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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**

Be

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

JUN 30 2010

IN RE:

Petitioner:

[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 Director, Vermont Service Center, denied the immigrant visa petition. 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 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 did not establish that she had the requisite qualifying relationship within two years of filing the petition, that she is eligible for immigrant classification based upon that relationship, and that she is a person of good moral character.

The petitioner, through counsel, submits a timely appeal and additional evidence, including a brief, criminal record searches, an affidavit from the petitioner, and copies of previously submitted documentation.

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further 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 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 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 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. 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 in this case is a native and citizen of Mexico who claims to have entered the United States without inspection in 1995. On December 31, 1996, the petitioner married E-V-¹, then a lawful permanent resident, in Tennessee. On March 10, 1997, E-V- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on August 23, 1997. On August 21, 1998, E-V- became a naturalized U.S. citizen. On August 25, 1998, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was denied on July 12, 2005, due to abandonment. On July 17, 2000, the petitioner and E-V- were divorced in the Fourth Circuit Court for Davidson County, Tennessee.² On January 8, 2003, the petitioner filed the first Form I-360, which was denied on May 24, 2004, because the petitioner did not establish that she had a qualifying relationship with her former husband due to the termination of their marriage over two years before the petition was filed, and she did not establish eligibility under the good moral character requirement.

The petitioner filed this Form I-360 on July 7, 2008. On October 19, 2009, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship and good moral character. The petitioner, through counsel, requested additional time to respond. On December 31, 2009, the director denied counsel's request for additional time to respond, and denied the petition for lack of, *inter alia*, the requisite qualifying relationship and good moral character.

On appeal, counsel asserts that the petitioner "had no knowledge of an actual formal divorce filed until January 2010," when counsel received a copy of the divorce decree. Counsel asserts that the petitioner "was never notified of a divorce nor served any papers," and that the petitioner "fled the State of Tennessee in 2001 after [E-V-] attempted to shoot her and himself" and "[s]he has been on the run since."

Qualifying Relationship and Eligibility for Immediate Relative Classification

The record contains the following documents relevant to the petitioner's claim that she had a qualifying relationship with E-V- within two years of filing this petition, as required by statute:

- A Certificate of Marriage issued by the State of Tennessee, showing that the petitioner and E-V- were married on December 31, 1996, in Davidson County, Tennessee;
- A Certificate of Divorce or Annulment issued by the Tennessee Department of Health, indicating that the marriage of petitioner and E-V- was dissolved on July 17, 2000;
- A Final Decree of Divorce issued by the Fourth Circuit Court for Davidson County, Tennessee, filed on July 20, 2000, indicating that on March 9, 2000, the petitioner was personally served with the original complaint for absolute divorce, and ordering that E-V- make child support payments to the Central Child Support Receiving Unit in Nashville, Tennessee, who, in turn, would send payments to the petitioner;

¹ Name withheld to protect individual's identity.

² No. 00D-511

- An Incident Report from the Metropolitan Police Department in Nashville, Tennessee, dated August 9, 2000, listing the petitioner as the “victim” of a “simple assault” and describing the “suspect” as the petitioner’s “ex-spouse” and “ex-husband”; and
- The petitioner’s affidavits dated May 27, 2008 and February 18, 2010.

In her May 27, 2008 affidavit, the petitioner states: “My husband says that he divorced me but I have not seen the divorce decree. . . . I know that there is an existing divorce which I never signed. I do not know when the divorce took place.”

In her February 18, 2010 affidavit, the petitioner states: “I had no idea if there was a divorce filed or granted. I just found out that I had been legally divorced when we searched the records of Tennessee in January 2010 and got a certified copy. If there is, I did not sign it or was served with any papers.”

The petitioner has not established that she was not aware that she was divorced. As indicated above, the Final Decree of Divorce that was issued in the Fourth Circuit Court for Davidson County, Tennessee, indicates that on March 9, 2000, the petitioner was personally served with the original complaint for absolute divorce. In addition, this Final Decree of Divorce orders that E-V- make child support payments to the Central Child Support Receiving Unit in Nashville, Tennessee, who, in turn, would send payments to the petitioner. In the director’s October 19, 2009 NOID, the director specifically requested that the petitioner submit proof from this Central Child Support Receiving Unit of whether or not she received the ordered payments and, if so, the receipt dates of such payments. Neither counsel nor the petitioner addresses this issue on appeal. Neither counsel nor the petitioner indicates why such evidence was unobtainable. It is also noted that the Incident Report from the Metropolitan Police Department in Nashville, Tennessee, dated August 9, 2000, describes E-V- as the petitioner’s “ex-spouse” and “ex-husband.” The record contains no explanation for this inconsistency. It is also noted that the petitioner asserts in her February 18, 2010 affidavit that E-V- “pointed a loaded gun at [her] head, pulled the trigger but the gun misfired.” The petitioner, however, does not mention this incident in her May 27, 2008 affidavit. This inconsistency detracts from the credibility of the petitioner’s claim. Given the inconsistencies and/or deficiencies discussed above, the petitioner has not established that she was unaware that she was divorced.

As discussed above, the petitioner has failed to demonstrate that she had a qualifying relationship with her former husband within two years of filing this petition, as required by statute. Therefore, she is unable to establish that she had a qualifying relationship as the spouse of a United States and that she is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb).

The language of the statute clearly indicates that to remain eligible for classification despite no longer being married to a U.S. citizen, an alien must have been the bona fide spouse of a U.S. citizen “within the past two years” and demonstrate a connection between the abuse and the legal termination of the marriage. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As previously noted, the petitioner in this case was divorced from her spouse for more than two years at the time of filing the petition. Accordingly, we concur

with the director's determination that the petitioner did not establish a qualifying relationship with her former husband. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

Good Moral Character

The director denied the petition, finding that the petitioner did not submit the requested police clearances or records with all the aliases she had used.

On appeal, counsel states, in part, that the petitioner is a person of good moral character, and that she has had no convictions for any misdemeanor or felony criminal cases in the United States. As supporting evidence, counsel submits seven record search certificates from the Harris County District Clerk in Houston, Texas, for the petitioner's various aliases, reflecting no criminal charges found. Counsel also submits a copy of arrest information from the Metro Nashville Police Department, reflecting that on August 16, 1999, the petitioner was charged with "Failure To Be Booked," which counsel asserts was for unpaid tickets. Counsel also asserts that the petitioner "drove to the Municipal Court and paid the fine immediately." Counsel also submits a "Criminal Name Search" from the website PublicData.com, made on November 12, 2009, showing that a search of the petitioner's name for the State of Tennessee found "no records matching search criteria."

A review of the additional evidence finds that the petitioner has overcome this portion of the director's objections. The petitioner has established that she is a person of good moral character. The petition may not be approved, however, because the petitioner has not established that she had a qualifying relationship as the spouse of a United States and that she is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb).

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.