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



U.S. Citizenship
and Immigration
Services

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MAR 24 2009

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

EAC 07 045 50089

IN RE:

Petitioner:

[REDACTED]

PETITION: Petition for Immigrant Battered 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.

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 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)(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 on October 5, 2007, determining that the petitioner had not established that the petitioner entered into the qualifying relationship in good faith.

On appeal, counsel submits additional documentation.

We concur with the director's determination that the petitioner has not established that she married E-C-¹ in good faith. Beyond the director's decision, we find three additional grounds for denial of the petition based on the present record. The petitioner has not established: that she resided with E-C-; that she was subjected to battery or extreme cruelty; and 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) the petition 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 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 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:

¹ Name withheld to protect individual's identity

(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 Chile who entered the United States on April 7, 2001 as a nonimmigrant student (F-1). On November 10, 2005, the petitioner married E-C-, a U.S. citizen, in Arlington, Virginia. E-C- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, on April 27, 2006.

In a personal statement dated September 5, 2006, the petitioner declared: she met E-C- in the fall of 2004 while taking a climbing class; she and E-C- started a relationship at that time and in early 2005 started living together in her apartment; in the summer of 2005 she and E-C- ended the relationship due to E-C-'s violent behavior; and by November of 2005 they had reunited and they got married. Other than these general statements, the petitioner does not provide further detail regarding her relationship with E-C-. The petitioner does not identify specific incidents, other than as related to the claimed abuse, regarding her interaction with E-C-, either before or during the marriage. The record does not include other testimonial information that would assist in evaluating her intent upon entering into the marriage.

To evidence that she entered into the marriage in good faith, the petitioner provided photographs of her wedding ceremony and reception and photographs of the couple on a few unidentified occasions. The petitioner also included copies of seven documents addressed to E-C- at the petitioner's address in Alexandria, Virginia. The documents are dated: October 3, 2005; January 20 and 27, 2006; April 18, 2006; May 21 and 23, 2006; and September 25, 2006. On appeal, counsel submits documents addressed to the petitioner at her Alexandria, Virginia address dated in December 2005, July 2006,

September 2006, and May 2007. The record on appeal also includes a wireless phone bill dated November 2006 addressed to the petitioner at a Silver Spring, Maryland address. The AAO observes that the petitioner and E-C-'s marriage certificate dated November 10, 2005, lists separate addresses, although the petitioner submits a lease agreement on appeal that is allegedly signed by both the petitioner and E-C- on February 14, 2005 for a one-year term from March 1, 2005 to March 31, 2006. Other than the lease agreement, the record contains no other documentation addressed to both the petitioner and E-C-. The record does not include any bank statements showing joint activity, insurance policies showing each other as beneficiaries, or any other evidence to substantiate that the petitioner and E-C- entered into a relationship with the intent to establish a life together. The record does not include information indicating why the petitioner would have a Silver Spring, Maryland address while she is claiming to live in Alexandria, Virginia. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO has also reviewed the statements submitted by the petitioner's friends and acquaintances who declare generally that they knew the petitioner, knew that she had a relationship with E-C-, and knew that they got married in November 2005. The AAO has also reviewed the additional statements submitted on appeal from friends and relatives and observes that similarly, these statements provide only vague information indicating that these individuals knew the petitioner was dating E-C- and knew about the wedding or attended the wedding, and that they generally interacted with the couple on weekends. None of the statements present detailed information or provide a chronology of events and most importantly, the statements do not provide evidence substantiating the petitioner's intent in entering into the relationship. The generality and bareness of detail included in these statements fail to establish the declarants' actual knowledge of and the legitimacy of 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.

