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

U.S. Citizenship
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Services

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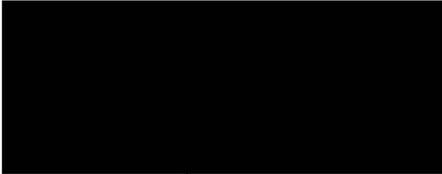
Office: VERMONT SERVICE CENTER

Date: JUN 09 2009

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Battered 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:



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.


John F. Grissom
Acting 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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 on October 23, 2007, finding that the petitioner's personal statements were internally inconsistent and inconsistent with other evidence. The director determined that the petitioner was not a credible witness. The director found that, as the evidence of the alleged abuse perpetrated by the petitioner's former spouse consisted solely of her statements and the petitioner had been found to not be a credible witness, the petitioner had not established that she had been subjected to battery or extreme cruelty by her former spouse.

On appeal, counsel submits a brief and provides some explanations regarding the inconsistencies detailed by the director. Counsel asserts that the petitioner is a reliable, credible witness and that the evidence in the record substantiates that she was subjected to battery and extreme cruelty perpetrated by her former spouse.

We find that the petitioner has provided sufficient evidence to establish that she was subjected to battery and extreme cruelty. However, the petitioner has not provided sufficient probative evidence to establish that she entered into her marriage in good faith and that she is a person of good moral character. The matter must be remanded for the director to issue a Notice of Intent to Deny (NOID) the petition on those specific issues pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect at the time the petition was filed.

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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , 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 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 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. 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 in this matter provides the following pertinent facts and procedural history. The petitioner's country of citizenship is Egypt. She was born in Doha, Qatar. The petitioner obtained a B-2, nonimmigrant visa and indicated on the nonimmigrant visa application that she intended to stay in the United States for several months and that the purpose of her trip was "vacation-visit." The petitioner entered the United States on November 27, 2004 on a B-2 visitor's visa, issued in Doha, Qatar. She married J-A-¹, a United States citizen, on November 29, 2004 in Birmingham, Alabama. The petitioner's former husband, through counsel, filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner filed a Form I-485, Application to Register Permanent Residence or

¹ Name withheld to protect individual's identity.

Adjust Status, which was received by United States Citizenship and Immigration Services (USCIS) on May 13, 2005. In response to a request for the petitioner to appear for an interview on the Form I-485 application on February 8, 2006, the petitioner stated through counsel, that she would not be able complete the interview on February 8, 2006 as the Form I-485 application is dependent on her husband's sponsorship and he would not be able to attend the interview on that day as he was working in Iraq. The petitioner stated on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, filed October 10, 2006 that she resided with her former husband from November 2004 to August 2005. The director issued a request for further evidence (RFE) on June 26, 2007 detailing inconsistencies in the record and requesting further evidence on a number of issues. The petitioner provided a response dated September 18, 2007, including documentation showing that J-A- filed for divorce from the petitioner and entered into an agreement in contemplation of divorce on July 25, 2007, which was accepted by the court on August 30, 2007. The judge of the Circuit Court in Tuscaloosa County, Alabama entered the final judgment order dissolving the marriage on August 30, 2007. Upon review of the information in the record, including the petitioner's response to the RFE, the director denied the petition on October 23, 2007.

The director's decision is based on a determination that the petitioner has presented inconsistent testimony and thus, the petitioner should not be considered credible in regards to the abuse she claims to have suffered at the hands of her former spouse. The AAO will not list the numerous discrepancies and inconsistencies noted by the director in the October 23, 2007 decision. The AAO observes that counsel for the petitioner has asserted that the inconsistencies have been clarified and that some inconsistencies based on conflicting information between the petitioner's statements and the statements her former husband made in support of the Form I-130 filed on her behalf were due to the unauthorized practice of law by an immigration consultant hired by the petitioner's former husband. The AAO has reviewed the file and finds that the petitioner has submitted testimony sufficiently detailing the abuse perpetrated by her spouse, that the petitioner filed a police report on August 15, 2005 regarding the abuse, and that third parties saw evidence of the abuse and provided testimony in that regard. The AAO finds, however, that while counsel has provided plausible explanations for some inconsistencies regarding the petitioner's circumstances, several significant discrepancies remain and relate to the issues of the petitioner's good faith marriage and good moral character.

The AAO finds that the petitioner's willingness to make misrepresentations to USCIS and other government agencies in order to obtain immigration benefits detracts significantly from her ability to establish good moral character. The AAO notes specifically that the petitioner misrepresented her reasons for entering the United States when obtaining a B-2 visitor visa. The petitioner had attempted to marry her former husband in Egypt and when the attempt was unsuccessful obtained the B-2 visa to enter the United States. The petitioner married her former husband on November 29, 2004, two days after entering the United States. The AAO finds that the petitioner's representation that her entry into the United States would be for a vacation/visit was false. The AAO also notes that the petitioner's failure to disclose that she and her former husband had separated in August 2005 when asking to reschedule a February 8, 2006 USCIS interview is a significant misrepresentation to a government agency, diminishes her credibility, and impacts significantly on her claim to good moral character. The

AAO notes that the record does not indicate that either misrepresentation was related to the abuse; however, the petitioner's misrepresentations to obtain immigration benefits impacts negatively on her claim to be a person of good moral character.

The AAO also observes that the petitioner has not indicated why she submitted the January 31, 2005 letter prepared by her former husband's representative, when that letter contained incorrect information. As the director noted, the January 31, 2005 letter was submitted in support of the petitioner's Form I-360 but included statements that conflicted with the petitioner's statements made in support of the Form I-360. The AAO further observes that the record remains unclear regarding the date of the petitioner's departure from Qatar in October 2004, the timing of the petitioner renting an apartment in Qatar in October or November 2004 and whether this was her intended residence with J-A-, and her statements regarding living in the apartment in Qatar in either October or November 2004. The confusing information provided regarding the events and circumstances of the petitioner's interactions with her former spouse, prior to their marriage, raise questions regarding the legitimacy of the petitioner's intent on entering the marriage and whether the couple intended to establish a life together. The AAO acknowledges the photocopy of the United States Uniformed Services identification issued to the petitioner and the photocopy of the August 17, 2007 letter sent to the petitioner on Blue Cross Blue Shield letterhead indicating that she was a dependent on J-A-'s health insurance from June 1, 2005 to September 2005; however, the record does not include consistent, comprehensible testimony supporting the petitioner's intent in entering into the marriage.

It is the specific misrepresentations the petitioner has made to USCIS and the overall confusing information in the record regarding the petitioner's meeting J-A- in September 2004, going to Egypt in October 2004 to try to get married, their intent or lack of intent to reside in Qatar, and eventual entry into the United States in November 2004, that suggests the petitioner did not enter into the marriage in good faith and raises questions regarding the petitioner's good moral character.

Upon review of the record, the AAO withdraws the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The AAO finds however that the petition is not approvable as the petitioner has not established her good faith intent in entering into the qualifying relationship and has not established her good moral character. This matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect at the time the petition was filed. On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.