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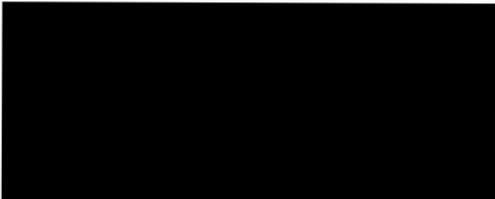
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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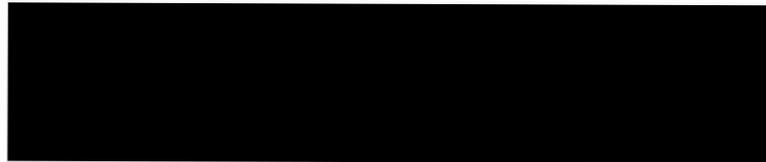
EAC 06 154 50327

Office: VERMONT SERVICE CENTER

Date: **SEP 29 2008**

IN RE:

Petitioner:



PETITION: Petition for Special 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:



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 spouse.

The director denied the petition finding that the petitioner failed to establish 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 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 C.F.R. § 1154(a)(1)(J) 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Ukraine who entered the United States on October 26, 2000 as a nonimmigrant visitor. The petitioner married E-A-¹ a United States citizen, in New York on December 19, 2001. The petitioner filed the instant Form I-360 on April 24, 2006. On September 15, 2006, the director issued a Notice of Intent to Deny (NOID) the petition which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that she married E-A- in good faith and that she is a person of good moral character. The petitioner responded to the NOID on November 13, 2006 with additional evidence. The director denied the petition on February 9, 2007, finding that although the petitioner established that she is a person of good moral character, she failed to establish that she entered into her marriage in good faith.

On appeal, counsel for the petitioner argues that the director "unjustly ignored" the petitioner's explanations and evidence and states that additional evidence would be submitted to the AAO within 30 days. To date, the record contains no further submission. Accordingly, the record is considered to be complete as it now stands. As will be discussed, we concur with the determination of the director and find that the petitioner has failed to overcome this determination on appeal. Moreover, we find additional issues, beyond the decision of the director, that preclude approval of the petition.

¹ Name withheld to protect individual's identity.

Good Faith Marriage

At the time of filing, the petitioner submitted the translation for what is purported to be her personal statement. The record, however, does not contain the actual statement from the petitioner, from which the translation was allegedly made. As such, the translation carries little evidentiary value. Regardless, the information provided in the translation contains few details regarding the petitioner's good faith marriage. The translation generally indicates that the petitioner met E-A-² in December 2000 at her friend's New Year's Eve party, that she and E-A- began dating, went to movies and cafés, and walked in parks and at the ocean. The translation then states that E-A- proposed to the petitioner in the beginning of December 2001 and that they were married on December 19, 2001. The translation offers no further information regarding their courtship, the petitioner's feelings for E-A-, or any other probative information to demonstrate that she entered into her marriage in good faith. We note that according to the Form G-325, Biographic Information, submitted by the petitioner in support of her Form I-485, Application to Adjust Status, the petitioner resided in Columbia, Maryland from the time she claims to have met E-A- in December 2000 until December 2001 when she moved to New York. The record further reflects that E-A- resided in New York during this time. The translation does not discuss the fact that the petitioner and E-A- resided in separate states during their entire pre-marital relationship or provide any other description regarding their courtship as it relates to this fact.

Although the petitioner also submitted statements from friends, the statements contain only general information regarding the petitioner's claim of a good faith marriage. [REDACTED] states that the petitioner told [REDACTED] that she was happy when she first met E-A- and [REDACTED] claims that on one occasion she joined the petitioner and E-A- for dinner. Although [REDACTED] describes the petitioner's home as "clean and lovely," she provides no details about the petitioner's relationship with E-A- which support a finding that she entered into the marriage in good faith. Similarly, [REDACTED] generally indicates that the petitioner seemed to be "happy and in love," but provides no specific description or details regarding her observations of the couple to support her statement. Finally, the statement from [REDACTED] indicates that [REDACTED] did not even know the petitioner until *after* she was married. Accordingly, [REDACTED] statement that "she knew the petitioner was married and . . . seemed very happy," is of little probative value in the determination of the petitioner's feelings and intent at the time of her marriage to E-A-.

As documentary evidence, the petitioner submitted photographs and copies of a lease and tax documents. Although the last page of the lease contains the petitioner's signature, in clause 1 of the lease, where the landlord and tenant are identified, E-A- is the only identified tenant. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence.

² Although the translation refers to the petitioner's spouse as A-A-, for consistency we will use the initials E-A- when referring to the petitioner's spouse.

Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The fact that the petitioner is not specifically identified as a tenant on the lease, yet has signed her name on the last page of lease casts doubt on the authenticity of the document and therefore, lessens its evidentiary value as it relates to the petitioner's claim of a good faith marriage. Similarly, the tax documents submitted by the petitioner are not signed by the petitioner or E-A- and are unaccompanied by evidence which demonstrates that the returns were actually filed with the Internal Revenue Service (IRS) and the New York State Department of Taxation and Finance. The remaining documentary evidence consists of seven photographs. However, the petitioner fails to describe the photographs, the date, time and importance of the events depicted, or to provide any other information about the photographs to establish their relevance to the petitioner's claim of a good faith marriage.

