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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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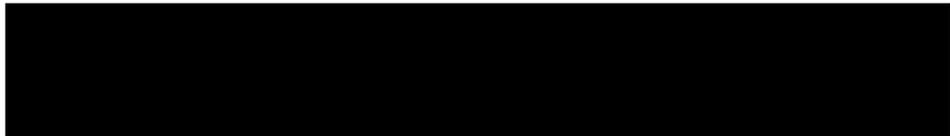
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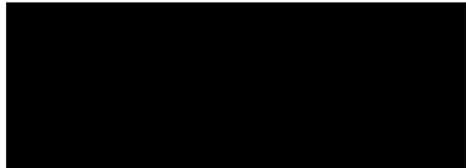
MAR 10 2011

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:

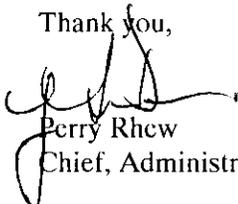


INSTRUCTIONS:

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 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 is a person of good moral character and that she married her husband in good faith.

On appeal, counsel asserts that the evidence establishes that the petitioner is a person of good moral character and that she married her husband in good faith. In support of his contentions, counsel submits a brief and additional evidence, including: a second letter from [REDACTED] a letter dated June 30, 2010, addressed to the petitioner from a debt collector, in connection with an overdrawn Wachovia Bank Checking Account; a computer printout from Wachovia Bank listing a joint account for the petitioner and her spouse; and copies of previously submitted documentation.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that she is a person of good moral character and that she entered into the marriage in good faith.

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:

(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.

* * *

(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 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.

* * *

(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.

The petitioner in this case is a native and citizen of Belarus who entered the United States as a B-2 nonimmigrant visitor on August 4, 2006. On June 23, 2007, the petitioner married E-A¹, a U.S. citizen.

The petitioner filed the instant Form I-360 on January 11, 2010, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On March 8, 2010, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite abuse, good moral character, and good-faith entry into the marriage. The director also requested information regarding E-A's citizenship status. The petitioner, through counsel, responded with additional evidence. On August 2, 2010, the director denied the instant I-360 petition because the petitioner did not establish that she is a person of good moral character and that she married her husband in good faith. On August 25, 2010, the director denied the I-485 application based on the denial of the I-360 petition. The petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

Good Moral Character

The record contains the following evidence relevant to the petitioner's claim that she is a person of good moral character:

- A Good Conduct Certificate, based on a fingerprint check, for [REDACTED] from the Police Department of The City of New York, processed on April 15, 2009, submitted at the

¹ Name withheld to protect individual's identity.

time of filing;

- A Criminal History Information Request for [REDACTED] received by the Florida Department of Law Enforcement on June 12, 2009, submitted at the time of filing;
- A letter dated May 24, 2010, from the Records Clerk of the Melbourne Police Department in Melbourne, Florida, indicating that “NO ADULT arrest record” was found for [REDACTED] submitted in response to the RFE;
- A letter dated June 16, 2009, from the Criminal Justice Information Services in Tallahassee, Florida, finding no Florida record for [REDACTED] submitted in response to the RFE; and
- A letter dated August 18, 2010, from the Records Clerk of the Melbourne Police Department in Melbourne, Florida, indicating that “NO ADULT arrest record” was found for [REDACTED] submitted on appeal.

The director denied the petition, finding that the petitioner did not submit the requested police clearances or records for her married name, [REDACTED]

On appeal, counsel states, “The letter from the Melbourne Police Department clearly stated that there was no adult arrest record found in the name of [REDACTED].” Counsel also states that the City of New York provided a Good Conduct Certificate based on a fingerprint check of the petitioner, which shows that the petitioner has no criminal record in New York.

