of the petitioner's lack of good moral character. However, as noted above, the fact that the petitioner is not included within any of the listed classes precluding a finding of good moral character does not preclude a finding that for other reasons such person is or was not a person of good moral character.

¹ Name withheld to protect individual's identity.

In this matter, the AAO has reviewed the circumstances of the arrest that occurred within three years of the petitioner's filing the Form I-360. The arrest warrant reveals that the petitioner was involved in a verbal dispute with another woman and when the other woman walked away from the petitioner, the petitioner picked up a kitchen knife, put it to the face of the other woman, and stated "this conversation is not over! Either you or me are going to end it." According to the police report, the petitioner then threw down the knife and started hitting the other woman when she realized the other woman had called the police.

The record does not include the petitioner's explanation regarding this incident and does not include a statement from the petitioner that she is a person of good moral character. The record does include a local police clearance from the Miami Dade Police Department showing no record for the petitioner. The regulation at 8 C.F.R. § 204.2(c)(1)(vii) provides, in pertinent part:

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 . . . although the acts do not require an automatic finding of lack of good moral character.

The petitioner's offense was an unlawful act that adversely reflects upon her moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). On appeal, the petitioner submits no evidence that her offense was committed under extenuating circumstances. Even if the petitioner's crime did not fall within section 101(f)(8) of the Act as a conviction of an aggravated felony, her offense still evidences a lack of good moral character pursuant to the first sentence of the last paragraph of section 101(f) of the Act: "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The AAO finds that the unlawful acts committed by the petitioner, her failure to provide an affidavit attesting to her good moral character, and her failure to provide an explanation of the circumstances of her unlawful acts in December 2003, when considered in totality fail to demonstrate that the petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Beyond the decision of the director, the petitioner has not established that she entered into the marriage in good faith.

Good Faith

In an April 19, 2007 sworn statement, the petitioner stated that she met her ex-husband (H-C-) where they worked, that they became friends, and that they started dating. She stated:

To the fact that he was older than me was an incentive I thought[t] that he was going to give the protection that I wanted in a men [sic]; someone who knew what he wanted and will not cheat on you. So we decided to get married. I was very excited; but five months after the marriage he started drinking behind by [sic] back; he started to be very aggressive and yelling at me all the time. He also stated that he did not want to work anymore that he want [sic] me to support both of us.

The petitioner does not provide any statements or other information regarding her intent in entering the marriage.

The record includes: a U.S. Treasury check dated April 30, 2004 mailed to the petitioner at the [REDACTED] address; a delivery statement dated October 17, 2003 showing H-C-'s address as the [REDACTED] address; credit card statements dated August 12, 2004, September 24, 2004, and October 13, 2004 mailed to H-C- at the [REDACTED] address; a letter dated September 20, 2004 from Citi Financial mailed to H-C- at the [REDACTED] address; a March 19, 2007 letter from a bank stating that the petitioner and H-C- maintained a checking account with the bank since September 13, 2001 and a signature card showing that both individuals had access to the account on August 25, 2003 and that the account was closed October 29, 2003; a document regarding child support payments showing H-C-'s address as the [REDACTED] address; four pictures of the petitioner and H-C- at what appears to be their wedding reception; and a copy of a lease signed September 27, 2003 by the petitioner and H-C- for the [REDACTED] premises indicating that three persons (the petitioner, H-C-, and the petitioner's mother) were authorized to live in the apartment. The record also includes two affidavits, one from the petitioner's mother and a second from an individual who indicated that she also lived in the apartment with the petitioner, H-C-, and the petitioner's mother. Neither affidavit provides any information regarding the petitioner's interaction with H-C- prior to the marriage or during the marriage, except as general information regarding the alleged abuse.

Upon review of the record, the AAO finds that the petitioner has not provided any substantive testimony regarding her intent in entering the relationship. The petitioner's statement is dedicated primarily to generally describing the abuse allegedly perpetrated by her ex-husband. She does not provide any details regarding the interactions of the couple or describe specific events that would evidence that she entered into the relationship in order to establish a life together.

The petitioner's marriage certificate confirms the couple's marital relationship, but does not establish the petitioner's own good faith in entering the marriage. The lease and the photographs show that the petitioner and her husband may have resided with each other and were together at a wedding reception, but this evidence alone fails to establish the requisite good faith marriage. Similarly, the credit card statements and other documents mailed to H-C- at the joint residence do not establish the petitioner's own good faith in entering into the relationship. The affidavits submitted confirm the former couple's joint residence but only discuss the alleged abuse and provide no probative information regarding their observations of the petitioner's good faith entry into marriage with her husband.

Upon review of the joint bank account, the AAO finds that the petitioner may have opened the account in 2001 and added her ex-husband to the account in August 2003, but then closed the account in October 2003. The AAO acknowledges the petitioner's statements that she tried to include H-C- on her car insurance policy and tried to file income taxes together but was unable to do so because of H-C-'s past behavior. However, the AAO notes that a finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a *bona fide* marriage. In this matter there is no substantive information demonstrating these factors. While the lack of documentary evidence in this matter is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered into this marriage in good faith. The petitioner has provided general statements completing lacking in the detail necessary to assist in ascertaining the truth of the statements submitted. Accordingly, the AAO finds that the petitioner

fails 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). 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 petitioner has not demonstrated that she is a person of good moral character and that she entered into the marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must therefore 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 appeal will be dismissed.

ORDER: The appeal is dismissed.