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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

**PUBLIC COPY**

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FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 05 2011

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 a fee of \$630. 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. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted. The previous decision of the AAO, dated May 17, 2010, will be affirmed and the petition will be denied.

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.

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

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(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.

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(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated May 17, 2010, only certain facts will be repeated as necessary here. In this case, the petitioner is a citizen of the Dominican Republic who last entered the United States on or around November 19, 1995. The petitioner married J-F-<sup>1</sup>, a U.S. citizen, on February 3, 1997. On April 23, 1997, J-F- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Forms I-130 and I-485 were denied on August 4, 2000. On May 5, 2001, J-F- filed another Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed another Form I-485, Application to Register Permanent Residence or Adjust Status. The Forms I-130 and I-485 were denied on February 24, 2004.

The petitioner filed the instant Form I-360 on July 22, 2008.<sup>2</sup> The director denied the petition on September 23, 2009, finding that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. In its May 17, 2010 decision on appeal, the AAO concurred with the director's determination and found beyond the decision of the director that the petitioner had not established that she is a person of good moral character.

On motion, counsel states that the petitioner has applied for a new certificate of good conduct from the New York Police Department (NYPD), which will be submitted to the AAO upon receipt. Counsel also states that U.S. Citizenship and Immigration Services (USCIS) failed to properly consider evidence submitted in regard to the issue of abuse, including: two letters/affidavits from the petitioner's counselor at the Violence Intervention Program, [REDACTED]; a psychological assessment from [REDACTED]; a letter/affidavit from the petitioner's psychologist, [REDACTED] and a note from the petitioner's general physician, [REDACTED], with evidence of the petitioner's prescription medication for anxiety and depression. As supporting documentation, counsel submits a copy of a receipt dated June 7, 2010, from the NYPD for the petitioner's request for a Good Conduct Certificate.

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

<sup>2</sup> The petitioner filed a prior Form I-360 on March 30, 2007, which was denied on May 16, 2008, after the petitioner failed to respond to the director's second request for additional evidence.

*Battery or Extreme Cruelty*

In its May 17, 2010 decision, the AAO found the evidence submitted by the petitioner and on the petitioner's behalf insufficient to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The relevant evidence, including the petitioner's self-affidavit, the letters from various witnesses, the letter from [REDACTED] and the evaluations from [REDACTED] and [REDACTED] are adequately discussed by the AAO in its May 17, 2010 decision and need not be repeated in detail here. Specifically, the AAO found that the petitioner's testimony lacks detailed, probative information regarding the alleged abuse, and the relevant evidence contained inconsistencies that diminished the probative value of the petitioner's testimony. Although these deficiencies and inconsistencies were explained in detail in the AAO's May 17, 2010 decision, counsel does not specifically address them on motion. For example, the AAO found that, although various witnesses claimed that the petitioner told them that J-F- forced her to have sexual relations with him against her will, the petitioner herself did not make this claim in her own testimony. In addition, although [REDACTED] stated that the petitioner reported that J-F- forced her to have an abortion, the petitioner herself did not make this claim in her own testimony. The AAO also pointed out that the prescriptions were dated October 3, 2009, and the record contains no evidence that the petitioner previously sought or received medication for her mental health, and that, during a period spanning nearly six years, the record contained no evidence of any follow-up treatment or counseling with any mental health professional beyond the petitioner's single interview with [REDACTED] in 2007 and the evaluation by [REDACTED] in October 2009. Again, counsel does not specifically address these deficiencies and inconsistencies on motion.

As stated by the AAO in its May 17, 2010 decision, the actions by the petitioner's husband do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner and on her behalf fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that her husband's non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. As discussed above, the petitioner has not resolved the inconsistencies and deficiencies in the record that diminish the evidentiary value of her statements. The petitioner's statements and the statements on her behalf do not establish that her husband subjected her to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) 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. As stated by the AAO in its May

17, 2010 decision, there is no clearance in the record covering the period from April 2007 through July 2008, when the instant petition was filed. The AAO acknowledges the receipt submitted on motion, dated June 7, 2010, from the NYPD for the petitioner's request for a Good Conduct Certificate. The record as it is presently constituted, however, does not contain the required clearance. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). As the petitioner did not submit the evidence of her good moral character with her motion, the motion may be dismissed for failing to meet applicable requirements pursuant to 8 C.F.R. § 103.5(a)(4). Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Upon review of the totality of the evidence, the petitioner has not demonstrated that she was battered or subjected to extreme cruelty by her spouse during their marriage and that she is a person of good moral character. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must remain denied.

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 previous decision of the AAO, dated May 17, 2010, will be affirmed and the petition will remain denied.

**ORDER:** The decision of the AAO, dated May 17, 2010, is affirmed. The petition remains denied.