A review of the evidence finds that the petitioner still has not established her good moral character. Although it was requested by the director in his RFE, the petitioner submitted no statement regarding her moral character. As primary evidence of a self-petitioner’s good moral character is the petitioner’s affidavit, the petitioner has failed to meet this threshold evidentiary requirement prescribed by the regulation at 8 C.F.R. § 204.2(c)(2)(v). In addition, as discussed above, the petitioner filed the instant Form I-360 on January 11, 2010. The petitioner’s Form G-325, Biographic Information, finds that the petitioner resided in Brooklyn, New York from January 2008 until the January 11, 2010 filing date. The Good Conduct Certificate for the petitioner from the Police Department of The City of New York was processed on April 15, 2009, or almost nine months before she filed the petition. 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 the petitioner’s Good Conduct Certificate from The City of New York was processed more than six months prior to the filing date of the petition, the AAO concurs with the findings of the director that the petitioner failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II) of the Act.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner’s claim that she married her husband in good faith:

- A notarized statement from the petitioner, dated January 2, 2010, submitted at the time of filing and again in response to the RFE, and a notarized statement dated May 28, 2010, also submitted in response to the RFE;
- A notarized statement from the petitioner's friend, [REDACTED] dated November 27, 2009, submitted at the time of filing and in response to the RFE;
- A notarized statement from [REDACTED] dated July 11, 2009, submitted at the time of filing and in response to the RFE;
- A notarized statement from [REDACTED] dated December 4, 2009, submitted at the time of filing;
- A mental health evaluation dated October 5, 2008, from [REDACTED], submitted at the time of filing;
- A notarized statement from [REDACTED] dated May 30, 2010, submitted in response to the RFE;
- A notarized statement from [REDACTED], dated May 30, 2010, submitted in response to the RFE;
- A notarized statement from A [REDACTED] dated May 29, 2010, submitted in response to the RFE;
- A police report dated May 24, 2007, listing the petitioner's address as [REDACTED]
[REDACTED]
- A copy of a medical insurance card from Connecticut General Life Insurance Co., issued to the [REDACTED] with a "Coverage Effective Date" of June 23, 2007;
- A letter dated June 30, 2010, addressed to the petitioner from a debt collector, in connection with an overdrawn Wachovia Bank Checking Account, listing E-A- as the joint applicant;
- A computer printout from Wachovia Bank listing a joint account for the petitioner and E-A- opened on October 11, 2007 and closed by the bank as an overdrawn account on October 29, 2007; and
- Photographs.

In her January 2, 2010 statement submitted at the time of filing, the petitioner states, in part, that: she first met E-A- in August 2002, when she came to the United States at the age of 15 as an exchange student and E-A- was her divorced 38-year-old host father; the petitioner lived with E-A- and his children and E-A- was more like an older friend to her than a parental figure; the petitioner and E-H- became close friends and spent much time together, which made E-A-'s daughter jealous; after leaving the United States in June 2003, the petitioner and E-A- stayed in contact with each other for the following two years via email, regular mail, phone, and exchanged gifts on holidays and birthdays; the petitioner returned to the United States for a two-week visit in February 2006, when she was 18, and she "could feel that [her] relationship with [E-A-] was shifting"; after she left the United States, she and E-A- continued writing and calling one another; the petitioner returned again in July 2006, and "in a matter of days [they] were already engaged in a secret romance," which they kept hidden from their friends and his children; the problems started when E-A-'s children became suspicious of their relationship and "the pressure was starting to get to him" whereupon E-A- went to his home country of Ecuador for a break; she fought with E-A-'s children during his absence and moved in with her friend

Norah; E-A- returned from Ecuador and the petitioner moved back in with him, whereupon his children and his other family members would not speak to either one of them; E-A- convinced the petitioner to stay in the United States, proposed to her in April [2007], and they married the following month; E-A-'s family members refused to accept the invitation to their wedding and the petitioner's family "wasn't too happy about [their] wedding either"; E-A-'s children hated her and while E-A- was at work, the petitioner stayed in a different area of the house from his children to avoid conflict; the petitioner and E-A-'s daughter engaged in a physical fight resulting in the police going to their house, but E-A- forbade her to press charges against his daughter; the petitioner and E-A- changed their wedding date from May 26 to June 23 because of his mother's scheduled surgery; E-A-'s mother was the only person who would talk to him, he began to drink more than usual, and sometimes when he was drunk, he called the petitioner names and blamed her for his suffering; a couple of days prior to the wedding E-A- realized that none of his family members planned to attend their wedding; they held their wedding at a tennis club with approximately 35 friends as guests, no members of either of their families "and it was the happiest days [sic] of all for both of us"; they enjoyed themselves for "about a month;" and that she filled out her immigration forms but E-A- never filed them.

