

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

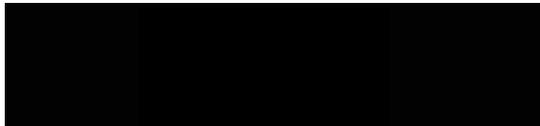
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE:

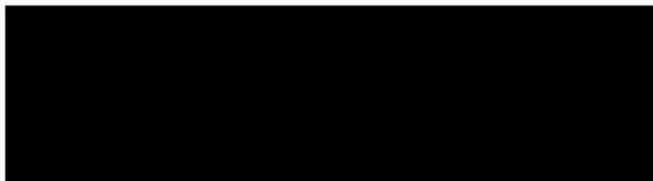
EAC 06 176 50831

Office: VERMONT SERVICE CENTER

Date: JUL 30 2008

IN RE:

Petitioner:



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:

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 preference 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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her United States lawful permanent resident spouse.

The director denied the petition, finding that the petitioner failed to establish a qualifying relationship with a lawful permanent resident of the United States, her eligibility for preference immigrant classification based on such a relationship, and that she is a person of good moral character.

The petitioner submits a timely appeal.

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 he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence 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)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an alien:

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) further 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 corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section . . . 204(a)(1)(B)(ii) of the Act for his or her classification as . . . a preference immigrant if he or she:

* * *

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship [to the U.S. lawful permanent resident].

(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)(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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil

* * *

(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 petitioner in this case is a native and citizen of Mexico. The petitioner married A-C-¹ in Mexico on June 6, 1994. At the time of their marriage A-C- was a lawful permanent resident of the United States. The record reflects that the petitioner entered the United States, without inspection, on an unspecified date. According to the records of Citizenship and Immigration Services (CIS) records, on February 21, 2002, A-C- was convicted of violating § 481.112 of the Texas Health and Safety Code, Possession with Intent to Distribute 200 grams of Cocaine. On October 4, 2002, A-C- was served with a Notice to Appear (NTA) charging him as a removable alien pursuant to section 237(a)(2)(A)(iii) of the Act as an alien convicted of an aggravated felony and pursuant to section 237(a)(2)(B)(i) of the Act as an alien convicted of a violation of any law or regulation relating to a controlled substance. Both charges were based upon A-C-'s February 21, 2002 conviction. A-C- was ordered removed from the United States on October 22, 2002, based on the charges listed in the NTA.²

The petitioner filed this Form I-360 on May 19, 2006. On October 20, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, noting deficiencies in the record and affording the petitioner the opportunity to submit further evidence to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, her corresponding eligibility for preference classification, and that she is a person of good moral character. The petitioner responded to the NOID on January 3, 2007. The director denied the petition on February 16, 2007, finding that the petitioner had failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, that she was eligible for preference classification based upon that relationship, and that she is a person of good moral character.

¹ Name withheld to protect individual's identity.

² A-C- attempted to reenter on July 23, 2005 by falsely claiming to be a United States citizen and was removed again on December 14, 2007.

On appeal, the petitioner asserts that she is the spouse of a lawful permanent resident of the United States and refers to the fact that a Form I-130 Petition for Alien Relative, filed by A-C- on her behalf, was approved. The petitioner also states that she “is trying [sic] to obtain” a police department from the Sacramento police department. Upon review, as will be discussed, we concur with the findings of the director.

Qualifying Relationship and Eligibility for Immediate Relative Classification

Although the record reflects that A-C- was, at one time, a lawful permanent resident of the United States, he lost his immigrant status on October 22, 2002, more than two years prior to the filing of the petition, when he was ordered removed from the United States. Moreover, the record does not reflect that A-C-’s removal from the United States was due to an incident of domestic violence but rather because of a drug-related conviction. Accordingly, the present record does not establish that A-C- lost his lawful permanent resident status during the two year period prior to filing and that his loss of status was due to an incident of domestic violence, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. Further, as the petitioner did not have a qualifying relationship as the spouse of a lawful permanent resident pursuant to section 204(a)(1)(B)(ii)(II) of the Act, she also was not eligible for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

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 petitioner submitted no affidavit regarding her good moral character and no police clearance or state-issued criminal background check at the time of filing or in response to the director’s NOID.

A review of the record reveals ambiguous evidence regarding the petitioner’s exact residence during the three-year period immediately preceding the filing of her petition. The Form I-360 indicates that the petitioner resided with A-C- in Texas until 2003 and that she currently resides in Mexico. She does not, however, provide the exact date on which she left the United States. On appeal, the petitioner submits evidence that she was unsuccessful in her attempt to obtain a finger print clearance from California. It is unclear why the petitioner sought a clearance from California given that we find no evidence of her residence in California. Regardless, the petitioner fails to provide evidence regarding the dates of her residence in Mexico or clearances from the state of Texas, where she indicated she resided until an unspecified date in 2003. Accordingly, the petitioner has 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

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



Page 6

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.