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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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Services

B9

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 01 2010

IN RE: Petitioner: [Redacted]

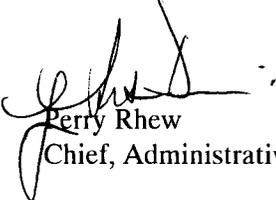
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[Redacted]

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, [REDACTED], initially approved the immigrant visa petition but subsequently revoked that approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

On May 1, 2009, the director revoked the approval of the petition because the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen, that he is eligible for immigrant classification based upon that relationship, and that he is a person of good moral character. The director also determined that, because the petitioner had not established that he was legally free to marry [REDACTED]¹, he had not established the remaining requirements of section 204(a)(1) of the Act.

On appeal, counsel submits a letter dated June 2, 2009, a copy of the January 26, 2007 approval notice for the instant petition, and copies of the following previously submitted documentation: an affidavit dated April 1, 2009, from the marriage & divorce registrar in Sylhet, Bangladesh, affirming, in part, that there is no *Nikahnama* registered in his office for the petitioner, and that the petitioner is unmarried; an “unmarried certificate” dated March 25, 2009, from the mayor of Sylhet, Bangladesh, certifying, in part, that, to the best of his knowledge, the petitioner “is not married now”; an affidavit dated March 24, 2009, from the petitioner’s mother, affirming, in part, that the petitioner “is now still unmarried”; an affidavit dated April 9, 2009, from the petitioner’s acquaintance, stating, in part, that, “[t]o the best of [his] knowledge” the petitioner was never married before coming to the United States; an affidavit dated August 21, 2006, from [REDACTED]; and an affidavit dated April 14, 2009, from the petitioner, stating, in part, that the nonimmigrant visa application was completed for him by an agent from [REDACTED], and that, although he signed it, he was not given the opportunity to review it. In his June 2, 2009 letter, counsel also states that the petitioner was never married to [REDACTED] and that “the record does not establish that [the petitioner] personally submitted the visa application or supporting documentation to the American consulate at any time to obtain a tourist visa.” Counsel indicates that he would submit a brief and/or additional evidence to the AAO within 30 days.

On November 23, 2009, the AAO received additional evidence from counsel, who states that the additional evidence was not available at the time of the appeal’s filing. Counsel submits the following additional evidence that the petitioner had never been married in Bangladesh: an “unmarried certificate” dated March 25, 2009, from the mayor of [REDACTED], which has been attested by the Assistant Secretary (Consular) of the Ministry of Foreign Affairs, [REDACTED] and by the Senior Assistant Secretary of the [REDACTED] Secretariat, [REDACTED] and by the [REDACTED] of Sylhet; a certification dated June 7, 2009, that the petitioner “was never married any where is [sic] Sylhet district,” from the District Sub-register in [REDACTED], which has been attested by the

¹ Name withheld to protect individual’s identity.

Assistant Secretary (Consular) of the Ministry of Foreign Affairs, [REDACTED] the [REDACTED] of Bangladesh in New York and by the Senior Assistant Secretary of the [REDACTED]; and an affidavit dated July 21, 2009, from the marriage & divorce registrar in Sylhet, Bangladesh, attested by the [REDACTED] Secretariat [REDACTED]

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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 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 guidelines for a self-petition filed under section 204(a)(1)(A)(iii) 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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

* * *

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Bangladesh who was admitted into the United States on December 11,

2000, as a B-2 nonimmigrant visitor. On February 24, 2003, the petitioner married M-E-, a naturalized U.S. citizen. On April 14, 2003, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on March 29, 2004, and the petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status. On April 24, 2003, the petitioner was issued a Notice to Appear for removal proceedings, which were terminated on February 12, 2004 by the Immigration Judge, based on the pending Forms I-130 and I-485. The petitioner and [REDACTED] were divorced on December 9, 2004. The I-485 application was denied on January 25, 2005, based upon the withdrawal of the I-130 petition by [REDACTED]

The petitioner filed the instant Form I-360 on March 1, 2005, which was approved on December 28, 2006. On April 20, 2007, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 18, 2009, the director issued a Notice of Intent to Revoke (NOIR) the approval of the instant petition because the evidence indicates that the petitioner submitted erroneous information regarding the number of times he had been married. Specifically, on his Nonimmigrant Visa Application (DOS Form 156) that he signed on September 12, 2000, the petitioner claimed to be married to [REDACTED] from Bangladesh, which contradicts the information he provided on the instant petition and on the Form G-325A, Biographic Information that he signed on March 24, 2003, and in his sworn statements dated December 5, 2008 and December 12, 2008, respectively. The petitioner, through counsel, responded with additional evidence. On May 1, 2009, the director revoked the approval of the instant I-360 petition because the petitioner did not establish that he had a qualifying relationship as the spouse of a United States citizen, that he is eligible for immigrant classification based upon that relationship, and that he is a person of good moral character. The director also determined that, because the petitioner had not established that he was legally free to marry [REDACTED], he had not established the remaining requirements of section 204(a)(1) of the Act. On May 22, 2009, the director denied the Form I-485, based on the revocation of the approval of the instant I-360 petition. The petitioner timely appealed the denial of the instant I-360 petition.

