

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



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

**U.S. Citizenship
and Immigration
Services**

B9

FILE:

EAC 07 137 50038

Office: VERMONT SERVICE CENTER

Date: **MAY 26 2009**

IN RE:

Petitioner:

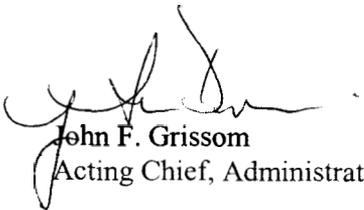
PETITION:

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.


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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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 failed to establish that she married her husband in good faith and that she was a person of good moral character.

On appeal, the petitioner submits additional evidence.

Applicable Law and Regulations

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 clause (ii) or (iii) of subparagraph (B), 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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 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. . . . 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.

Pertinent Facts and Procedural History

The petitioner was paroled into the United States on May 7, 2000. On March 27, 2004, the petitioner married M-E-¹, a U.S. citizen, in Massachusetts. The petitioner filed this Form I-360 on April 13, 2007. On November 7, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into marriage with her husband and her good moral character. The petitioner submitted additional evidence in response to the RFE, which the director found insufficient to establish her eligibility. The director denied the petition on May 16, 2008 and the petitioner, through counsel, timely appealed.

The petitioner submits additional evidence on appeal, which fails to overcome the grounds for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the former regulation at 8 C.F.R. § 204.2(c)(3)(ii)(2007), in effect at the time the petition was filed.

Good-Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's good faith in marrying her husband:

- The petitioner's January 29, 2008 letter submitted below and her July 9, 2008 letter submitted on appeal;
- Letters from the petitioner's friends, [REDACTED] and [REDACTED] submitted below and on appeal;
- Letters from the petitioner's children, submitted on appeal;
- Retirement savings account statement of the petitioner's husband and his mortgage foreclosure deed, submitted on appeal;
- Postmarked envelopes addressed to the petitioner and her husband individually, submitted on appeal; and
- Copies of photographs of the petitioner and her husband at their wedding and on one other, unspecified occasion.

In her first letter, the petitioner stated that when she met her husband he was nice, kind and considerate and she was in love with him, but that he became abusive shortly after their marriage. On appeal, the petitioner states that she did not want to divorce her husband because she was very in love with him. The petitioner does not further describe, in probative detail, how she met her husband, their courtship, wedding, shared residence and experiences, apart from the abuse. Her brief statements are insufficient to demonstrate that she entered the marriage in good faith.

¹ Name withheld to protect individual's identity

The statements of the petitioner's friends and children also lack detailed, probative information sufficient to establish the petitioner's claim. The petitioner's friends state that the petitioner was in love with her husband and lived with him before their marriage, but that her husband became abusive shortly after their marriage. [REDACTED] also states that he witnessed the petitioner's wedding, but he does not describe the event, or the petitioner's behavior towards her husband in any probative detail. The petitioner's children also state that their mother was in love with M-E- and that everything went well at first, but that M-E- became abusive soon after their marriage. The petitioner's children do not further describe their mother's feelings for or interactions with M-E-, apart from the abuse.

The remaining, relevant evidence also fails to demonstrate the requisite good faith. The postmarked envelopes are addressed to the petitioner and her husband individually and indicate that they shared a residence, but the envelopes do not demonstrate the petitioner's good faith in entering their marriage. The retirement account statement is in M-E-'s name alone, does not name the petitioner as a beneficiary or provide any other, relevant information. Similarly, the foreclosure deed merely confirms that M-E- lost his home, but does not provide any information relevant to the petitioner's good faith in marrying him. The photographs merely show that the petitioner and her husband were pictured together at their wedding and on one other, unspecified occasion.

While the petitioner explains that her husband never shared financial responsibilities for their home, she fails to provide detailed, probative testimony of how she met her husband, their courtship, wedding, shared residences and experiences, apart from the abuse. The present record does not demonstrate that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

In her first letter, the petitioner asserted that she had always been a law abiding citizen and had never been arrested. In response to the RFE, she submitted a letter from the Massachusetts Criminal History Systems Board, which stated that no criminal court appearances were found in a search based on the petitioner's date of birth and her name. However, the letter misspells the petitioner's last name as "Cappichone." The petitioner's last name is spelled "Capacchione" on her passport and her marriage certificate. The letter from the Massachusetts Criminal History Systems Board is consequently insufficient to demonstrate the petitioner's good moral character.

On appeal, the petitioner submits a letter from [REDACTED] who attests to the petitioner's good moral character as a member of his congregation for the past year. The petitioner did not, however, submit local police clearance letters or a state criminal background check based on a search of her fingerprints or the correct spelling of her name. The petitioner has failed to submit the primary evidence specified in the regulation at 8 C.F.R. § 204.2(c)(2)(v). Consequently, the present record does not demonstrate that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The petitioner has not demonstrated that she entered into marriage with M-E- in good faith and that she is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation in effect at the time the petition was filed, at 8 C.F.R. § 204.2(c)(3)(ii) (2007),² required U.S. Citizenship and Immigration Services (USCIS) to provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision was made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.

² The regulation was amended to remove the specific requirement for a NOID on June 18, 2007. 72 Fed. Reg. 19100, 19107 (Apr. 17, 2007). The amended regulation applies to petitions filed on or after that date. *Id.* at 19104.