In response to the director's NOID, the petitioner submitted an affidavit, two additional statements from friends, and an undated, uncaptioned photograph. In her affidavit, although the petitioner provides an explanation for her failure to open a bank account, obtain a job, and for the lack of documentary evidence, the petitioner provides no further probative testimony regarding her feelings for E-A- and her intent to establish a life with him at the time of her marriage. Rather, the petitioner states that she was not able to open a joint bank account because she did not have a social security number and that she never received an employment authorization card because the mailboxes in her apartment building were tampered with and vandalized. The petitioner additionally claims that she does not have more photographs because she left "almost all of [their] photos" in the apartment and did not want to return because she fears her spouse. As it relates to her tax returns, the petitioner states that in May 2005, she hired a tax preparer in her neighborhood to mail her returns for the 2002, 2003 and 2004 tax years but found that in November 2005, the preparer had disappeared. The petitioner's statement does not, however, provide an explanation for why she waited until 2005 to file the returns for the previous years.

The statement submitted by the petitioner's friend, [REDACTED] indicates that she met the petitioner in 2002, again, *after* her marriage to E-A-, and generally describes celebrating unspecified occasions together. Similarly, the statement from [REDACTED], apart from the discussion regarding the claimed abuse, only describes the petitioner as being "very happy" with E-A-. Neither statement provides any specific details regarding the petitioner's courtship with E-A- or probative information to establish her feelings and intent in marrying E-A-.

In his decision, the director acknowledged the petitioner's explanations regarding the lack of documentary evidence, stating:

The Service is aware that primary documentation of a relationship can be difficult, if not impossible, to obtain when domestic violence has occurred or is ongoing. Therefore, other evidence of a relationship will be considered when attempting to determine that a petitioner entered into the marriage in good faith.

The director went on to consider and discuss the evidence contained in the record, including the testimonial evidence and the petitioner's photographs, and determined that the evidence did not sufficiently establish that the petitioner entered into her marriage in good faith. While counsel may not agree with the director's determination or conclusions regarding the petitioner's evidence, a review of the record does not support any of counsel's appellate contention that the director "ignored" the petitioner's explanations and evidence. In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While CIS must consider all credible evidence relevant to a petitioner's entry into the marriage in good faith, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

As discussed above, the record contains scant documentary evidence to support a finding that the petitioner entered into her marriage in good faith. The petitioner submits undated photographs of unspecified occasions, copies of tax documents that were never filed, and a lease that contains noted discrepancies. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence also fails to support a finding that she entered into her marriage in good faith. Notwithstanding the petitioner's failure to submit the original document from which the purported translation was made, the information contained in both her personal statement and the statements submitted on her behalf contain few probative details regarding the petitioner's long-distance courtship and which describe the petitioner's feelings for E-A- prior to their marriage and her intent to establish a life with him. Accordingly, we concur with the finding of the director that the petitioner has 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.

Beyond the decision of the director, we find additional issues that preclude approval of the petition.

Residence

On her Form I-360, the petitioner claims to have resided with E-A- from December 19, 2001 until August 2005 and that she and E-A- last resided together at [REDACTED] New York. The petitioner, however, submitted no documentary evidence to demonstrate her residence with E-A- at the claimed address. Although the record contains a letter from the Coney Island Job Center addressed to E-A- at the claimed address, the record contains no evidence which indicates that the petitioner also resided there. While the petitioner submitted tax documents and a lease for the claimed address, the petitioner admits that the tax returns "were most probably never filed" and, as previously noted, the lease contains an unexplained inconsistency regarding the petitioner's tenancy at the claimed address. The petitioner's personal statements do not discuss their residence,

describe any of their shared possessions, or provide any other probative details regarding their residence during their marriage. Similarly, although the letters submitted on the petitioner's behalf refer to shared occasions spent with the petitioner and E-A- they do not offer specific details such as E-A-'s and the petitioner's address or the dates of their residence together.

Accordingly, we hereby withdraw the director's affirmative determination on this issue and find that the petitioner has failed to establish that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) 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. At the time of filing, the petitioner submitted no affidavit regarding her good moral character and no police clearance or state-issued criminal background check from New York, where she claims to have resided since December 2001. In his NOID, the director specifically requested the petitioner to provide an affidavit and indicated that if the petitioner had been arrested, she must submit copies of documentation related to the arrest and any relevant court disposition. In response, the petitioner submitted a fingerprint clearance from New York, but failed to submit a personal statement regarding her good moral character. The petitioner's failure to submit a statement regarding her good moral character is significant given that the record reflects a Federal Bureau of Investigation (FBI) Identification Record that indicates the petitioner was arrested in New York on October 24, 2004 for driving while intoxicated.

Given the FBI Identification Record which shows a 2004 arrest, the petitioner's failure to address this arrest and to provide any other information relevant to her good moral character in an affidavit, and her failure to submit any police records or court documentation to demonstrate the outcome of her 2004 arrest, we are unable to find, as a matter of discretion pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), that the petitioner has established that she is a person of good moral character. The fact that an alien does not fall within one of the enumerated bars to good moral character at section 101(f) of the Act, "shall not preclude a finding that for other reasons such person is or was not of good moral character." Section 101(f) of the Act, 8 U.S.C. § 1101(f). Similarly, section 204.2(c)(1)(vii) states, in pertinent part:

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.

Accordingly, we hereby withdraw the director's affirmative finding on this issue and find that 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.