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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B9

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[Redacted]

FILE:

[Redacted]  
EAC 05 108 52664

Office: VERMONT SERVICE CENTER

Date: DEC 22 2006

IN RE:

Petitioner: [Redacted]

PETITION:

Petition for Special 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:

[Redacted]

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as a special immigrant pursuant to 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 her United States citizen spouse.

The director denied the petition because the record did not establish the petitioner's good moral character and that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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 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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 standard and 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.

\* \* \*

(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 petitioner in this case is a native and citizen of Mexico. The petitioner claims to have married V-M<sup>1</sup>, a U.S. citizen, on June 23, 2003 in Colorado. On March 7, 2005, the petitioner filed the instant Form I-360 with supporting documentation. On September 13, 2005, the director issued a Request for Evidence (RFE), *inter alia*, of the petitioner's good moral character and her good faith entry into marriage. The director denied the petition on January 25, 2006, noting that the petitioner failed to respond to the RFE and finding the evidence insufficient to establish the petitioner's eligibility. On March 22, 2006, the director reopened the case on its motion<sup>2</sup> and issued a Notice of Intent to Deny (NOID) indicating that the evidence was not sufficient to establish that the petitioner resided with her spouse, that she married her spouse in good faith, and that she is a person of good moral character. The petitioner, through counsel, responded to the NOID on May 18, 2006, by submitting copies of documents previously submitted. The director denied the petition on June 29, 2006, finding that the petitioner failed to establish that she is a person of good moral character and that she entered into the marriage in good faith. The petitioner, through counsel, submitted a timely appeal.

On appeal, counsel states that the petitioner has proven that "she is a victim of domestic violence" and that the Service erred in denying the petition because the petitioner "has established eligibility for suspension of deportation." Counsel then claims that the petitioner has proven the petitioner's "physical presence," that she was battered, and that she is a person good moral character. Counsel's argument that the petitioner has

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> It appears that counsel for the petitioner changed his address and failed to notify the Service. As a result, the director's RFE went to counsel's previous address.

established eligibility for suspension of deportation and her physical presence is misplaced. The petitioner's eligibility for suspension of deportation which is governed by section 240A(b)(2), 8 U.S.C. § 1229b(a)(2), is not at issue in this proceeding. Rather, as previously indicated, the petitioner must establish her eligibility under section 204(a)(1)(A)(iii) of the Act. Upon review, we concur with the findings of the director. Counsel's statements on appeal are not persuasive and fail to overcome the director's findings.

#### *Good Faith Entry into Marriage*

In her statement, the petitioner indicates that she met her spouse at a birthday party of a mutual friend. She indicates that they "started talking on the phone and eventually started dating," and that on June 23, 2003, they were married. The petitioner fails to provide any dates or description of the length of their courtship and does not further discuss how she met her husband, their courtship, wedding or any of their shared experiences, apart from her husband's abuse. Similarly, other than describing the alleged abuse, the affidavits submitted by the petitioner's daughter and friend provide no further details of the petitioner's good faith marriage. The petitioner's daughter indicates only that "since the beginning he never treated my Mom with any respect," while the petitioner's friend indicates that she rented an apartment to the petitioner and her new husband. Despite the director's request for further evidence of the petitioner's good faith marriage in both the RFE and the NOID, the petitioner failed to submit any further testimonial or documentary evidence regarding her good faith marriage.

The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). In this case, the evidence submitted by the petitioner is not sufficient to establish that she intended to establish a life with her spouse and that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Good Moral Character*

The regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner's good moral character is *an affidavit from the petitioner accompanied by a police clearance* from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition. With the initial submission of her petition, while the petitioner did submit a certified document from the District Court, County of Denver, Colorado which indicated that the petitioner's February 9, 2000 arrest was "terminated without prejudice," the petitioner failed to submit police clearances and to address her good moral character in an affidavit.

In both the RFE and the NOID, the director reiterated the regulatory requirements regarding good moral character. However, the petitioner failed to submit any clearances and to address her good moral character in an affidavit.

On appeal, counsel asserts that as the petitioner provided evidence that the criminal matter against her was dismissed, she has established her good moral character. This statement is not persuasive. The petitioner has failed to submit any of the required evidence of good moral character. Without a police clearance and a sworn statement regarding her good moral character, we are unable to determine whether the petitioner has had any further criminal history. The present record thus fails to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Beyond the decision of the director, we also question the validity of the petitioner's marriage certificate as it does not appear to have been returned to the county clerk by the person who solemnized the marriage. The portion of the certificate related to the marriage itself remain blank and unsigned by the official who performed the marriage, the petitioner and V-M-, and by any witnesses. Without evidence that an actual ceremony was performed, as indicated by the petitioner, and recognized by the county clerk, the petitioner had failed to establish that she has a qualifying relationship as the spouse of a United States citizen and that she is eligible for classification based upon that relationship.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 appeal is dismissed.