In her May 28, 2010 statement submitted in response to the RFE, the petitioner states, in part, that when she entered into a relationship with E-A-, she was "happy, confident, and full of plans" and E-A- was "fun, caring, intelligent and romantic." The petitioner also states, "Most of the time I felt safe, happy, sure of the fact that everything is and will be just fine." The petitioner states that the change in E-A-'s behavior towards her "happened shortly after [their] wedding," that he refused to add her to his bank account, that it was impossible to add her name to any other accounts without a social security number, and that he refused to fill out immigration papers for her. The petitioner states that she ended up leaving him at the end of the year.

In her November 27, 2009 statement, [REDACTED] states, in part, that she met the petitioner in Belarus in 2004, and heard about her trips to the United States when E-A- became her "father figure." [REDACTED] states that the petitioner emailed her one day that she and E-A- were "romantically involved" and getting married soon. [REDACTED] states that she came to the United States in June 2007, was unable to attend the petitioner's wedding, but met her in New York where they spent a few days together. [REDACTED] states that she met E-A- when she accompanied the petitioner back to her home in Florida, for a five-day visit, during which time she learned that the petitioner had no legal immigration status because, according to the petitioner, E-A- "couldn't afford it at the moment, but it was all going to be done very soon." [REDACTED] states that she moved to New York in December 2007, and invited the petitioner to New York, the petitioner "accepted [her] invitation and ended up not returning back to Florida."

In her July 11, 2009 statement, [REDACTED] states, in part, that she met the petitioner in March 2007 on a Russian website, and the petitioner invited her and her husband to have dinner with them. [REDACTED] states that the petitioner and E-A- seemed like a happy couple, that they cooked and set the table together, "[made] fun of each other jokingly," and they all had a wonderful time. [REDACTED] also states that although the petitioner "was concerned with how things were running at home," she was excited and elated about her upcoming wedding. [REDACTED] states that she and her husband "attended their

small but beautiful wedding.”

In his December 4, 2009 statement, [REDACTED] in part, that he and his wife “had gone to dinner at [the petitioner’s] home several times and they also came to [REDACTED] home on several occasions.” [REDACTED] also states that he and his wife attended the petitioner’s wedding.

In her May 30, 2010 statement, [REDACTED] states, in part, that she met the petitioner through E-A-’s daughter when the petitioner was an exchange student. [REDACTED] also states that she saw the petitioner when she returned in 2006 to visit and during another visit “after another semester at school.” [REDACTED] states that the petitioner and E-A- “were always doing something together, whether it was dancing, cooking, cleaning the house, or simply watching a movie.” [REDACTED] states that while E-A- was in Ecuador in December 2006, the petitioner moved out after fighting with E-A-’s daughter and his daughter’s aunt, but moved back in with E-A- when he returned. [REDACTED] states that when the petitioner and E-A- announced their engagement, “[E-A-’s] children were outraged by the news, his sister told him he could not come and visit her at her house any more, and his mother moved out to live with his sister.” [REDACTED] also states that she attended the petitioner’s wedding.

In his May 30, 2010 statement, [REDACTED] states, in part, that he met the petitioner through his girlfriend, [REDACTED], in January 2006, and that even though E-A-’s family members stopped going over to their house after the relationship between him and the petitioner became known, the petitioner and E-A- “looked happy together.” [REDACTED] also states that he was not able to attend their wedding, but he and [REDACTED] visited them in July 2007, and they “had fun together.”

In his May 29, 2010 statement, [REDACTED] states, in part, that he met the petitioner in March 2007, at a dinner party hosted by the petitioner and E-A-, which he attended with [REDACTED]. [REDACTED] states that they became good friends and that they “spent time at each others’ houses, had dinner together.” [REDACTED] also states that he attended the petitioner’s wedding and that he moved in with the petitioner and E-A- in August 2007, for two months until he found his own place. As supporting documentation, [REDACTED] submits a traffic ticket that was mailed to him at the [REDACTED].

