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



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 10 120 50426

Office: VERMONT SERVICE CENTER

Date: SEP 13 2010

IN RE:

[REDACTED]

PETITION: Petition for 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:

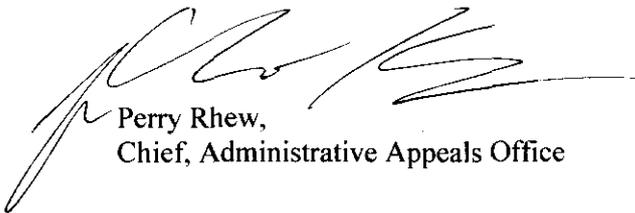
SELF-REPRESENTED

INSTRUCTIONS:

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 service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn in part and affirmed in part. The appeal will be dismissed.

The petitioner seeks immigrant classification under 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 on the basis of his determination: (1) that the petitioner had not established her eligibility for immigrant classification based upon a qualifying relationship with a lawful permanent resident of the United States because her husband lost his status more than two years before the petition was filed; (2) that the petitioner failed to establish that she was subjected to battery or extreme cruelty by her husband during their marriage; and (3) that she is a person of good moral character. On appeal, the petitioner submits additional testimonial evidence.

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 permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, 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)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –
 - (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or
 - (bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse. . . .

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immediate relative or as a preference immigrant if he or she:

* * *

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship [to the U.S. citizen or lawful permanent resident spouse].

* * *

- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child and must have taken place during the self-petitioner’s marriage to the abuser.

- (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 filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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. . . .

* * *

- (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a

pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

- (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 is a citizen of the Dominican Republic who entered the United States without inspection on or around May 3, 1996. She married B-H,¹ who was then a lawful permanent resident of the United States, on February 15, 1997. U.S. Citizenship and Immigration Services (USCIS) records indicate that B-H- lost his status as a lawful permanent resident on January 30, 2001 when he was ordered removed from the United States. The petitioner filed the instant Form I-360 on March 22, 2010. After considering the evidence of record, the director denied the petition on May 4, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO affirms the director's determination that the petitioner has not established her eligibility for immigrant classification based upon a qualifying relationship with a lawful permanent resident of the United States because her husband lost his status more than two years before the petition was filed but withdraws the director's determinations that the petitioner failed to establish that she was subjected to battery or extreme cruelty by her husband during their marriage and that she failed to establish that she is a person of good moral character.

Qualifying Relationship and Corresponding Eligibility for Preference Immigrant Classification

The petitioner does not dispute that she filed this petition more than two years after B-H- lost his status as a lawful permanent resident of the United States. Rather, she states on appeal that B-H- was a

¹ Name withheld to protect individual's identity.

lawful permanent resident at the time he perpetrated the alleged abuse, and requests that the petition be approved on that basis.

The petitioner's assertions on appeal fail to overcome this ground of the director's decision. The record indicates clearly that the petitioner was no longer married to a lawful permanent resident of the United States at the time she filed the instant petition, as her husband has not been in such status since 2001. The language of section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act is clear: in order to remain eligible for classification despite no longer being married to a lawful permanent resident of the United States, the petitioner must establish first that she was the bona fide spouse of a lawful permanent resident "within the past two years." Second, she must establish either (1) that her husband lost his status as a permanent resident within the past two years due to an incident of domestic violence; or (2) that there was a connection between the legal termination of the marriage within the past two years and battering or extreme cruelty by the lawful permanent resident spouse.

The petitioner has satisfied neither requirement. First, she was not the spouse of a lawful permanent resident "within the past two years" of filing the petition in 2010, as B-H- has not been a permanent resident since 2001. Nor has she demonstrated that B-H- lost his status due to an incident of domestic violence or that there was a connection between legal termination of their marriage and battery or extreme cruelty by B-H-. Accordingly, the AAO concurs with the director's determination that the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act because she was not married to a lawful permanent resident of the United States within the two years preceding the filing of the petition.

Battery or Extreme Cruelty

The second issue before the AAO on appeal is whether the petitioner has established that she was subjected to battery or extreme cruelty perpetrated by B-H- during their marriage. As evidence that B-H- subjected her to battery and/or extreme cruelty, the petitioner submits testimonial evidence.

