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U.S. Citizenship
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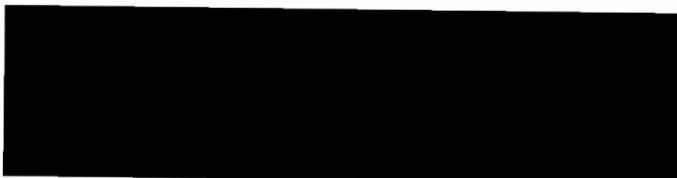
Date: MAY 04 2006

IN RE: Petitioner:



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:



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 appeal will be sustained.

The petitioner is a native and citizen of Mexico who last entered the United States on July 5, 2002 as a nonimmigrant visitor (B-2) with authorization to remain in the United States until January 3, 2003. On August 31, 2004, the petitioner filed a Form I-360 seeking classification as a special immigrant 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 subjected to battery or extreme cruelty by her United States citizen spouse. On March 8, 2005, the director issued a notice requesting evidence of the petitioner's good faith entry into marriage with her U.S. citizen husband and evidence of their joint residence. The petitioner, through counsel, responded with additional evidence on May 9, 2005 and requested an additional 60 days to provide further evidence. On June 17, 2005, the petitioner submitted further evidence. On August 1, 2005, the director denied the petition because the evidence did not establish that the petitioner entered into her marriage with her U.S. citizen husband in good faith and because the petitioner had not demonstrated that she was a person of good moral character. On appeal, counsel submits a brief and additional evidence. We find that the evidence submitted on appeal, combined with the documentation submitted below, overcomes the director's reasons for denial and the appeal will be sustained for the following reasons.

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 he or she demonstrates that the marriage to the United States citizen spouse was entered into 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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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 contained 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. . . . 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 evidence will be considered.

Good Faith Entry into Marriage

The record shows that the petitioner married [REDACTED] a U.S. citizen, on July 17, 1992 in Chicago, Illinois. The petitioner was not divorced from her previous spouse in Mexico until February 18, 1997. However, counsel provides documentation that under Illinois law, the petitioner's marriage to [REDACTED] became valid on the date her divorce was entered, February 18, 1997. *See* 750 Ill. Comp. Stat. 5/212(b) (2006). With her petition and in response to the director's request, the petitioner submitted the following documents as evidence of her good faith marriage to [REDACTED]

- 1) her own statement;
- 2) a list of addresses where she had resided with [REDACTED] from June 1992 to August 2004;
- 3) copies of joint account statements for the petitioner and the beneficiary from Beneficial dated June 1, September 1, and December 1, 2003;
- 4) partial copies of [REDACTED]'s 2003 income tax returns;
- 5) a copy of a wedding card for [REDACTED] and the petitioner;

- 6) photographs of the petitioner and [REDACTED]
- 7) a copy of an Illinois Retail Installment Contract between Value City Furniture and the petitioner and [REDACTED] dated January 15, 2003;
- 8) a Valentine's Day card from [REDACTED] to the petitioner dated February 14, 1994;
- 9) a copy of a joint residential rental agreement for the petitioner and [REDACTED] effective September 15, 1998 to September 30, 2000 for [REDACTED] Chicago, Illinois, 60645;
- 10) copies of money orders from the petitioner and [REDACTED] for the rent of the [REDACTED] residence dated September 3, November 4, December 9, 1999 and January 11, February 8, April 4 and July 7, 2000;
- 11) letters from the petitioner's children, [REDACTED] and [REDACTED]
- 12) a Form G-325A signed by [REDACTED] on February 7, 2004;
- 13) a Form I-130 Petition for Alien Relative signed by [REDACTED] on May 20, 2004 and listing the petitioner as the beneficiary; and
- 14) three rental receipts issued jointly to the petitioner, [REDACTED] and [REDACTED] brother dated July 19, August 1 and December 2, 2003 for their residence at [REDACTED] Bellwood, Illinois, 60104.

The director noted that the copy of [REDACTED] 2003 federal income tax return listed his address as [REDACTED], Chicago, Illinois and was filed as "Head of Household," although the petitioner claimed that she and [REDACTED] lived together at [REDACTED] Bellwood, Illinois from August 2001 to August 2004. In addition, the director noted that [REDACTED] Form G-325A states that he lived at [REDACTED] Chicago, Illinois from June 1998 to August 2001, an address not included in the petitioner's list of the couple's joint residences. The director determined that the additional evidence submitted did not outweigh the questions raised by these discrepancies.

On appeal, counsel states that the [REDACTED] address listed on [REDACTED] 2003 tax return is his parents' address. The record contains a copy of the 2001 income tax returns of [REDACTED] parents, which confirms their residential address as [REDACTED] Chicago, Illinois. In addition, the petitioner submitted [REDACTED] 2003 Form W-2 Wage and Tax Statement, which lists his address as [REDACTED] Bellwood, Illinois. Whatever [REDACTED] reasons for listing his parents' address on his 2003 tax return, the evidence indicates that [REDACTED] was residing with the petitioner at the [REDACTED] address in 2003. The joint statements from Beneficial, the Value City joint contract, and the joint rental receipts for the [REDACTED] address all identify the petitioner and [REDACTED] living together at

the [REDACTED] address from January to December, 2003. In addition, on appeal, the petitioner submits the 2001 and 2002 IRS tax return listing for [REDACTED] which lists the [REDACTED] address as his residence.

