



U.S. Citizenship
and Immigration
Services

(b)(6)

Date **SEP 10 2014**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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:

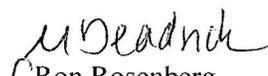
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Vermont Service Center director (“the director”) 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 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 U.S. citizen.

The director denied the petition for failure to establish that the petitioner is a person of good moral character, and had resided with her spouse and entered into the marriage with him in good faith.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 an abusive 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 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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.

* * *

(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 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.

* * *

(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. . . . 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of China who claims to have last entered the United States on parole on [REDACTED] 2011. The petitioner married M-T-¹, a U.S. citizen, on [REDACTED] 2009 in Saipan in the Commonwealth of the Northern Mariana Islands (CNMI). The petitioner and M-T- divorced on [REDACTED] 2010. The petitioner filed the instant Form I-360 on July 13, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character, the requisite battery or extreme cruelty, and the petitioner's good-faith entry into the marriage with M-T-. The petitioner responded with additional evidence which the director found insufficient. On November 8, 2012, the director issued a Notice of Intent to Deny (NOID) seeking evidence of the petitioner's good moral character, joint residence with M-T-, and good faith entry into the marriage with M-T-. The director denied the petition, finding the petitioner's response was not sufficient to demonstrate eligibility.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner's claims on appeal fail to establish her eligibility and the appeal will be dismissed for the following reasons.

Joint Residence

The director correctly determined that the record failed to demonstrate that the petitioner resided with her husband. On her Form I-360, the petitioner stated that she resided with her husband from January 30, 2009 until February 2, 2010. In her December 20, 2011 declaration, the petitioner stated that she met M-T- because they were neighbors, but she did not discuss their shared residence after marriage. The petitioner's friend, [REDACTED] stated that the petitioner and M-T- were neighbors before they got married, she was a godmother at their wedding, and that M-T- would come home drunk. [REDACTED] another friend, stated that she had taken the petitioner to a domestic violence advocate and helped the petitioner obtain a restraining order against M-T-.

¹ Name withheld to protect the individual's identity.

Neither of the petitioner's friends identified her marital address or described in probative detail any particular visit to the petitioner's marital residence.

On appeal, the petitioner asserts that she submitted sufficient evidence below and explained her inability to provide further documentation of her residence with M-T-. In her declaration submitted below, the petitioner stated that she does "not really like to talk about [M-T-] now because everything went bad." She does not, however, discuss her inability to provide evidence of their joint residence and she does not provide any further explanation or description of her marital residence on appeal. The preponderance of the relevant evidence fails to demonstrate that the petitioner resided with her former husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that she married M-T- in good faith. The petitioner stated in her declaration that she and M-T- were neighbors prior to their marriage, and that M-T-'s aunt and the petitioner's friend, Ms. [REDACTED], were their matchmakers. The petitioner expressed that she thought they would have a good marriage, but she did not discuss in any detail her courtship and engagement; her decision to marry; their marriage ceremony; their joint residence; and any of their shared experiences, apart from the abuse.

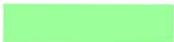
Ms. [REDACTED] stated that she was a godmother at the petitioner's wedding, and that the petitioner and M-T- were close because they were neighbors for many years. Although Ms. [REDACTED] was the petitioner's matchmaker, she provided no detailed information about the petitioner's entry into marriage with M-T-. Ms. [REDACTED] stated that the petitioner acted too quickly and made a bad choice in her marriage, and noted that nothing suggested that her marriage to M-T- was not in good faith. Ms. [REDACTED] statement is brief and also lacks probative information about the petitioner's marital intentions and her relationship with M-T-.

On appeal, the petitioner asserts that the director did not consider Ms. [REDACTED] affidavit or explain why it was deficient. As the director noted in the NOID, Ms. [REDACTED] brief assertion that the petitioner entered her former marriage in good faith is insufficient. Ms. [REDACTED] did not indicate that she was present during the petitioner's courtship or wedding; that she ever observed the former couple together or otherwise had any personal knowledge of the petitioner's relationship with M-T-, apart from the abuse. The preponderance of the relevant evidence in this case fails to establish that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

Section 101(f) of the Act 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 paragraphs (2)(D) . . . of section 212(a)(2) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) of this title . . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period[.]

