

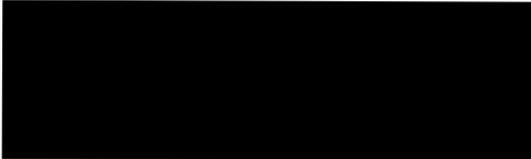
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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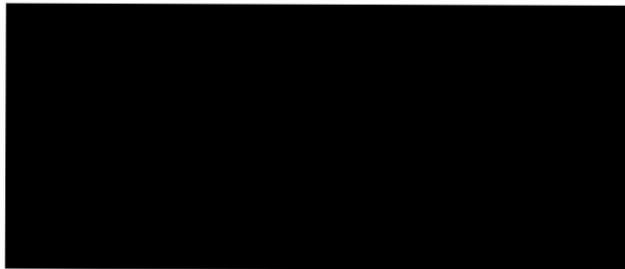
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FILE: [REDACTED]  
EAC 07 230 50509

Office: VERMONT SERVICE CENTER

Date: **AUG 03 2009**

IN RE: Petitioner:



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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal because the brief and/or additional evidence was submitted untimely. The matter is again before the AAO on a motion to reconsider. The motion will be granted and the previous decision to deny the petition will be affirmed.

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.

The director denied the petition because the petitioner did not establish that she was a person of good moral character. On motion, counsel submits a brief.

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 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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 guidelines for a self-petition filed 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who entered into the United States without inspection reportedly on October 31, 1993. On September 19, 2001, the petitioner married S-V-<sup>1</sup>, a U.S. citizen, in San Jose, California. S-V- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on April 8, 2002. On April 25, 2003, the petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status. On May 7, 2004, the petitioner was served with a Notice to Appear for removal proceedings charging her as inadmissible under section

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<sup>1</sup> Name withheld to protect individual's identity.

212(a)(6)(A)(i) of the Act, and the petitioner's I-485 application was denied because she was statutorily ineligible to adjust her status under section 245(i) of the Act. On September 13, 2005, the petitioner's application for cancellation of removal under section 240A(b) of the Act was denied by an Immigration Judge in San Francisco, California. The petitioner, through counsel, subsequently appealed, and on November 29, 2006, the Board of Immigration Appeals (BIA) affirmed the decision of the Immigration Judge and ordered further that the petitioner was permitted to voluntarily depart from the United States, without expense to the Government, within 60 days from November 29, 2006, or any extension beyond that time, as may be granted by the Department of Homeland Security (DHS). The petitioner, through counsel, filed a motion to the BIA on January 26, 2007. The petitioner remains under an alternative order of removal to Mexico, as provided in the Immigration Judge's September 13, 2005 order.

The petitioner filed the instant Form I-360 on July 30, 2007. On August 14, 2007, and again on March 19, 2008, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character. The director also requested a statement indicating the current status of the petitioner's marriage. The petitioner, through counsel, timely responded to the director's requests with additional evidence. On July 31, 2008, the director denied the petition because the petitioner did not establish that she was a person of good moral character. Specifically, the director found that the petitioner did not submit police reports for the two violations cited in the letter from the Dos Palos Police Department, or a clearance from Gilroy, Santa Clara County, Texas, where the petitioner had resided.

Counsel timely appealed; however, he did not submit a brief or additional evidence within 30 days of filing the appeal. Only when the AAO requested proof of counsel's timely filing of a brief did counsel submit additional evidence. The AAO, therefore, summarily dismissed the appeal because it could not extend the period of time in which to submit a brief, and no further evidence to rebut the director's determinations had been timely submitted for consideration.

On motion, counsel submits a brief and states, in part, that the director's request for a police clearance from Gilroy, Texas was in error, as there is no Gilroy, Texas, and the petitioner never resided in Texas.

At the outset, although the director found that the petitioner had not submitted a clearance from Gilroy, Santa Clara County, Texas, this portion of the director's decision shall be withdrawn. While the AAO concurs that the evidence is insufficient to establish that the petitioner is a person of good moral character, the AAO does not agree that the evidence indicates that the petitioner resided in Gilroy, Santa Clara County, Texas. Rather, as stated by counsel on appeal, the evidence indicates that the petitioner resided in Gilroy, Santa Clara County, California. Counsel's remaining claims on appeal, however, do not overcome the director's ground for denial.

#### *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 this case, the record contains the following:

- A print-out from the Bureau of Criminal Identification and Information (BCII) in Sacramento, California, dated September 5, 2007, addressed to the petitioner at: [REDACTED], in Gilroy, California, finding no criminal history record for the petitioner, based upon a fingerprint search of records in BCII files;
- An undated letter addressed to "To Whom It May Concern" from [REDACTED] of the Records Unit of the Dos Palos Police Department in Dos Palos, California, stating that, based on a criminal check of their files, the petitioner has a record with their department, showing two violations in which she is mentioned as the suspect, one of which "is still undergoing investigation for Forgery." [REDACTED] also states that a copy of the report can be obtained "with the proper request from your department";
- A "Contact History from Master Name File," which was attached to the undated letter from the Dos Palos Police Department, listed above, listing the petitioner at the following address: [REDACTED] in Dos Palos, California, and listing the following three contacts and dates: "REG VIOL" on 12/30/2005; "OTHER INCIDENT" on 02/23/2007; and "FORGERY" on 06/26/2007;
- A letter from counsel, dated September 17, 2007, addressed to: Criminal Court, County of Fresno, Firebaugh Division, [REDACTED] Firebaugh, California, requesting a determination whether the petitioner has a criminal history in the jurisdiction of the said court, and, if not, a certified letter stating that she has no criminal history;
- A letter dated October 10, 2007, from [REDACTED] from counsel's office, addressed to the U.S. Citizenship and Immigration Services, at the Vermont Service Center, stating, in part, that they have contacted the appropriate department to obtain dispositions of the petitioner's two violations, and, upon receipt, they "will send this information under a separate cover"; and
- A letter from [REDACTED] of the Records Unit of the Dos Palos Police Department, certifying that on April 22, 2008, a records search revealed "a traffic violation in December 2005 and a Forgery case in June of 2007 that was never filed by the District Attorney[']s office in Los Banos." [REDACTED] states further, "This letter is not a recommendation but is only meant to certify that the above subject has no pending cases in Dos Palos."

A review of the record reveals that during the during the three-year period immediately preceding the filing of her petition on July 30, 2007, the petitioner resided at: [REDACTED] in Los Banos, California (for approximately four months from the filing of the petition); [REDACTED] in Dos Palos, California; and [REDACTED] in Gilroy, California. As discussed above, the director

found that the petitioner did not submit police reports for the two violations cited in the letter from the Dos Palos Police Department. It is noted that counsel does not address this issue in his brief dated March 25, 2009. Moreover, as discussed above, [REDACTED] from counsel's office indicated in her October 10, 2007 letter that their office would provide dispositions of the petitioner's violations from the "appropriate department" [referring to the Criminal Court, County of Fresno, Firebaugh Division, in Firebaugh, California], but then failed to do so. As such, the petitioner has failed to provide the requested evidence regarding the dispositions of her two violations. 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

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.

**ORDER:** The previous decision of the AAO, dated February 24, 2009, is affirmed. The petition is denied.