On appeal, counsel further explains that the listing on the Form G-325A of [REDACTED] as [REDACTED] address from June 1998 to August 2001 was a mistake and that he actually lived with the petitioner at [REDACTED] Chicago, Illinois, 60626 and at [REDACTED] Chicago, Illinois, 60645 during this time. The following documents submitted below and on appeal support this claim: Two ComEd utility bills addressed to [REDACTED] at the [REDACTED] address and dated October 27, 1998 and July 28, 1999A; a joint lease for [REDACTED] and the petitioner for an apartment at [REDACTED] Chicago, Illinois, 60645, effective September 15, 1998 to September 30, 2000; and copies of money orders from the petitioner and [REDACTED] for the rental of this residence dated September 3, November 4, December 9, 1999 and January 11, February 8, April 4 and July 7, 2000.

On appeal, the petitioner submits a second statement dated August 25, 2005, in which she explains that she met her husband in January 1992 at the gas station where he worked and where she went every night to get gas. She states that they dated for five months, during which time he often brought her "red roses, chocolates, cards, balloons." The petitioner states that [REDACTED] moved into her home in May 1992 and they were married in July 1992. The petitioner states:

I remember we were very happy; we were great partners at this time. He Show [sic] me his love for me and my family all the time. He liked to play with my children a lot. He would take them to the lake, to the park, to watch movies, to the school activities so everything seemed he was having a great time. I was very happy to see that he had made such connection with my children that it was for me almost incredible that this was happening.

The petitioner explains that she and her husband did not have many joint contracts because

he had some kind of problem either with the police or the Credit bureau, so he will always ask me to do every thing [sic] under my name, he could not open a checking account, so at the beginning of our relationship, he would give me all his money and thru [sic] my checking account we will manage our expenses. I have provided a check . . . to show that I was sharing, [sic] the money with him.

The record, as supplemented on appeal, corroborates the petitioner's statements and contains sufficient evidence of her good faith entry into marriage with [REDACTED]. The following documents submitted below demonstrate the petitioner's good faith in marrying [REDACTED] the joint statements from Beneficial, the Value City joint contract, the joint rental receipts for the [REDACTED] address, the joint lease for the [REDACTED] address and copies of money orders from the petitioner and [REDACTED] for the rental of that residence. On appeal, the petitioner submits a copy of her check made payable to [REDACTED] and dated March 24, 1993, which corroborates her statement submitted on appeal, as quoted above. On appeal, the petitioner also submits on appeal a school record for her daughter,

from the Gale Academy. The record states that [REDACTED] was enrolled at Gale from 1994 to 1997 and lists her father as [REDACTED]

The letters and affidavits submitted below and on appeal further support the petitioner's claim. In their letters submitted below, the petitioner's children, [REDACTED] and [REDACTED] all indicate that [REDACTED] was like a father to them. On appeal, the petitioner submits affidavits from five family members, eight friends, and two acquaintances, many of whom state that they attended parties and celebrated holidays with the petitioner and [REDACTED] and all of whom attest to the petitioner's good faith marital relationship. Apart from the petitioner's relatives, the affiants include three neighbors who knew the petitioner and [REDACTED] when they lived on [REDACTED] in Chicago in the late 1990s and the family's automobile mechanic, [REDACTED]. [REDACTED] states, "I fixed a lot of times [the petitioner's] car's [sic] she dropp [sic] off and several times her husband came back to pick-up the vehiculo [sic] and I know all the anothers [sic] members like sons and daughters I saw she had a good relation and armony [sic] when they are together. I know this family for so many years. . . ." The attestations of these neighbors and business owner demonstrate that the petitioner's good faith marriage to [REDACTED] was readily apparent to individuals outside of her family.

The documentary and testimonial evidence establishes that the petitioner entered into her marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii) of the Act and pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii).

Good Moral Character

The petitioner did not initially submit police clearance letters or state-issued criminal background checks pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). In his March 8 and May 26, 2005 notices, the director did not inform the petitioner of this deficiency or request the requisite evidence. Yet the director denied the petition, in part, for lack of evidence of the petitioner's good moral character. The petitioner has overcome this basis for denial on appeal.

On appeal, the petitioner submits a letter from the Illinois State Police Bureau of Identification dated October 15, 2005, which states that a search of the petitioner's fingerprints failed to reveal any criminal convictions. The record shows that the petitioner resided in Illinois for over ten years before her petition was filed. The state-issued criminal background check submitted on appeal thus establishes the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v).

The petitioner has established that she entered into her marriage with her U.S. citizen husband in good faith and that she is a person of good moral character. We concur with the director's determination that the petitioner meets all the other statutory requirements. Accordingly, the petitioner has established that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition will be approved.

We note that the petitioner's youngest child, [REDACTED] turned 21 years old on the date this petition was filed and is consequently ineligible to be classified as a derivative beneficiary of her mother's petition. *See* 8 C.F.R. § 204.2(c)(4). However, [REDACTED] may be eligible to self-petition for immigrant classification under section 204(a)(1)(iv) of the Act, as amended by section 805(c) of the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005"). Sons and daughters of abusive U.S. citizens may now file a self-petition under section 204(a)(1)(A)(iv) of the Act until they are 25 years of age if they were eligible to file such a petition when they were under 21 years old and they show that the abuse was at least one central reason for the filing delay. Section 204(a)(1)(D)(v) of the Act, 8 U.S.C. § 1154(a)(1)(D)(iv) (2006).

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.