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



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 16 2007

EAC 06 048 52579

IN RE:

Petitioner:



PETITION: Petition for 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:

SELF-REPRESENTED

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 dismissed.

The petitioner seeks immigrant classification under 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 a United States citizen.

The director denied the petition because the petitioner did not establish that she was a person of good moral character.

On appeal, the petitioner submits additional evidence.

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 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).

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 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

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. . . . 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 Vietnam who entered the United States on June 13, 2000 as a nonimmigrant visitor (B-1). On January 16, 2001, the petitioner married F-P<sup>1</sup>, a U.S. citizen, in California. The petitioner filed this Form I-360 on December 1, 2005. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of evidence of, *inter alia*, the petitioner's good moral character. The petitioner timely responded to the NOID with additional evidence. The director denied the petition on July 25, 2006 and the petitioner timely appealed. On appeal, the petitioner submits a statement and letters from three individuals attesting to her character, which fail to overcome the ground for denial.

In her March 9, 2006 statement submitted below and in her undated statement submitted on appeal, the petitioner attests to her good moral character. The petitioner also submitted letters from several individuals who praise her character and contributions to her community. However, the regulation at 8 C.F.R. § 204.2(c)(2)(v) directs that a self-petitioner's own attestation of good moral character should be accompanied by local police clearances or state-issued criminal background checks for every locality or state where the petitioner has resided for at least six months in the three years preceding the filing of the petition. If police clearances or criminal background checks are not available, a petitioner may provide an explanation and submit other evidence of his or her good moral character, such as affidavits. 8 C.F.R. § 204.2(c)(2)(v).

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

In this case, the petitioner has not submitted a local police clearance or a state-issued criminal background check and she has not indicated that such documents are unavailable. With the NOID, the director provided the petitioner with a list of agencies that could assist her in obtaining police clearances. The record indicates that the petitioner lived in San Jose, California for the three years preceding the filing of her petition. However, the petitioner submitted no clearance from the San Jose police department or a California criminal background check and she provides no explanation for her failure to do so. Without a credible explanation of the petitioner's inability to obtain such documents, the petitioner's own statements and the supporting affidavits are insufficient to establish her good moral character.

The record fails to establish that the petitioner is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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. Accordingly, the appeal will be dismissed. This dismissal is without prejudice to the filing of a new petition for classification under section 204(a)(1)(A)(iii) of the Act with the requisite supporting documentation.

**ORDER:** The appeal is dismissed.