Beyond the decision of the director, the AAO also finds that the petitioner failed to establish that she resided with E-C-. As noted above, the record does not include any documentary evidence, except for a copy of the lease submitted on appeal, showing that the couple established a residence together. The lease submitted on appeal, rather than in response to one of the two requests for evidence issued by the director, raises questions regarding its legitimacy. As observed above, the lease is dated for a one-year period beginning in March 2005, but E-C- lists a different address on the marriage certificate issued in November 2005. The AAO also notes that the petitioner and E-C-'s claimed landlord indicates that the couple resided at the apartment from March 2005 thorough March 2007, although the petitioner indicates that the difficulties with E-C- began in January 2006 and continued until August 2006. The AAO also declines to accept intermittent mail addressed to one of the parties at a claimed address as evidence of mutual residence. The AAO notes again that the petitioner received mail at an address different than her claimed address and has not provided an explanation for the different address. The present record is insufficient to establish that the petitioner resided

with E-C- as required by 8 C.F.R. § 204.2(c)(1)(v).

The AAO also finds that the petitioner has failed to establish that she was subjected to battery or extreme cruelty perpetrated by E-C-. The record includes several statements made by friends and acquaintances who indicate generally that the petitioner told them about property damage including holes in the walls of her apartment and a broken balcony and bathroom door, and showed them some bruises. The individuals making the statements indicate generally that they witnessed verbal abuse and saw email messages that were aggressive in nature. The record also includes summaries of two police reports: a police report for an incident that happened July 7, 2006 wherein the petitioner reported that a door had been damaged; and a police report for an incident that happened July 13, 2006 wherein the petitioner showed the police some bruises on her left wrist and right forearm. The record further includes the petitioner's personal statement indicating there were five incidents of abuse between January 2006 and July 2006. The petitioner reported: verbal abuse and being shaken that resulted in bruises on her arms; that E-C- took her passport and documents so that she could not continue working on her immigration case; that E-C- broke the door of her car and took away her keys; and that incidents with E-C- involved physical and verbal violence by pushing her, disappearing frequently, and lying. The petitioner also included printouts of email messages during a period between July 24, 2006 and August 31, 2006 wherein both parties sent angry, aggressive emails to one another.

Although the record includes two summaries of police reports, the petitioner does not provide evidence that she followed up the police reports with prosecution of E-C-. Neither does the record include temporary or final restraining orders against E-C-. The record does not include the circumstances and detail of the alleged incidents wherein the petitioner was pushed, shaken, and bruised by E-C- or when her car door was broken. The petitioner does not mention the broken balcony and bathroom door or holes in the wall which are noted by the individuals providing statements on her behalf. Neither does the landlord in her statement mention that the apartment needed repairs from damage to the walls and balcony and bathroom doors, but simply noted that the couple was always in good standing with their rent. The record does not include probative detail of any of the particular incidents where the petitioner's husband allegedly battered or subjected her to extreme cruelty. The record does not include specific details regarding the time of the incidents of verbal or physical abuse or where the alleged abuse took place. The record does not provide sufficient probative detail of the acts of E-C- so that these acts can be examined and the AAO can ascertain that E-C-'s actions subjected the petitioner to psychological, sexual abuse or exploitation or were part of an overall pattern of violence. As such, the petitioner's claims do not rise to the level of extreme cruelty as those acts are described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The relevant evidence fails to demonstrate that the petitioner's spouse subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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. The petitioner submitted no affidavit regarding her good moral character. The record includes a police clearance for Fairfax County, Virginia showing an arrest for petty larceny and the petitioner's successful completion of an Alternative Community Service Program and the dismissal of the petty larceny conviction. The AAO observes that the petitioner has not provided a similar background check for Maryland although she received mail in that State. As the petitioner failed to submit an affidavit of good moral character and evidence of police clearances in all jurisdictions where she resided, the AAO is precluded from finding that the petitioner has established good moral character. 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Conclusion

The record does not demonstrate that the petitioner entered into the qualifying relationship in good faith. In addition, the petitioner has not established that she resided with E-C-, that E-C- subjected her to battery or extreme cruelty during their marriage, and that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and this petition must be denied.

Despite the petitioner's ineligibility based on the present record, this case 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. Here, that burden has not been met.

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.