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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 06 029 52032

Office: VERMONT SERVICE CENTER

Date: JUL 22 2008

IN RE:

Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused 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 classification as an 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 battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, noting the petitioner's failure to respond to the director's Notice of Intent to Deny (NOID) and finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, that she is a person of good moral character and that she entered into her marriage in good faith.

The petitioner 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 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, 8 U.S.C. § 1154(a)(1)(J) 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:

(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 . . . spouse, must have been perpetrated against the self-petitioner . . . 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.

* * *

(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.

(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.

* * *

(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 record provides the following pertinent facts and procedural history of this case. The petitioner is a native and citizen of Guatemala who indicates on the Form I-360 that she entered the United States on

an unspecified date in 1987. On November 21, 1997, the petitioner married A-M-¹ a United States citizen in Texas. The petitioner filed the instant petition on November 3, 2005. On May 5, 2006, the director issued a Request for Evidence (RFE) to establish the requisite battery or extreme cruelty, good moral character, and good faith marriage. After receiving no response to the RFE, the director issued a Notice of Intent to Deny (NOID) on August 31, 2006, which again notified the petitioner of the deficiencies in the record regarding her claim of battery or extreme cruelty, good moral character, and good faith entry into marriage. The petitioner failed to respond to the NOID and the director denied the petition on February 13, 2007, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, that she is a person of good moral character, and that she entered into her marriage in good faith.

The petitioner submits a timely appeal. On the Form I-290B, the petitioner states that the denial of her petition was improper because she has “evidence and documentation that proves [her] good moral character and sufficient evidence that [she has] been subject to battery and extreme cruelty committed by [her] USC spouse.” The petitioner does not address the director’s finding regarding the petitioner’s failure to establish her good faith entry into marriage. Further, although the petitioner indicates that she would send a brief and/or additional evidence to the AAO within 30 days of the filing of her appeal, no further submission has been received. Accordingly, the record is considered to be complete as it now stands. As will be discussed, upon review of the record, we concur with the findings of the director that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, that she is a person of good moral character and that she entered into her marriage in good faith.

Battery or Extreme Cruelty

At the time of filing, the petitioner submitted documentation related to A-M-’s criminal history, which demonstrates that he has been convicted of driving while intoxicated, assault, robbery, criminal mischief, possession of marijuana, burglary, and criminal trespass. In addition, the petitioner submitted evidence of a Temporary Ex Parte Protective Order obtained by a third-party against A-M-. This documentation, however, does not list the petitioner as the victim of A-M-’s criminal activity or otherwise establish that she was subjected to battery or extreme cruelty by him. The petitioner also fails to submit any testimonial evidence such as a personal statement or statements from witnesses regarding her A-M-’s alleged battery or extreme cruelty or a description of how his criminal history and the protective order issued to a third party relate to her claim of abuse. Accordingly, we concur with the director’s determination that the petitioner failed to establish that her spouse subjected her or her child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

¹ Name withheld to protect individual’s identity.

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. The director specifically notified the petitioner of these regulatory requirements in the RFE and gave the petitioner an additional opportunity to submit evidence of her good moral character in response to the NOID. The petitioner failed to submit an affidavit describing her good moral character and to provide any discussion of her good moral character at the time of filing or in response to the RFE or NOID. Moreover, the petitioner failed to submit a police clearance or state-issued criminal background check. Accordingly, we concur with the director's finding that the petitioner failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good Faith Marriage

At the time of filing, the petitioner submitted a copy of her marriage certificate, a copy of her 1999 Form 1099-INT from Texas First Bank, and a copy of an April 2002 bank statement from University Federal Credit Union. The petitioner submitted no further documentary evidence regarding her good faith marriage of more than five years in response to the director's RFE and NOID, such as evidence of the joint filing of the 1999 tax returns that accompanied the Form 1099-INT, utility bills, leases, life, health or car insurance. While there may be an explanation for the lack of documentary evidence, the petitioner fails to provide any explanation and to submit any testimonial evidence regarding her good faith marriage, such as details regarding how she met her spouse, their courtship, shared events, her feelings toward her spouse, or other testimony which demonstrates that she intended to establish a life with her spouse. Accordingly, we concur with the finding of the director that the petitioner failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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