In her March 11, 2010 letter, the petitioner stated that her marriage to B-H- went well until he struck her in the face one day. She stated that B-H- continued verbally and physically abusing her after that point and threatened to report her immigration status if she called the police. In her June 1, 2010 self-affidavit submitted on appeal, the petitioner stated that although their marriage went well initially, arguments over small issues became violent over time until he started beating her and threatening her immigration status. The petitioner describes in probative detail one incident in August 1998 when B-H- hit her with a belt. The petitioner explained that whenever she told B-H- that she would call the police, he threatened to call immigration and take her infant son from her and that she only escaped his physical abuse when he was arrested in 1998 and later imprisoned. The petitioner submitted evidence establishing that B-H- was convicted of sexual assault and risk of injury to a child in 1999, and that he was required to register as a sex offender for the rest of his life. The petitioner also submitted excerpts from letters that B-H- sent her from jail after his arrest, which included a threat to kill the petitioner and her family if she did not allow him to see their son.

In his March 13, 2010 letter, [REDACTED] stated that he saw B-H- verbally abusing the petitioner on one occasion, and in his June 1, 2010 letter added that B-H- continued to threaten the petitioner by mail after his imprisonment.

In his March 13, 2010 letter [REDACTED] stated that he lived with B-H- and the petitioner for a period of five months, and that he came to realize that B-H- was verbally and physically abusing the petitioner. He also stated that he witnessed one instance of abuse. [REDACTED] repeated these assertions in his June 2, 2010 letter.

In his March 13, 2010 letter, [REDACTED] stated that B-H- mistreated the petitioner, and he reiterated that assertion in his June 2, 2010 letter.

In his March 13, 2010 letter, [REDACTED] stated that the petitioner told him that B-H- was mistreating her, and he reiterated that assertion in his May 25, 2010 letter.

In her March 13, 2010 letter, [REDACTED] stated that B-H- verbally and physically abused the petitioner, and was unfaithful.

In her March 13, 2010 letter, [REDACTED] described in probative detail an incident where she witnessed B-H- hit the petitioner in the face. [REDACTED] also stated that B-H- verbally abused the petitioner.

In her March 13, 2010 letter, [REDACTED] stated that she witnessed B-H- verbally and physically abusing the petitioner.

In her January 26, 2010 letter, [REDACTED] stated that she personally witnessed B-H- hitting the petitioner. Ms. Rodriguez also stated that B-H- verbally abused the petitioner.

The testimonial evidence of record establishes that B-H- subjected the petitioner to both battery and extreme cruelty, as those terms are defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has credibly recounted in probative detail a cycle of abuse and specific instances of battery and extreme cruelty inflicted upon her by B-H- during their marriage, and her account is supported by B-H-'s threatening letters, his criminal record and the testimony of her affiants. The petitioner has established that B-H- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act and the AAO, therefore, withdraws this portion of the director's decision.

Good Moral Character

The third issue before the AAO is whether the petitioner has established that she is a person of 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 (in this case, during the period beginning in March 2007 and ending in March 2010).

The record contains a local police clearance from New Brunswick, New Jersey issued in the petitioner's married name. Although the record indicates that the petitioner has also used her maiden name, and her maiden name is not listed on the local police clearance, the clearance states that the petitioner presented her Dominican passport as identification when she obtained the clearance, and her passport lists her maiden name. It is therefore clear that the locality issuing her local police clearance was aware of the petitioner's use of another surname. Moreover, the petitioner submitted other credible evidence of her good moral character, including letters from her pastor and her employer.

The evidence of record establishes that the petitioner is a person of good moral character as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act and the AAO, therefore, withdraws this portion of the director's decision.

Conclusion

The petitioner has established that she was subjected to both battery and extreme cruelty by B-H during their marriage and that she is a person of good moral character, and the AAO withdraws those grounds of the director's denial of the petition. However, the petitioner has failed to establish that she is eligible for preference immigrant classification based on her relationship with B-H-, and the AAO affirms that portion of the director's denial of the petition. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), and her petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.