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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 07-061-50638

Office: VERMONT SERVICE CENTER

Date:

APR 03 2009

IN RE:

Petitioner: [REDACTED]

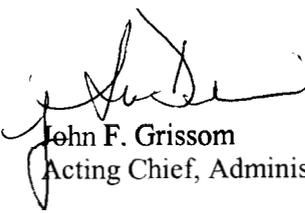
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

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.


John F. Grissom
Acting 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 AAO will withdraw the director's decision. Because the petition is not approvable, however, it will be remanded for further action.

The petitioner seeks 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 the spouse of an abusive U.S. citizen. She filed the instant Form I-360 Petition on December 26, 2006. The director denied the petition on February 11, 2008, finding that the petitioner had submitted insufficient evidence to establish that she entered into her marriage in good faith.

The petitioner submits a timely appeal on March 14, 2008 with additional affidavits as evidence of a good faith marriage. We concur with the director's determination that the petitioner has not established that she entered into her marriage in good faith. Counsel's statement and additional evidence submitted on appeal do not overcome this ground for denial. Moreover, we do not concur with the director's determination that the petitioner has established that she is a person of good moral character. Nonetheless, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 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 regulation at 8 C.F.R. § 204.2(c)(1) provides guidance regarding relevant eligibility requirements:

(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.

* * * *

(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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China who was admitted to the United States on May 30, 2005 with a K-1 nonimmigrant fiancée visa. On June 13, 2005, the petitioner married C-S-¹ a U.S. citizen, in Honolulu. They divorced on May 4, 2007.

The petitioner, through counsel, filed the instant Form I-360 Petition on December 26, 2006 along with supporting documents. Finding insufficient evidence of eligibility, on September 17, 2007 the director issued a Request for Evidence (RFE) of good moral character and that the petitioner entered into her marriage in good faith. The petitioner timely responded with copies of documents submitted previously, including three affidavits from acquaintances, the petitioner's affidavit and a psychological evaluation of the petitioner; a photograph of the petitioner with C-S- dated December 10, 2003; and a statement of "no record found" from the Hawaii Criminal Justice Data Center based on a name search of the petitioner under her married name. On February 11, 2008 the director denied the petition, finding that the evidence submitted initially and in response to the RFE did not establish that the petitioner had entered into her marriage in good faith. The director specifically noted that the petitioner had met the other eligibility requirements. The petitioner, through counsel, submits a timely appeal and additional evidence.

Good Faith Entry into Marriage

The record includes the following evidence relevant to the petitioner's claim that she entered into her marriage with her U.S. citizen spouse in good faith: (1) her own statement submitted at different times and dated September 22, 2006 and December 7, 2007; and a more detailed version submitted on appeal; (2) a statement from [REDACTED], the petitioner's aunt;

¹ Name withheld to protect individual's identity.

generally consistent with the petitioner's claims; (3) a statement from the petitioner's parents confirming that C-S- and his parents visited China as claimed; (4) one photograph of C-S- with the petitioner and two with her parents, electronically date-stamped in December 2003 during his visit to China, and (4) a letter from C-S- which was written to "Council" on March 12, 2005 to express his love for the petitioner, who was his fiancée at that time.

Upon a review of all of the evidence submitted, we find that the petitioner has failed to establish by a preponderance of the evidence that she entered into her marriage in good faith. In her statements, the petitioner claimed that in October 2003 her aunt, [REDACTED] introduced her by telephone to her co-worker, C-S-; the petitioner and C-S- developed a relationship over the telephone and in December 2003 they agreed to meet in Hong Kong. She stated that they spent four days sightseeing and then went to her hometown in China so C-S- could meet her family; he stayed at her home for about ten days; she showed him around Canton and enjoyed every moment with him; and she was sad when he returned to Hawaii. She claimed that he proposed marriage a couple of months later and she accepted. In April 2004, he returned to China with his parents to visit her and introduce their families to each other; his family stayed at her home for about 15 days; and everyone got along well. She said it was easy for everyone to see that they were in love. When C-S- and his family returned to Hawaii, he sent her gifts and money; when he was in China he called her a few times a day; she thought he was kind and, after he had courted her for two years, she was ready to marry him, live with him and have his children. After she got her fiancée visa, she left for Hawaii on May 30, 2005; they were married two weeks later.

The petitioner claims that their marriage was wonderful at first, they would go for long walks, go shopping, to the movies and to the beach; and would visit her aunt and his parents. She devoted the majority of her statement to the abusive relationship that developed shortly after their marriage; she claimed that she left him in September 2005 and moved in with her aunt because of this abuse. She claimed on her I-360 Petition that she left him in December 2005; her aunt, [REDACTED], claimed in her statement that her sister-in-law visited the petitioner at her home where she resided with C-S- when they were having problems in May 2006. Other than this unexplained inconsistency, [REDACTED]'s statement generally provides the same details as the petitioner's, adding only her opinion that everyone could see that the couple was very happy and excited to see each other when the petitioner arrived in Honolulu, and that at their wedding everyone could see how excited they were to start their lives together. The letter from the petitioner's parents confirms that C-S- visited China on two occasions as related by the petitioner; the photographs also confirm a meeting in December 2003; and the letter from C-S- states his love for his fiancée.

Other than the statements described above, there is no evidence in the record from anyone claiming to have personal knowledge of the petitioner before she and C-S- were married. Moreover, other than claiming to have been in love with C-S- and ready to marry him, live with him and have his children after a two-year long distance courtship, nowhere in the petitioner's statement does she provide any information regarding her feelings for her husband before her marriage or why they became engaged or married or her plans for a future with her husband.

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 evidence include the birth certificates of children born to the couple; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii). In this case, while the record indicates that the couple met in China and resided together during their marriage, the record lacks sufficient documentary evidence and testimonial evidence regarding a good faith marriage.

The petitioner is not required to submit preferred primary or secondary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the lack of probative detail and substantive information in the petitioner's testimony regarding the couple's feelings and plans, engagement and shared experiences, other than those related to abuse, as well as the absence of documentary evidence, significantly detracts from the credibility of her claim.

Accordingly, the petitioner has failed to establish by a preponderance of the evidence that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. We, therefore, concur with the director's findings that the petitioner failed to satisfy this requirement.

Evidence of Good Moral Character

Beyond the decision of the director, we also note that the petitioner failed to submit sufficient evidence of 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; and 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 where they resided. In this case, the petitioner submitted the results of a criminal background check from Hawaii based on a search of records in her married name, but failed to include her maiden name. Moreover, she did not submit a police clearance or a state-issued criminal background check for her prior residence in China. The record indicates that she lived in China prior to her entry into the United States on May 30, 2005, during the three-year period immediately preceding the filing of her I-360 Petition. She has thus failed to provide all of the required police clearances or state-issued criminal background checks.

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. We, therefore, withdraw the director's finding that the petitioner met this requirement.

Conclusion

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).

For the reasons noted above, the AAO concurs with the director's decision that the petitioner has failed to establish by a preponderance of the evidence that she entered into her marriage in good faith. Beyond the director's decision, we also find that the petitioner did not establish that she is a person of good moral character. Consequently, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The petition is not approvable for the above stated reasons, with each considered as an independent and alternative bar to approval.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID as required under former 8 C.F.R. § 204.2(c)(3)(ii)(2006). While it is no longer a regulatory requirement for petitions filed on or after June 18, 2007, a NOID is required in this case, as it was filed on December 26, 2006.

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 director's decision is withdrawn; however, the petition is currently not approvable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.