

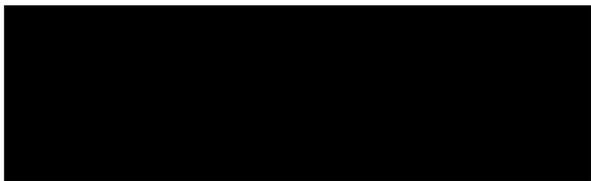
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



BQ

DATE: SEP 30 2011

OFFICE: VERMONT SERVICE CENTER

FILE:

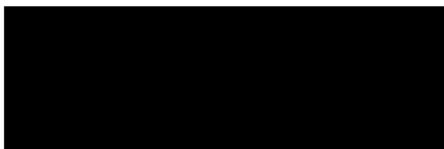


IN RE:



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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

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 failed to submit requisite evidence of her good moral character. The appellate record before the AAO consists of an argument made on the Form I-290B, Notice of Appeal, and additional evidence.

*Applicable Law*

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.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 evidentiary standard and 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.

\* \* \*

- (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.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Mexico, married [REDACTED]<sup>1</sup> a citizen of the United States, on [REDACTED] 2008. She filed the instant Form I-360 on April 5, 2010. In his May 27, 2010 RFE, the director requested, *inter alia*, that the petitioner submit proof of her good moral character, which was to include an affidavit from the petitioner accompanied by local police clearances or state-issued criminal background checks from each place the petitioner had lived for at least six months during the three-year period immediately preceding the filing of the self-petition, as required by 8 C.F.R. § 204.2(c)(2)(v). The director specifically informed the petitioner that if such local police clearances or state-issued criminal background checks were searched by name only (as opposed to being searched by fingerprints), she was required to supply the law enforcement agency conducting the search with any aliases she had ever used.

The petitioner responded to the RFE on August 23, 2010 and submitted, in pertinent part, a criminal background check conducted by the Phoenix, Arizona Police Department (PPD). That document stated that the PPD had searched its files for the name [REDACTED] and that no criminal records had been found.

However, the record indicates that the petitioner has utilized at least two names in addition to [REDACTED] (1) [REDACTED] and (2) [REDACTED]. As the petitioner did not submit background checks using all aliases, as specifically instructed by the director, he denied the petition on October 14, 2010. Although counsel filed a timely appeal on November 16, 2010, she did not submit the requisite criminal background checks of the names [REDACTED] and [REDACTED]. Instead, counsel stated that she and the petitioner “do not know why” the petition was denied, and the petitioner stated that she and counsel were “confused.” Both counsel and the petitioner also made brief statements regarding the petitioner’s legal name.

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

On June 2, 2011, we issued a request for additional evidence (RFE), and explained that the petitioner's legal name was not relevant to the issue at hand. We stated that regardless of her legal name, the record contains information that the petitioner has utilized the aliases "[REDACTED]" and "[REDACTED]" and that, as such, those names had to be searched through a criminal records database. Citing to the regulation at 8 C.F.R. § 204.2(c)(2)(v), we requested that the petitioner submit a state-issued criminal background check or local police clearance from each place she resided for at least six months during the three years preceding the filing of this petition (from April 2007 to April 2010). We explained that if the background check or clearance was based on a search of her name, but not her fingerprints, she was to provide the issuing authority with each of the following names: (1) [REDACTED] (2) [REDACTED] and (3) [REDACTED]

*Analysis*

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has overcome the director's ground for denying this petition.

In response to our RFE counsel submitted, in pertinent part, the results of a criminal background check conducted by the PPD on June 22, 2011. This document states that the petitioner provided the PPD with both her legal name as well as each of the aliases she has used, and it indicates that no criminal history is associated with any of the three names. In response to our RFE, the petitioner also submitted a July 9, 2011 affidavit in which she attests to her good moral character and explains the difficulties she encountered in obtaining the correct police clearance. The petitioner, therefore, has demonstrated that she is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

The petitioner has established that she is a person of good moral character, and we concur with the director's determination that she meets all other statutory requirements. The petitioner, therefore, has established that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and this petition will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden and the appeal will be sustained.

**ORDER:** The director's October 14, 2010 decision is withdrawn. The appeal is sustained, and the petition is approved.