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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



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

B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 06 2010

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:

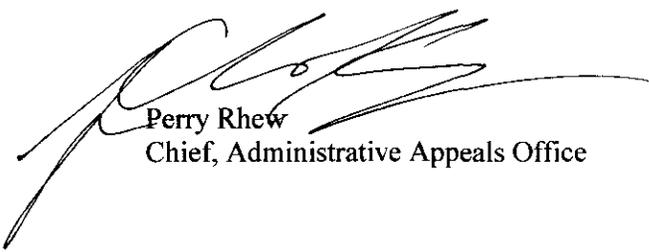
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 appeal will be dismissed.

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 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, and submits a memorandum of law and additional evidence.

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

- (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 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.

* * *

- (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 petitioner is a citizen of Peru. He married [REDACTED],¹ a citizen of the United States, on May 23, 2007. The petitioner submitted the instant Form I-360 on December 5, 2008. The director issued a subsequent notice of intent to deny (NOID) the petition, to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the NOID, the director denied the petition on December 7, 2009. The director's lengthy NOID and denial of the petition are both contained in the record and the AAO will only repeat their contents here as necessary.

The sole issue before the AAO is whether the petitioner has established that he is a person of good moral character. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

As noted, in evaluating whether the petitioner is a person of good moral character, U.S. Citizenship and Immigration Services (USCIS) looks to the provisions of section 101(f) of the Act as well as the standards of the average citizen in the community. Although section 101(f) of the Act lists several classes of persons statutorily ineligible for a finding of good moral character, it also specifically states that even if the petitioner is not in any of the classes listed, USCIS is not precluded from finding that the petitioner lacks good moral character. Similarly, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, the following:

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.

Although the petitioner does not appear to fall within any of the classes of persons specifically delineated at section 101(f) of the Act, 8 U.S.C. § 1101(f), the director made a discretionary finding in his December 7, 2009 decision that the petitioner lacks good moral character. In making that determination, the director noted that the petitioner was convicted of stalking [REDACTED] (although that charge was later amended to assault and battery against a household member); that he violated a protective order obtained against him by [REDACTED] and that a police officer who accompanied [REDACTED] to the couple's former apartment to retrieve her personal items testified that the petitioner had berated and yelled at [REDACTED]. The director also noted an inconsistency between the petitioner's testimony and that of the police officer. The AAO observes further that in his September 2, 2009 NOID, the director noted that according to the transcript of a [REDACTED] hearing (which is of record) before the Juvenile and Domestic Relations Court of Arlington County, Virginia, during which the petitioner was convicted of the crime of family abuse, the judge found that the petitioner lacked credibility. As noted by the director, the judge at that hearing stated that the petitioner's testimony made no sense: if he was afraid of [REDACTED], then it made no sense that he was following [REDACTED]; calling

¹ Name withheld to protect individual's identity.

her; and watching her while she worked. The director noted further that the judge at that hearing stated that it appeared as though the petitioner was calling the police not because he was afraid of [REDACTED], but because he wanted to get her into trouble. Finally, the director noted that the judge granted [REDACTED] - a final, two-year protective order against the petitioner.

On appeal, counsel states that because the petitioner does not fall within any of the classes of persons described at section 101(f) of the Act, the petitioner is not statutorily ineligible for a finding of good moral character. Counsel does not, however, address the language at section 101(f) of the Act that allows for a discretionary finding of a lack of good moral character. Nor does he address the petitioner's behavior in relation to the standards of the average citizen in the community.

With regard to the petitioner's violation of the protective order, counsel argues that the "attempt to reconcile and make up is not evidence of a lack of good moral character. To the contrary[,] saving a marriage is an act in which the community, particularly, the predominant Christian community, is something that is worth doing and is encouraged." With regard to the testimony of the police officer who accompanied [REDACTED] to the couple's former apartment to retrieve her personal items that the petitioner berated and yelled at [REDACTED], counsel states that it was the police officer who yelled at the petitioner. Counsel states further that even if the petitioner did berate and yell at [REDACTED], even "the best of husbands and wives have their spats and quarrels." Counsel states that the petitioner has had two previous relationships, that he never had violent quarrels or arguments in either relationship, that both relationships ended nicely, and that he has remained friends with both women. According to counsel, [REDACTED] "set out to have her revenge by concocting and instigating situations then filing cases that would lead to his incarceration and end in his deportation."

The AAO does not find counsel's assertions persuasive. It does not agree that violating a protective order should be encouraged, regardless of whether the petitioner desired to reconcile with [REDACTED]. Nor will the AAO discount the testimony of the police officer who accompanied [REDACTED] to the couple's apartment, particularly in light of the fact that the judge at the December 28, 2008 hearing in Virginia found the petitioner's testimony with regard to that incident lacking in credibility. Nor does the AAO find convincing counsel's statement that even if the petitioner did yell at [REDACTED] as described by the police officer, it may be explained as a spat or a quarrel that "the best of husbands and wives" could have, as the testimony of the police officer who witnessed the event does not lead to a conclusion that it was a simple spat or quarrel. Finally, even if the petitioner was not violent in previous relationships, that history would not establish that he was never violent with [REDACTED].

As noted, USCIS evaluates a petitioner's claim to be a person of good moral character 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. The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that the petitioner is a person of good moral character. The record shows that the petitioner has committed and been convicted of unlawful acts which adversely reflect upon his moral character and he has failed to establish that such acts were committed under extenuating circumstances. The behavior of the petitioner as set forth above, and in the director's NOID and denial, is not consistent with the standards of the average citizen in the

community. Even if the AAO were to ignore the testimony of the police officer who accompanied [REDACTED] to the couple's former apartment to retrieve her personal items, which it does not, the record would still establish that the petitioner violated a protective order, was convicted of assault and battery against a household member, and had a two-year protective order issued against him. The AAO finds that, as a matter of discretion exercised under section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), the petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner has failed to overcome the ground for denial on appeal. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.