Qualifying Relationship and Eligibility for Immediate Relative Classification

On the Form I-360, the petitioner stated that he had been married only one time. On the G-325A, Biographic Information form, signed by the petitioner on March 24, 2003, the petitioner indicated that he had no former spouses. The petitioner also signed sworn affidavits before a U.S. Citizenship and Immigration Services (USCIS) Officer on December 5, 2008 and December 12, 2008, respectively, that he had been married only once, that is, to [REDACTED]. As noted by the director, however, the evidence in the record contains the DOS Optional Form 156, Nonimmigrant Visa Application, signed by the petitioner on September 12, 2000, listing his marital status as married, and listing his wife's name as [REDACTED] and her nationality Bangladesh. The petitioner's signature on this application matches his passport signature and, as pointed out by the director in his decision, the petitioner's handwriting on the application matches the handwriting on his Form I-94, Departure record.

The AAO acknowledges the documentation listed above, along with the attestations, indicating that

the petitioner was unmarried and that he was never married in Bangladesh. While the petitioner may not have been married in Bangladesh, he did indicate on the DOS Optional Form 156, Nonimmigrant Visa Application, that he was married to [REDACTED]. The AAO also acknowledges the petitioner's assertion on appeal that an agent from Canada's St. Francis Xavier University completed his nonimmigrant visa application, and that although he signed the form, he was not given the opportunity to review it. It is noted, however, that the petitioner signed the Nonimmigrant Visa Application twice, under both "Applicant's Signature" and "Signature of Person Preparing Form." In addition, as discussed above, the handwriting on the Nonimmigrant Visa Application matches the handwriting on his Form I-94, Departure record. In view of the foregoing, the petitioner has failed to demonstrate that his marriage to [REDACTED] was a valid marriage.

The affidavits and statements listed above, alleging that the petitioner is unmarried, are noted. However, given the unresolved discrepancies in the record, these documents alone do not establish that the petitioner had a qualifying relationship as the spouse of a United States citizen, and that he is eligible for immigrant classification based upon that relationship.

As discussed above, the petitioner has failed to demonstrate that his marriage to [REDACTED] was a valid marriage. Therefore, he is unable to establish that he had a qualifying relationship as the spouse of a United States citizen and that he is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb).

Good Moral Character

In his decision, the director found that the petitioner has failed to establish that he is a person of good moral character because of bigamy and making false statements on his nonimmigrant visa application. On appeal, counsel states that the evidence submitted to the director establishes that the petitioner's marriage to [REDACTED] was his only marriage, and that he is a person of good moral character.

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, "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." Section 101(f) of the Act, 8 U.S.C. § 1101(f), 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 –

* * *

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraph [h] . . . (10)(A) of section 212(a) of this Act;

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act[.]

Section 212(a)(10)(A) of the Act, 8 U.S.C. § 1182(a)(10)(A), describes, in pertinent part:

Practicing Polygamists

Any immigrant who is coming to the United States to practice polygamy is inadmissible.

In his decision, the director found that, even if the petitioner had established that he was never married to [REDACTED], he cannot be found to be a person of good moral character because of making a false statement on his nonimmigrant visa application, namely that he was married to [REDACTED]. The petitioner's statement that he was married to [REDACTED], however, was not an oral statement made under oath and, therefore, does not constitute testimony within the meaning of section 101(f)(6) of the Act. *Matter of R-S-J*, 22 I&N Dec. 863 (BIA 1999). Thus, we withdraw this ground for revocation.

In addition, the inadmissibility ground pertaining to polygamy, cited above, does not pertain to the petitioner because there is no evidence that the petitioner was seeking to practice polygamy in the United States. We, therefore, also withdraw this ground for revocation.

In sum, we withdraw the director's finding that petitioner lacks good moral character pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petition may not be approved, however, as the petitioner has not demonstrated that he had a qualifying relationship as the spouse of a U.S. citizen and that he is eligible for immigrant classification based upon that relationship. In addition, as stated by the director in his decision, because the petitioner has not established that he was legally free to marry [REDACTED] he also has not established the remaining requirements of section 204(a)(1) of the Act. He is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and the revocation of the petition's approval must stand.

The approval of the petition will be revoked for the above stated reasons, with each considered as an independent and alternative basis for revocation. 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.