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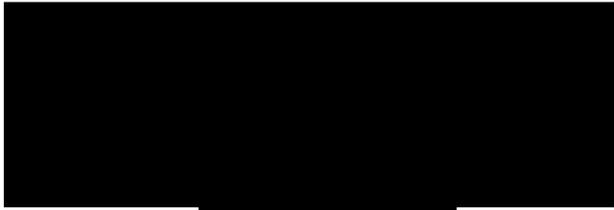
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B9

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FILE: [Redacted]
EAC 03 221 55372

Office: VERMONT SERVICE CENTER

Date: DEC 06 2000

IN RE: Petitioner: [Redacted]

PETITION: Petition for Immigrant Battered 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:



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.

Robert P. Wiemann, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(B)(ii) of 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 because the petitioner did not respond to a request for further evidence of the petitioner's good moral character and the evidence submitted did not establish the petitioner's eligibility.

On appeal, counsel submits additional evidence and claims that the evidence was timely submitted in response to the director's request.

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 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 a preference immigrant under section 203(a)(2)(A) of the Act, 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)(J) of the Act 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 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 standard and guidelines for a self-petition under section 204(a)(1)(B)(ii) 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.

* * *

(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 facts and procedural history. The petitioner is a native and citizen of Mexico who entered the United States without inspection in 1987. On August 20, 1993,

the petitioner's marriage to M-R¹, was registered with the civil authorities in Houston, Texas. At that time, the petitioner's husband was a lawful permanent resident of the United States. On October 15, 1993, the petitioner's husband filed a Form I-130, petition for alien relative, on her behalf, which was approved on December 22, 1993. Citizenship and Immigration Services (CIS) records show that the petitioner's husband was ordered removed from the United States and that he consequently lost his lawful permanent resident status on May 1, 2002 because he was convicted of an aggravated felony and a crime of domestic violence, stalking or child abuse in violation of sections 237(a)(2)(A)(iii) and 237(a)(2)(E)(i) of the Act.

The petitioner filed the instant Form I-360 on July 28, 2003. On August 22, 2005, the director issued a Request for Evidence (RFE) of the petitioner's good moral character. Having received no response from the petitioner or counsel, the director denied the petition on January 25, 2006 pursuant to the regulation at 8 C.F.R. § 204.1(h) because the evidence previously submitted did not establish the petitioner's eligibility.

On appeal, counsel submits evidence in support of the petitioner's good moral character and claims that the evidence was timely submitted. We concur with the director's conclusion and find that the evidence submitted on appeal does not establish the petitioner's good moral character. Nonetheless, the petition will be remanded because the director denied the case without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Good Moral Character

On appeal, the petitioner submits her own affidavit notarized on September 8, 2005, in which she attests to her good moral character, states that she has never been arrested by the police while living in the United States or Mexico and that she has lived in Houston, Texas for the last ten years. The petitioner also submits a letter dated September 7, 2005 from the Houston, Texas Police Department, which states that the Department has no record of the petitioner ever having been arrested. Counsel claims that these documents were timely submitted in response to the RFE. However, counsel submits no postal or delivery receipts or other evidence that the documents were, in fact, timely received by CIS.

The petitioner's affidavit and the police clearance letter submitted on appeal fail to establish the petitioner's good moral character. The letter identifies the petitioner only by her married name and address. The director's RFE specifically noted that "if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including your maiden and/or married name(s), if applicable." The petitioner's marriage certificate and the birth certificates of her children all identify her by her maiden name, thus showing that she has publicly identified herself by her maiden name in the United States. The police clearance letter submitted on appeal does not indicate that a search was performed under the petitioner's maiden name, as specified in the RFE.

¹ Name withheld to protect individual's identity.

Consequently, the present record does not establish the petitioner's good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v), and as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

The petitioner failed to demonstrate her eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.