



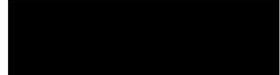
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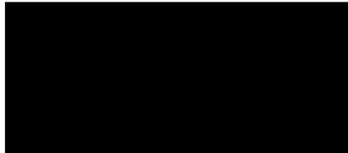
Date: **DEC 19 2011**

Office: VERMONT SERVICE CENTER File: 

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:

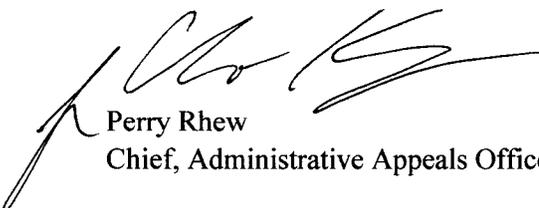


**INSTRUCTIONS:**

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 the \$630 fee. 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, (“the 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 pursuant to 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner is a person of good moral character and entered into marriage with her former husband in good faith.

On appeal, the petitioner’s representative submits a statement and additional evidence.

*Relevant 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 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.

\* \* \*

(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. 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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of the Philippines who was admitted to the United States on January 14, 1998 with a B1/B2 visa that was issued to another individual. The petitioner married her second husband, A-R-, a U.S. citizen, in [REDACTED] on October 1, 2007.<sup>1</sup> The petitioner's marriage to A-R- terminated in a divorce on October 28, 2009.

The petitioner filed the instant Form I-360 on March 1, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character, good-faith entry into the marriage, shared residence with her husband, and her husband's battery or extreme cruelty. The petitioner, through former counsel, timely responded with additional evidence which the director found insufficient to fully establish the petitioner's eligibility. The director denied the petition for failure to establish that the petitioner is a person of good moral character and entered into marriage with her husband in good faith. The petitioner's representative filed a timely appeal.

On appeal, the petitioner's representative submits a statement, federal and local criminal record checks, and supporting letters attesting to the petitioner's good moral character from her family and friends.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not fully overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

The relevant evidence submitted below fails to demonstrate the petitioner's entry into her marriage in good faith. As evidence of her good-faith marriage, the petitioner initially submitted copies of two greeting cards, a rental lease agreement, three rent receipts and four photographs taken on two, unspecified occasions. In response to the RFE, the petitioner submitted a declaration, dated April 26, 2010. In the declaration, she stated that she met her former husband in September 2007 at a flea market. She recalled that her friend gave A-R- her phone number and he called her that evening and asked her to accompany him on a date. She stated that they went to lunch and watched a movie on their

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<sup>1</sup> Name withheld to protect the individual's identity.

first date. The petitioner recounted that on their second date they visited A-R's city of residence, listened to music, took a walk and met his neighbors. She stated that on their third date she returned to A-R's city of residence and took a tour of a [REDACTED]. The petitioner did not describe their wedding ceremony, joint residence or any of their other shared experiences, apart from the abuse.

In response to the RFE, the petitioner also submitted a letter signed by three of her friends, [REDACTED]. The petitioner's friends briefly discussed the petitioner's marriage, but spoke predominately of the abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. The letter provides, in pertinent part, "[t]o the best of our knowledge as per how [the petitioner] has told us . . . She has told us that she was very much in love with him when they were married." The director correctly concluded that this letter provided no specific information demonstrating that the petitioner married her former husband in good faith.

Previous counsel indicated in response to the RFE that proof of the petitioner's good faith marriage was contained in a letter from the petitioner's former landlord, [REDACTED] stated in her undated letter that she rented a house to the petitioner and A-R- from June 2007 until August 2009. She stated, "I know that their marriage was real for one thing she has copies of her divorce papers." The record contains another letter from [REDACTED] which was initially filed with the Form I-360. [REDACTED] stated in her initial letter, dated October 30, 2009, that she first met the petitioner two years ago when the petitioner married A-R-. The letters from [REDACTED] speak predominately of the abuse in the petitioner's marriage. The director correctly concluded that [REDACTED] letters provided no specific information demonstrating that the petitioner married her former husband in good faith.

On appeal, counsel asserts that "special attention" should be given to [REDACTED] letters because [REDACTED] resided near the petitioner's shared residence with her former husband. Counsel notes that [REDACTED] "accompanied [the petitioner] to the doctor for her deteriorating mental and physiological health related to the abuse and to the police to obtain her police reports." Counsel states that [REDACTED] letters are "clear, credible, plausible and relevant, and corroborate with [the petitioner's] affidavit."<sup>2</sup> Although [REDACTED] letters are considered relevant evidence, [REDACTED] speaks mainly of the abuse, and fails to discuss in probative detail her observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant evidence reflects that the petitioner and her former husband resided together and were photographed together on two, unspecified occasions. In the petitioner's declaration, she failed to describe their wedding ceremony, joint residence or any of their other shared experiences, apart from the abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that

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<sup>2</sup> On appeal, the petitioner's representative references a letter from a family advocate as evidence of the petitioner's continued counseling at the Center for Women and Families. However, this letter was not in the evidence submitted on appeal. Nor was it listed as additional evidence in the appeal cover letter.

she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) 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 (in this case, during the period beginning in March 2008 and ending in March 2010).

As evidence of her good-moral character, the petitioner initially submitted evidence that she requested a Federal Bureau of Investigation (FBI) background check as well as letters attesting to her good-moral character from three of her friends and her sister. In response to the RFE, the petitioner submitted evidence that the fingerprint card she submitted to the FBI for a criminal background check was rejected because the fingerprints were of low quality. The director determined that the attestations from the petitioner's friends and sister were insufficient to establish the petitioner's good-moral character.

On appeal, the petitioner submitted the results of an FBI criminal background check based upon her fingerprints. The background check, dated August 2, 2010, reflects that the petitioner has no arrest record. She also submitted local police background checks from the ██████████ Metro Police and the ██████████ conducted on the petitioner's name and date of birth. These background checks, dated April 25, 2011 and May 6, 2011 respectively, reflect that the petitioner does not have an arrest record. The petitioner provided additional supporting letters from her sister, friends and members of her church, which attest to her good moral character. Accordingly, the petitioner has established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has established that she is a person of good moral character. However, she has not overcome the director's determination that she did not enter into the marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.