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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUL 08 2009

EAC 07 227 50003

IN RE:

[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 service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that he is a person of good moral character.

Counsel filed a timely appeal on October 17, 2008.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (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 petitioner is a citizen of Ecuador who entered the United States as a C-1 alien in transit on March 8, 2001. He married J-O-<sup>1</sup> a citizen of the United States, on December 26, 2002. J-O- filed Form I-130, Immigrant Petition for Alien Relative, on behalf of the petitioner on May 21, 2003. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same day.

The petitioner filed the instant Form I-360 on July 27, 2007. On August 10, 2007, the director issued a request for additional evidence, and requested additional evidence to establish that he was in fact

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

married to J-O-; that he and J-O- shared a joint residence; that he is a person of good moral character; and that he married J-O- in good faith. The director issued a second request for additional evidence on April 18, 2008, and requested clarification as to whether he and J-O- were still married, as well as evidence to establish that he is a person of good moral character and that he married J-O- in good faith. The petitioner responded on July 15, 2008. After considering the evidence of record, the director denied the petition on September 19, 2008.

### **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, during the period beginning in July 2004 and ending in July 2007).

The record of proceeding before the director when he made his decision contained only a police clearance from Ecuador, as well as evidence that the petitioner's fingerprints were taken on July 24, 2007. However, as noted by the director, there was no indication to whom these fingerprints were taken, nor were any results of a background clearance based upon these fingerprints submitted. Accordingly, the director found that the petitioner had failed to establish that he is a person of good moral character.

On appeal, the petitioner submits an October 27, 2008 police clearance from the City of New York, as well as a background check conducted by the Federal Bureau of Investigation. Both searches indicate that the petitioner has no criminal history. Accordingly, the AAO finds that the petitioner has established that he is a person of good moral character.

However, the petition may not be approved, as the record does not establish that the petitioner shared a joint residence with J-O-, or that he married J-O- in good faith.

### **Joint Residence**

The record of proceeding is insufficient to establish that the petitioner and J-O- shared a joint residence. The petitioner did not complete the portion of the Form I-360 which requested the last address at which he and J-O- last lived together, and the last date at which they lived together at that address. On the Form G-325A, which he signed on May 1, 2003, the petitioner listed his then-current address as [REDACTED], in Ridgewood, New York. His Form W-2 from 2004 lists his then-current address as [REDACTED] in Brooklyn, New York. His 2004 income tax return, which he filed jointly with J-O-, provides lists the couple's address as [REDACTED] in Brooklyn, New York. However, the AAO notes that the [REDACTED] address is also named on the petitioner's 2004 Form W-2 as the address of his employer. As the documentary evidence of record does not establish the couple's joint residence, and there is no testimonial evidence from the

petitioner, further exploration into the issue of joint residence is warranted. The record, as it currently stands, does not establish that the petitioner and J-O- shared a joint residence, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### **Good Faith Entry into Marriage**

Nor is the record of proceeding as currently constituted sufficient to establish that the petitioner married J-O- in good faith. The only evidence relevant to the issue of the petitioner's good faith entry into the marriage is the 2004 tax return, and photographs of the couple. However, the tax return is unsigned, and there is no evidence establishing that it was actually filed with the Internal Revenue Service; and the photographs appear to have all been taken on the same day. There is no testimony from the petitioner regarding the couple's first introductions, their courtship, their decision to marry, or their wedding. Again, as the documentary evidence of record does not establish the good faith entry into the marriage, and there is no testimonial evidence from him, further exploration into this issue is warranted. The record, as it currently stands, does not establish that the petitioner entered into marriage with J-O- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### **Conclusion**

The petitioner has established that he is a person of good moral character. However, the record as it currently stands does not establish that the petitioner shared a joint residence with J-O-, or that he married J-O- in good faith. As these issues were not addressed by the director, his September 19, 2008 decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the petitioner has established that he shared a joint residence with J-O-, and that he married J-O- in good faith. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's September 19, 2008 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.