Section 212(a)(2)(D) of the Act states, in pertinent part:

Any alien who—

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution . . . is inadmissible.

On [REDACTED] 2009, the petitioner was convicted or promoting prostitution in violation of Title 6 of the Commonwealth of the Northern Mariana Islands Code (CMC), Section 1344. On [REDACTED] 2009, the Superior Court of the CNMI sentenced the petitioner to one year of imprisonment with all but 20 days suspended. In response to the RFE, the petitioner submitted a copy of the notice of appeal of her conviction to the CNMI Supreme Court, but she has submitted no evidence that the court overturned or vacated her conviction on appeal.

Regardless of the outcome of the petitioner’s criminal appeal, a conviction is not required to render an alien inadmissible for procuring prostitution under section 212(a)(2)(D)(ii) of the Act. *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 550-551 (BIA 2008). In this case, the petitioner stated in her declaration below, that she operated a bar, “[REDACTED],” and that the bar made its profit from “ladies drinks” that patrons would buy at a premium price for the girls who were employed by the bar. She stated that the girls would entertain the patrons who bought the premium drinks at their table. The petitioner explained that if patrons wanted to take a girl out of the bar, they would have to pay a “bar fine.” On the night of her arrest, the petitioner told a patron (who was an undercover investigator) that it would cost him \$150 to take a girl out and that he could do “whatever he wants” with the girl when they left. The petitioner stated, “I am not naïve, I know that if a man and a woman leave the bar they may go have sex. . . . [T]hat is none of my business as far as I am concerned, except that if an employee is going to leave her post, I expect to be compensated for the revenue I will lose as a result.” The petitioner asserts that the public defender who represented her in her criminal case “did a terrible job and [she] was convicted in a bench trial.”

The Declaration of Probable Cause and Complaint filed in the petitioner’s criminal case states that on the night of her arrest, the petitioner negotiated with four undercover agents regarding how much each of them would be charged to take four ladies from the bar. Ultimately, the petitioner “made an offer to Agent [REDACTED] that the ladies can go with them to their hotel for \$150.00 each as a discount and that they can have the ladies the whole night. . . . All these ladies agreed to have sex with the four agents upon the finalization with [the petitioner].” The Complaint further states that when

police detectives entered the bar, the petitioner attempted to run away, but was detained and arrested.

The plain language of section 212(a)(2)(D)(ii) of the Act relates to persons who procure or attempt to procure others for the purpose of prostitution or who receive the proceeds of prostitution. The provision was enacted to address aliens “involved in the business of prostitution, using the term ‘procure’ in its traditional sense to refer to a person who receives money to obtain a prostitute for another person.” *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. at 552. On appeal, the petitioner contends that the director has an erroneous understanding of the term “procure.” Although the petitioner submits a copy of the definition of the term “procure” from *Black’s Law Dictionary*, he does not elaborate on his argument that the director erred in her understanding of the term. *Black’s Law Dictionary* defines the word “procure,” as applied to prostitution, as “[t]o obtain, as a prostitute, for another.”² The record reveals no error in the director’s determination that the petitioner directly or indirectly procured or attempted to procure persons for the purpose of prostitution within the scope of section 212(a)(2)(D)(ii) of the Act.

The preponderance of the relevant evidence shows that the petitioner directly or indirectly procured or attempted to procure persons for the purpose of prostitution within the scope of section 212(a)(2)(D)(ii) of the Act. Consequently, section 101(f)(3) of the Act bars a finding of the petitioner’s good moral, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not established that she resided with her husband, entered into their marriage in good faith or that she is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). She has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

² *Black’s Law Dictionary* 1087 (5th ed. 1979) defines the term “procure” as:

To initiate a proceeding; to cause a thing to be done; to instigate; to contrive, bring about, effect, or cause. To persuade, induce, prevail upon, or cause a person to do something . . . To obtain, as a prostitute, for another. Procure connotes action and means to cause, acquire, gain, get, obtain, bring about, cause to be done . . . To find or introduce;—said of a broker who obtains a customer. To bring the seller and the buyer together so that the seller has an opportunity to sell. . . .