In her October 5, 2008 mental health evaluation [REDACTED] states, in part, that counsel referred the petitioner to her office, that she interviewed the petitioner on June 14 and September 12, 2008, and that her statement “was taken under an oath that the information would be accurate with the best of [the petitioner’s] knowledge.” In her evaluation, [REDACTED] reiterates the petitioner’s history as to how she met E-A-, their courtship, decision to marry, and wedding.

The director denied the petition, finding that the petitioner submitted insufficient evidence to show that she entered into the marriage in good faith.

On appeal, counsel states that the bank statement and credit collection letter submitted on appeal “along with the volumes of other evidence submitted with the I-360 clearly leaves no doubt of their bona fide marriage.”

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner, however, has submitted insufficient testimonial evidence to support a finding that she entered into her marriage in good faith. The petitioner's testimony and the testimony submitted on her behalf is general and vague and provides minimal information pertinent to the circumstances of the petitioner's courtship with her husband, their decision to get married, their wedding, and their shared experiences, apart from the alleged abuse.

For example, [REDACTED] states that she met the petitioner in March 2007 on a Russian website, that the petitioner invited her and her husband to have dinner with them, and the petitioner and E-A- seemed like a happy couple, that they cooked and set the table together, "[made] fun of each other jokingly," and they all had a wonderful time. Similarly, [REDACTED] states that he and his wife "had gone to dinner at [the petitioner's] home several times and they also came to [REDACTED] home on several occasions." In like manner [REDACTED] states he and [REDACTED] visited the petitioner and E-A- in July 2007, and they "had fun together." Similarly [REDACTED] states that he met the petitioner in March 2007, at a dinner party hosted by the petitioner and E-A-, that they became good friends, that they "spent time at each others' houses, had dinner together." Although these individuals attest to their friendship with the petitioner, their affidavits provide little details regarding the bona fides of the petitioner's relationship with E-A-.

The record also contains inconsistencies and deficiencies. For example, [REDACTED] states that after the petitioner and E-A- announced their engagement, E-A-'s "mother moved out to live with his sister." This conflicts with the petitioner's testimony that she lived only with E-A- and his children; she does not mention in any of her testimony that E-A-'s mother ever lived with them. Similarly, [REDACTED] states that he moved in with the petitioner and E-A- in August 2007 for two months until he found his own place. Again, this conflicts with the petitioner's testimony that she lived with E-A- and his children only; she does not mention in any of her testimony that [REDACTED] ever lived with them. In addition, in her October 5, 2008 mental health evaluation, although [REDACTED] states that she interviewed the petitioner on June 14 and September 12, 2008, she does not specify the length of her sessions with the petitioner, and, moreover, she primarily includes the text, verbatim, of the petitioner's January 2, 2010 statement, in recounting how the petitioner met E-A-, their courtship, decision to marry, and wedding. Thus, the nature of the interview conducted by [REDACTED] with the petitioner is unclear, which detracts from the probative value of her evaluation. The record contains no explanation for these inconsistencies and deficiencies.

In addition, as stated by the director in his decision, the copy of the petitioner's medical insurance card does not specify that the petitioner is the beneficiary of E-A-. Neither the petitioner nor counsel, however, addresses the director's observation on appeal. The joint bank account for the petitioner and E-A-, opened on October 11, 2007 and closed by the bank as an overdrawn account on October 29, 2007, contains minimal activity and no evidence that both the petitioner and E-A- used the account. Thus, the account does not establish the petitioner's good-faith entry into the marriage. The photographs confirm that the petitioner and E-A- were married and pictured together, but, in light of the inconsistencies and deficiencies discussed herein, these documents, along with the police report

showing the petitioner's address, do not establish the petitioner's good-faith entry into the marriage. In this case, we do not find the petitioner's evidence sufficient to meet the petitioner's burden of proof. The relevant evidence fails to demonstrate that the petitioner married her husband in good faith, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(ix). The petitioner also has not resolved the inconsistencies and deficiencies discussed herein that diminish the evidentiary value of her testimony and the testimony on her behalf. Accordingly, the AAO concurs with the findings of the director that the petitioner failed to establish that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not demonstrated that she is a person of good moral character and that she married her husband in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied and the appeal dismissed for the above stated reasons. 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.