



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

B9

APR 30 2009

FILE:

EAC 06 241 51232

Office: VERMONT SERVICE CENTER

Date:

IN RE:

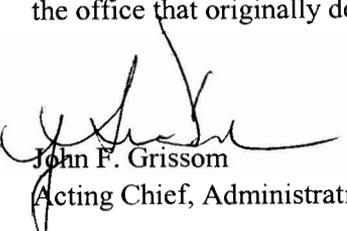
Petitioner:

PETITION: Petition for Immigrant Abused 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:

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; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification under 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 a United States lawful permanent resident.

On August 7, 2007, the director denied the petition. The director determined that the petitioner had failed to establish: a qualifying relationship with a lawful permanent resident; eligibility for immigrant classification based on a qualifying relationship; that she resided with the claimed abuser; that she was subjected to battery or extreme cruelty perpetrated by her claimed spouse; that she is a person of good moral character; and that she entered into the marriage in good faith.

On appeal, counsel submits a brief, the petitioner's affidavit, and additional documentation.

The AAO concurs with the director's determination on the issues listed above; nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident 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 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), 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 explained 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.

(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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

(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 in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Peru. She entered the United States in 1993 on a B-2 visitor visa. She obtained a divorce from her first husband in New York on December 30, 1996. She provided a photocopy of a marriage certificate to show that she married her second husband, the claimed abuser in this matter on March 11, 1997 in the State of New Jersey. The marriage certificate lists the address of the petitioner and J-B-¹ as on [REDACTED] in Butler, New Jersey. The record includes a Form I-130, Petition for Alien Relative, filed August 29, 1997 that the petitioner's second husband, J-B- filed on her behalf. Counsel for the petitioner provides an approval notice of the Form I-130 issued August 5, 1998. The record includes a photocopy of pages of the petitioner's Peruvian passport reissued by the Peruvian government in September 2001. The passport lists the petitioner as single. The record includes an undated Form G-325A, Biographical Information, sheet for the petitioner that lists her addresses in the

¹ Name withheld to protect individual's identity.

United States as on [REDACTED] in Butler, New Jersey from February 1993 to April 1997 and as on [REDACTED] in Wayne, New Jersey from April 1997 to “present.” The record includes a second Form G-325A for the petitioner that is dated April 23, 2004 and lists the petitioner’s address as on [REDACTED] in Paterson, New Jersey from October 1997 to “present.” The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), Special Immigrant, which is the subject of this appeal, on August 21, 2006. The petitioner indicated on the Form I-360 that she lived with J-B- from January 1996 to November 2005.

Qualifying Relationship and Immigrant Preference Classification

The record includes a photocopy of J-B-’s resident alien card. However, on the issue of qualifying relationship, the director noted that the petitioner claimed to be single as early as September 2001 when she renewed her Peruvian passport. Thus, the director requested evidence of the current status of the petitioner’s marriage to J-B-. The record includes notarized statements from eight individuals, dated in April 2007, who claim that they have known the petitioner for some time and state generally that she has been separated from her husband, J-B-, for more than a year or for 14 months. The petitioner provided an April 2007 statement that was not notarized stating that she is still married to J-B-. The director determined that the evidence in the record was insufficient to establish that the petitioner was married to the claimed abuser and had filed the Form I-360 within the appropriate time limits. On appeal, counsel for the petitioner provides a letter from the Peruvian Consul General indicating that it is necessary for both parties to the marriage to appear at the consulate in order to change the status on a passport. Counsel asserts that as this is a battered spouse petition it is reasonable that the petitioner would not be able to convince her abusive spouse to cooperate with her in registering the marriage at the Peruvian Consulate in 2001.

The AAO does not find that the petitioner has established a qualifying relationship with a lawful permanent resident and eligibility for immigrant preference classification. As this matter will be remanded, the director should further inquire regarding the status of J-B-, as well as whether the petitioner continued to be married to J-B- subsequent to September 2001. Evidence that would assist in establishing the current state of the relationship would include certified copies or an original of the marriage certificate and the prior divorce judgments, as well as a detailed explanation from the petitioner regarding her application for a replacement passport.

