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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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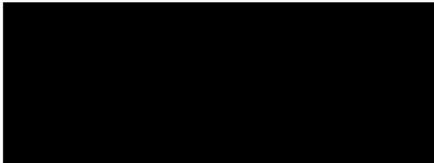
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: 

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 Vermont Service Center director (“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 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 her *United States citizen spouse*.

The director denied the petition for failure to establish the requisite qualifying relationship, eligibility based upon that relationship, and good moral character. On appeal, counsel submits a brief and the following additional documentation: a declaration from the petitioner, dated September 20, 2010; a letter dated September 10, 2010, from the California Department of Justice, addressed to the petitioner; a legacy Immigration and Naturalization Service memorandum; and a prior decision of the AAO.

Applicable 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 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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of the Philippines who entered the United States as a nonimmigrant visitor in 1999. On May 15, 2008, the petitioner married a person whom she claims is a U.S. citizen in California. The petitioner filed the instant Form I-360 self-petition on June 8, 2009. The director subsequently issued a request for additional evidence (RFE) that the petitioner was a person of good

moral character and that her husband subjected her or her children to battery or extreme cruelty during their marriage. The director also requested evidence of her husband's immigration status and inquired as to whether the petitioner had ever been placed into immigration proceedings. The petitioner submitted additional evidence. The director found the petitioner's response to the RFE insufficient and denied the petition because the petitioner failed to establish the requisite qualifying relationship and eligibility based upon that relationship, and good moral character.

On appeal, the petitioner's counsel asserts that the petition should be approved, as the director's decision conflicts with congressional intent because the director failed to take into consideration "any credible evidence" provided by the petitioner. Counsel states further that the petitioner has submitted her husband's name, date and place of birth, social security number, and the number of his California driver's license, which, along with the petitioner's declaration that she actually saw his naturalization certificate, should constitute sufficient evidence of her husband's U.S. citizenship. Counsel also states that the petitioner has submitted sufficient evidence, including a new clearance from the [REDACTED], to prove that she is a person of good moral character. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome all of the director's grounds for denial.

Qualifying Relationship and Eligibility for Immediate Relative Classification

The director determined that the petitioner had not established a qualifying relationship and eligibility based upon that relationship because she had not submitted sufficient evidence of her husband's immigration status. The director determined further that a search of U.S. Citizenship and Immigration Services (USCIS) electronic data systems also did not find any evidence to support the petitioner's claim that her husband is a U.S. citizen.

The AAO acknowledges the evidence submitted by the petitioner, including her declaration that she actually saw her husband's original naturalization certificate, to support her claim that her husband is a U.S. citizen. The AAO also acknowledges counsel's claim that the director failed to consider the petitioner's evidence, which is sufficient and credible. Counsel, however, conflates the evidentiary standard prescribed by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. The statute mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This provision prescribes an evidentiary standard. See 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *In re Cabrera*, 21 I&N Dec. 589 (BIA 1996); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). In his decision, the director addressed the relevant evidence and explained the insufficiency of that evidence to establish the petitioner's eligibility. We find no error in the director's assessment of the relevant evidence.

Counsel contends further that the director's decision is inconsistent with an unpublished decision of the AAO and a legacy Immigration and Naturalization Service memorandum indicating that the director's requirement of "corroborating documentation" could not be the basis for denying the petition because it was not supported by the statute or regulations. Counsel fails, however, to articulate how the relevant documentation establishes, under the applicable standard of a preponderance of the evidence, that the petitioner has the requisite qualifying relationship and eligibility based upon that relationship. Counsel asserts that the petitioner's husband's name, date and place of birth, social security number, California driver's license number, and the petitioner's declaration, should constitute sufficient evidence of his U.S. citizenship. The record, however, does not support counsel's claims.

In this matter, a review of the petitioner's husband's immigration record does not reveal that he is either a U.S. citizen or a U.S. lawful permanent resident. In view of the foregoing, the petitioner has failed to establish that she has a qualifying relationship as the spouse of a United States citizen, and that she is eligible for immigrant classification based upon that relationship.

As discussed above, the petitioner has failed to demonstrate that her husband is a U.S. citizen or a lawful permanent resident. Therefore, she is unable to establish that she has a qualifying relationship as the spouse of a U.S. citizen or lawful permanent resident and that she is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa), (cc) and 204(a)(1)(B)(ii)(II)(aa), (cc) of the Act.

Good Moral Character

The director determined that the petitioner had not established good moral character because she had not submitted evidence to cover the entire three-year period prior to the June 8, 2009 filing of the current petition. Specifically, the petitioner had submitted affidavits and police clearances dated August 21, 2000 and July 26, 2008, respectively.

On appeal, counsel states that the petitioner has submitted sufficient evidence, including a new clearance from the California Department of Justice, to prove that she is a person of 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, a review of the record finds that during the three-year period immediately preceding the filing of her petition on June 8, 2009, the petitioner resided in [REDACTED]. The record contains the following evidence of the petitioner's good moral character: affidavits attesting to the petitioner's good moral character; and three clearances from the [REDACTED], dated August 21, 2000, July 26, 2008, and September 10, 2010, respectively, finding no criminal history for the petitioner.

The foregoing evidence finds that the petitioner has submitted the required evidence 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.

The petition may not be approved, however, because the petitioner has failed to establish the requisite qualifying relationship and eligibility based upon that relationship.

Conclusion

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. Here, that burden has not been met. The petitioner has failed to establish the requisite qualifying relationship and eligibility based upon that relationship. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.