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



**U.S. Citizenship
and Immigration
Services**

B9

[REDACTED]

FILE:

[REDACTED]
EAC 07-111-51660

Office: VERMONT SERVICE CENTER

Date: APR 06 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.

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 March 12, 2007. The director denied the petition on January 3, 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 January 28, 2008 with additional 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 claims and additional evidence on appeal do not overcome this ground for denial. Moreover, we do not concur with the director's determination that she 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 Venezuela who was admitted to the United States at Miami, along with her five-year old daughter, on November 17, 2003 as a B-2 nonimmigrant visitor. She filed a Form I-539 Application to Extend Status on April 7, 2004 while residing in Boca Raton, Florida, which was approved on September 1, 2004. On June 24, 2005, the petitioner married M-T,¹ a U.S. citizen, in Georgia.

The petitioner, through counsel, filed the instant Form I-360 Petition on March 12, 2007 along with supporting documents, including photographs and a police report. Finding insufficient evidence to establish that the petitioner entered into her marriage in good faith, the director issued a Request for Evidence (RFE) on September 17, 2007. The petitioner timely responded with additional evidence on November 13, 2007. On January 3, 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 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:

- The petitioner's statement dated March 9, 2007.
- An Apartment Lease Contract, dated August 13, 2004 and signed by both the petitioner and M-T- confirming their joint residence at [REDACTED] in Jacksonville at that time.
- A leaflet from Twin Lakes Academy Elementary, dated December 14, 2004, regarding, *inter alia* responsibility for the student before and after school. It lists the petitioner's daughter as a

¹ Name withheld to protect individual's identity.

student residing at the same [REDACTED] address noted above and lists M-T- and the petitioner as her parents/stepparents.

- A Wal-Mart moneygram receipt for \$200, dated July 24, 2005, issued to the petitioner in Jacksonville and showing M-T- as the recipient in Tucson, Arizona.
- Statements or affidavits from acquaintances which generally confirm the petitioner's account of the problems she had with her husband, and one from M-T-'s sister.
- Photographs of the couple, often with the petitioner's daughter, at various events described by the petitioner.

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 statement, the petitioner described meeting her future husband and spending pleasant times with him and his family and claimed that she loved him; photographs show the couple at various times and places as support for her claim of passing good times with him and friends or relatives. However, the petitioner did not provide any time frame for their first meeting or when she moved in with him; she devoted the majority of her statement to a detailed description of problems in the couple's relationship, their decision to marry despite these problems, M-T-'s continuing abusive behavior and her decision to leave him on account of that abuse. Moreover, other than claiming to have been in love with M-T-, nowhere in her statement does the petitioner 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.

The three acquaintances who provided affidavits on behalf of the petitioner also described the problems in the couple's relationship and did not claim to have personal knowledge of their courtship or noted simply that the couple was happily married in the beginning. The petitioner's sister-in-law confirms that she spent Christmas together with the petitioner and her husband in 2004 and that they "were a happily married couple," but she does not describe the former couple's interactions during Christmas in 2004 or provide any other insight into the petitioner's relationship with her husband, apart from his irresponsible behavior.

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, the record shows that the petitioner resided with her husband, once sent him \$200, and that her husband was listed as her daughter's stepfather on one school form. Although the petitioner states that she resided with her husband for two years, she submitted no other evidence of their shared financial assets or liabilities or other significant marital responsibilities.

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 her feelings for and plans with her husband, their engagement and shared experiences, other than those related to abuse, 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. In her statement, the petitioner did not address her moral character. The petitioner submitted a local police clearance for Jacksonville, Florida. However, she did not submit a police clearance or a state-issued criminal background check for her prior residence in Boca Raton, Florida. The record indicates that she lived there in 2004, 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)(2007). 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 March 12, 2007.

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.