Residence

The AAO concurs with the director’s determination that the petitioner did not establish that she resided with J-B-. The AAO has reviewed the documentation submitted by counsel to establish that J-B- received mail at the [REDACTED] address; however, there is evidence in the record that casts doubt on the relationship of J-B- and the petitioner and their joint claimed residence. The petitioner herself has provided discrepant information. The petitioner stated that “[a]fter New Year’s Eve 1995, we [J-B- and the petitioner] started living together at [J-B-’s] apartment located at . . . [REDACTED] Butler, New Jersey.” On the petitioner’s Form G-325, she indicates that she lived at the [REDACTED] address from

February 1993 to April 1997. As the director noted, J-B- remained on credit card accounts and utility accounts almost a year subsequent to the date the petitioner claims she separated from J-B-. The AAO has noted counsel's explanations regarding J-B-'s continued use of the address but finds the explanations deficient. For example, counsel claims that the petitioner could not register and insure her car in her own name, but independent records indicate that she has registered several cars in her own name. The AAO finds that the use of these various addresses as mail drops undermines the probative value of any mail addressed to J-B- at the claimed joint residence when attempting to establish actual joint residence.

The AAO has reviewed the statements submitted by the petitioner's friends and concurs with the director's determination that the statements lack detailed information sufficient to establish the friends' actual knowledge of the petitioner's claimed joint residence with J-B-. The statements do not provide any probative testimonial evidence regarding her residence with J-B-, such as a description of the apartment and its location, their shared belongings, or any other information describing in detail a joint residence. The AAO has also reviewed the petitioner's Internal Revenue Services (IRS) Form 1040 for the 2005 year and concurs with the director's determination that the IRS Form does not establish joint residency with J-B-. The AAO finds the petitioner's ability to obtain a jointly filed IRS Form 1040 for the 2004 year and not previous years raises questions regarding the petitioner's veracity when representing to her counsel that she could not obtain copies of returns filed by her abusive husband for the 1997 to 2005 years. The AAO notes as well that neither IRS Form in the record is signed by the filers and certified by the IRS.

The AAO has reviewed each document in the record and counsel's assertions regarding the director's determinations. Upon review of the totality of the information in the record, the AAO does not find sufficient credible evidence to establish that the petitioner jointly resided with J-B-. As this matter will be remanded for the issuance of a NOID, the director should again note the discrepancies and insufficiencies regarding the claimed joint residence of the petitioner and J-B- and offer the petitioner yet another opportunity to provide independent evidence that she jointly resided with J-B-. The AAO notes that assertions do not qualify as independent evidence and evidence that the petitioner creates after U.S. Citizenship and Immigration Services (USCIS) points out the deficiencies and inconsistencies will not be considered independent and objective evidence. Necessarily, independent and objective evidence is evidence that is contemporaneous with the event to be proven. The information in the current record is insufficient and raises significant questions regarding the reliability and veracity of the petitioner's claims. As noted above, there is insufficient credible evidence to establish that the couple actually resided together. Upon review of the information submitted on appeal on this issue, the petitioner has not offered evidence sufficient to establish joint residence.

Abuse

The petitioner has not established the requisite abuse to qualify to receive this benefit. The director noted that he had considered: the petitioner's statement; the statements of [REDACTED], [REDACTED], and [REDACTED] and [REDACTED] evaluation. The director noted the

inconsistencies in the petitioner's statement and determined that the petitioner had not established that she was a reliable witness. The AAO concurs with the director's determination and observes that the petitioner's own statement lacks detail. The petitioner states generally: that in October 1997 J-B- became "more aggressive;" that in November 1997 he called her names; that from 1999 to 2005 confrontations with J-B- would occur on weekends; that from 2001 to 2005 J-B- would pick fights on Saturdays and this would include physical abuse; that in 2002 to 2003 J-B- would initiate sexual intercourse although she was not willing; that in 2004 J-B- stopped supporting her financially; and that in October 2005 J-B- beat her. General statements without specific detail regarding the timing and circumstances of events do not assist in establishing the actuality of the events.

