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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAY 1 5 2009

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 06 047 51034

IN RE: Petitioner: [redacted]

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:

[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. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner seeks immigrant classification pursuant to 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.

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 lawful permanent resident 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)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

The director issued a Notice of Intent to Deny (NOID) the petition on June 18, 2007 notifying the petitioner of the deficiencies in the record and affording the petitioner the opportunity to provide evidence to establish that she is a person of good moral character. Upon review of the petitioner's response, the director denied the petition determining that the petitioner had not provided police clearances for all her aliases and had not provided evidence resolving the conflicting statements regarding the illegal use of the petitioner's passport. Counsel for the petitioner submitted a motion to reopen and reconsider the matter and provided evidence of police clearances for the various names the petitioner had used in the past. Counsel also provided the petitioner's affidavit. Upon review of the petitioner's motion and further evidence, the director denied the petition on February 11, 2008. The director determined that the petitioner had not provided evidence establishing her lack of culpability in the illegal use of her passport. The director determined that the petitioner was subject to the provisions of Section 101(f) and thus had not established that she is a person of good moral character.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal and provides the petitioner's mother's March 18, 2008 affidavit in support of the appeal.

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:

> (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 under section 204(a)(1)(B)(ii) 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.
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> * * *
>
> (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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guatemala. She obtained a multiple entry B-1/B-2 visa on October 6, 1995 valid until October 5, 2000. On September 21, 1996, the visa was cancelled by the legacy Immigration and Naturalization Service (INS) in Miami, Florida when the applicant's sister attempted to enter the United States using the visa.

The issue in this matter is whether the petitioner has established that she is a person of good moral character and is not subject to the provisions of Section 101(f) of the Act. Section 101(f) states in pertinent part:

> No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was --
>
> 3) A member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)A of section 1182(a) of this title . . .

Section 1182(a)(6)(E) states in pertinent part:

> (i) In general
>
> Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

The record includes information on the use of the petitioner's passport by her sister, when her sister attempted to enter the United States in September 1996. The record includes the petitioner's October 28, 1996 statement in which she reported that after entering the United States on October 28, 1995, she put her passport away. She indicated that a friend visited her about a year prior to the date of the letter (October 1995). The petitioner indicated further that later she could not find her passport. The petitioner noted that when her sister told her she intended to visit the United States she thought her

sister had obtained a visa. The petitioner noted further that she learned that her sister had attempted to enter the United States with her visa and her visa had been cancelled when her mother sent her a copy of her passport page with the cancelled visa.

The record also includes the petitioner's sister's sworn statement taken on September 21, 1996 before an immigration officer. When asked how she obtained the passport on which she attempted to enter the United States, the petitioner's sister stated: "[t]he passport belongs to my sister and she let me use it to attempt to [enter] the U.S." The record further includes the petitioner's sister's December 29, 2004 affidavit wherein she declared that in 1996, without the consent of the petitioner, she took the petitioner's passport and traveled to the United States using the passport and that the passport was not provided to her by the petitioner.

In the petitioner's undated statement submitted in support of the November 23, 2007 motion to reopen the director's decision, the petitioner stated that in 1996 around the last time she entered the United States, she visited Centro Guatemalteco, for help with her immigration case. She noted that she was afraid and did not want any problems because of her sister's illegal use of her passport. The petitioner indicated that an individual at Centro Guatemalteco helped her and is the individual who wrote the October 28, 1996 statement for her to sign. The petitioner also noted that she did not speak English at the time and that the individual at Centro Guatemalteco spoke a little Spanish but that her first language was English. The petitioner indicated that the information in her signed October 28, 1996 letter is incorrect. She noted that she did not have a friend visit her from Guatemala and that she mailed her passport to her mother when her mother requested it. The petitioner speculated that either her sister lied in her September 21, 1996 sworn statement before an immigration officer or maybe her sister thought the petitioner had told their mother that the sister could use the passport. The petitioner reiterated that she sent her passport to her mother, when her mother requested it, and thought her mother needed the passport to fill out an application.

On appeal, the petitioner provides her mother's March 18, 2008 affidavit, wherein her mother declares: that in 1996 she requested that the petitioner send her passport to her; that she told the petitioner she needed the passport to fill out an application; that this was a lie as she wanted the passport so that she could send the petitioner's sister to the United States using the United States visa in the petitioner's passport; and that the petitioner did not know her mother's real intention of sending the petitioner's sister to the United States using the petitioner's visa.

The issue in this matter is whether the petitioner knowingly assisted her sister to attempt to enter the United States using her visa, a violation of United States law. The petitioner provides two conflicting statements regarding her lack of knowledge of the illegal use of her passport. The petitioner is obligated to clarify her inconsistent and conflicting testimony. The petitioner's assertion that she did not write the October 28, 1996 statement but signed it without understanding the content is insufficient. There is no remedy available for a petitioner who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on the petitioner's behalf. *See* 8 C.F.R. § 292.1. In addition, asserting that the letter was factually incorrect does not

resolve the matter. Although the petitioner offers an explanation for the incorrect information in the letter, that the individual writing the letter did not fully understand Spanish, the petitioner does not describe how simple words like "friend" could be misinterpreted.

The petitioner's sister has also provided two conflicting statements regarding how she obtained the petitioner's passport. The petitioner's sister's statement made in 1996 has greater weight, as the statement was made before an immigration officer contemporaneous with the event. The petitioner's speculation regarding her sister's thought processes in "lying" and later changing her story to match the petitioner's story is not probative evidence. The petitioner's sister's 2004 statement, as well as the petitioner's mother's statement submitted on appeal, does not overcome the petitioner's sister's testimony in 1996 before an immigration officer. Like a delayed birth certificate, statements made years after the incident raise serious questions regarding the truth of the facts asserted. *Cf. Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). The petitioner's sister's statement before an immigration officer that: "[t]he passport belongs to my sister and she let me use it to attempt to [enter] the U.S.," has the ring of truth. The petitioner's sister's later statement suggests that she is trying to make amends for damaging the petitioner's immigration case. Similarly, the petitioner's mother's statement submitted on appeal appears to be an attempt to overcome the petitioner's sister's admission to an immigration officer.

The AAO finds that the petitioner is subject to Section 101(f) as it incorporates Section 212(a)(6)(E) of the Act. The petitioner has admitted that her passport was used in 1996 by her sister in her sister's illegal attempt to enter into the United States. The petitioner in this matter has not submitted independent, objective evidence to resolve the inconsistencies in the record regarding her knowledge of her sister's use of the passport. The record supports a determination that the petitioner knowingly let her sister use her passport in her attempt to illegally enter the United States. Accordingly, the AAO finds that the petitioner has not established that she is a person of good moral character.

The petition will be denied for the reason set out in the director's decision. 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 appeal is dismissed.