In the petitioner's request for a temporary restraining order on October 13, 2005, the petitioner stated: that on October 9, 2005 J-B- pushed her against the wall causing her to hit her head, left bruises on her chest, and had frequently pushed, kicked, punched her on her head, arms and legs; and that on October 13, 2005, J-B- went to the petitioner's house to pick up clothing and yelled at her, pushed her against a wall causing a cut in her hand and causing her to hit her head, and threatened the petitioner saying he was going to kill her. The temporary restraining order was granted and the petitioner obtained what appears to be a final restraining order on October 20, 2005. As the director noted, the temporary restraining order was obtained based only on the petitioner's testimony. The photocopy of the final restraining order does not include a legible date stamp or seal. The petitioner did not provide evidence that she obtained medical treatment or that she reported any of the incidents prior to October 13, 2005 to the police or to courts. The petitioner's inconsistent statements and the lack of other independent evidence undermine the probative value of the restraining orders.

The statements submitted on the petitioner's behalf are general and do not provide dates of specific incidents. In the August 10, 2006 statement of [REDACTED] noted that he sold the couple a car in February 1999 and indicated that after he gave the keys to J-B- he saw J-B- arguing with the petitioner, pushing her and calling her bad names. As the director observed, this statement, made more than six years after the incident, is inconsistent with the petitioner's statement that J-B- acted one way in public and another way in private. The AAO notes as well that the petitioner did not discuss the 1999 incident in her statement.

The record also includes an April 26, 2006 report prepared by [REDACTED], who saw the petitioner on four occasions in March and April 2006. [REDACTED] repeated the petitioner's statements and diagnosed the petitioner with major depression disorder and post traumatic stress disorder. [REDACTED] notes that the petitioner is a "continuous domestic violence victim of threats and stalking, [f]ear of legal status and husband calling [i]mmigration to deport her." She prescribes drugs and recommends a permanent order of protection as well as recommending that the petitioner move from her present house if the stalking recurs. As [REDACTED]'s report is based on the petitioner's testimony and the petitioner's testimony is general and contains inconsistencies that have not been resolved, the report has questionable probative value. In addition, the AAO finds that the doctor's report does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's depression/post traumatic stress disorder. Upon review of the totality of the information in the record,

the AAO finds that the petitioner has not provided sufficient consistent evidence with details of specific events and timing to substantiate that she has been subjected to abuse. Upon remand, the director should request certified records of any independent evidence submitted as well as any underlying documentation in support of the restraining orders.

Good Moral Character

On the issue of good moral character, the petitioner should submit an affidavit stating that she is a person of good moral character and 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. The AAO acknowledges the Paterson police department's inability to obtain records prior to August 2004 as of October 2007 and their work to convert the older records to a new computerized system. Upon remand, the petitioner should provide further information regarding the status of the local police clearances requested and other information that would assist in establishing her good moral character.

Good Faith Entry into Marriage

The AAO notes that much of the evidence submitted to establish the petitioner's joint residence with J-B- was also submitted to establish the petitioner's good faith marriage. For the same reasons indicated in the director's decision and as noted above, the AAO does not find the evidence probative in establishing the petitioner's good faith in entering the marriage. In addition, the AAO finds the petitioner's brief statement regarding the circumstances of the courtship insufficient to establish her intent upon entering the marriage. Moreover, a life insurance policy established in July 2005, when the marriage was apparently breaking down suggests the life insurance policy was obtained for purposes other than for a couple who intended to establish a life together. Further, the AAO notes that failure to pay the premium on a life insurance policy effectively terminates the policy, a decision the petitioner apparently did not take as she continued to allow proceeds from her bank account to be used to continue the policy months after the separation and after she lost contact with the J-B-.

Upon review of the information in the record, including the lack of significant detail regarding the petitioner's interaction with J-B- and the inconsistent information provided regarding addresses, and the lack of a satisfactory explanation regarding the life insurance policy, the AAO finds the petitioner's statements not credible. Similarly, the statements submitted on the petitioner's behalf lack detail to substantiate that they knew the petitioner and her spouse and observed particular incidents demonstrating the alleged *bona fides* of the couple's marital relationship. In addition, the general statements do not substantiate that the petitioner's intent upon marrying J-B- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage. The record lacks credible detailed information sufficient to establish the good faith intent of the petitioner in entering the marriage. Accordingly, the AAO concurs 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.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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. The petitioner has not sustained that burden.

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