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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**

B9

DATE: APR 09 2012 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:

SELF-REPRESENTED

**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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director (the director) denied the immigrant visa petition and affirmed his decision in response to a subsequent motion to reopen and reconsider. 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 on the basis of his determination that the petitioner had failed to establish: (1) that her husband subjected her to battery or extreme cruelty during their marriage; (2) that she is a person of good moral character; and (3) that she married her husband in good faith. On appeal, the petitioner submits a brief 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, 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, 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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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.

\* \* \*

- (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 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.

\* \* \*

- (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.
- \* \* \*
- (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.

As noted, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, that “[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.” Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, the following:

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was

\* \* \*

(6) one who has given false testimony for the purpose of obtaining any benefits under the Act. . . .

\* \* \*

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Jamaica who entered the United States on January 6, 1991. She married J-T,<sup>1</sup> a citizen of the United States, on September 6, 2005. The petitioner filed the instant Form I-360 on April 21, 2009. The director issued a subsequent notice of intent to deny (NOID) the petition, and the petitioner filed a timely response. After considering the evidence of record, including the petitioner’s response to the NOID, the director denied the petition on October 1, 2010.

The AAO reviews these matters 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 failed to overcome the director’s ground for denying this petition.

#### *Battery or Extreme Cruelty*

In her August 3, 2010 letter submitted below the petitioner claimed that J-T- was physically and sexually abusive; was unfaithful; threatened her immigration status; and called her names. However, she did not describe any specific incidents of abuse in probative detail. Although she repeats her assertion that J-T- was abusive on appeal, she again fails to specifically describe any incidents of abuse.

The record also contains two letters from the petitioner’s sister, who alleged that J-T- was both jealous and unfaithful. She also briefly discussed an incident during which J-T- physically assaulted an old family friend and threatened the petitioner’s immigration status. However, infidelity is not comparable to any of the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as

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

examples of extreme cruelty, and her allegations regarding the incident of physical abuse and threats to the petitioner's immigration status lack the detail necessary to establish that they constituted battery or extreme cruelty.

Considered in the aggregate, the relevant evidence fails to establish that J-T- subjected the petitioner to battery or extreme cruelty during their marriage as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Good Moral Character*

On May 28, 2000, the petitioner pleaded guilty to violating section 221.10 of the New York Penal Law<sup>2</sup> which states the following:

Criminal possession of marihuana in the fifth degree.

A person is guilty of criminal possession of marihuana in the fifth degree when he knowingly and unlawfully possesses:

1. marihuana in a public place, as defined in section 240.00 of this chapter, and such marihuana is burning or open to public view; or
2. one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams.

Criminal possession of marihuana in the fifth degree is a class B misdemeanor.

The petitioner was granted a conditional discharge for one year, ordered to perform three days of community service, and her driver's license was suspended for six months.<sup>3</sup>

The petitioner filed Forms I-485, Application to Register Permanent Residence or Adjust Status, on April 4, 2006 and July 20, 2007.<sup>4</sup> When asked "Have you ever, in or outside the United States . . . been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?" the petitioner answered in the negative on both applications. A U.S. Citizenship and Immigration Services (USCIS) officer asked the petitioner this same question during a January 9, 2008, interview held in connection with to the second Form I-485 and the petitioner answered that she had not.

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<sup>2</sup> See Criminal Court of the City of New York, County of New York, Certificate of Disposition Number 111343, Docket Number 2000NY052484 (May 28, 2000).

<sup>3</sup> See *id.*

<sup>4</sup> See Form I-485, MSC 06 186 21181, denied August 10, 2006; Form I-485, MSC 07 300 12469, denied March 1, 2008.

In her testimony submitted below and on appeal, the petitioner concedes she told the USCIS officer she had never been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations. The beneficiary, therefore, gave false testimony for the purpose of obtaining the immigration benefit of permanent residence in the United States. Accordingly, section 101(f)(6) of the Act precludes a finding of her good moral character. See *Opere v. INS*, 267 F.3d 10 (1<sup>st</sup> Cir. 2001) (false testimony at adjustment interview); *Bernal v. INS*, 154 F.3d 1020 (9<sup>th</sup> Cir. 1998) (false statements at naturalization interview).

Although a voluntary and timely retraction of false statements will not bar a finding of good moral character, the petitioner's delayed admission of her criminal history was neither voluntary nor timely. See *Matter of M-*, 9 I&N Dec. 118 (BIA 1960). The record shows that the petitioner admitted to having given false testimony long after receiving the director of the USCIS New York District Office's March 11, 2008 decision denying her second Form I-485.

The record does not establish any extenuating circumstances or rehabilitation that would warrant a finding of the petitioner's good moral character despite her false testimony. Although she asserts her innocence of the underlying crime for which she was convicted, we cannot go behind the conviction. She claimed in her August 2, 2010 response to the director's NOID that the person preparing her first Form I-485 did not ask her if she had been arrested and asserted that she thought the conviction had been "wiped out" and that "everything was back to normal." The petitioner addresses the underlying crime again on appeal, but she does not discuss the issue at hand, which is her false testimony about it to the USCIS officer in 2008. Although the record contains brief letters from several friends and her pastor regarding the petitioner's allegedly good moral character, none of them address her provision of false testimony.

The petitioner has given false testimony for the purpose of obtaining permanent residency in the United States. Pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), she cannot be deemed 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 relevant testimonial evidence does not establish that the petitioner married J-T- in good faith. In her letters submitted below the petitioner stated that she met J-T- at a party and liked him from the beginning, and that he moved into her apartment shortly after they began dating. On appeal she claims she married him for love and companionship. However, she has not described their courtship, wedding ceremony, and shared residence and experiences, apart from the alleged abuse, in probative detail. [REDACTED] did not provide that information either, and only stated in very generalized terms, that the petitioner married J-T- in good faith.

The relevant documentary evidence does not establish that the petitioner married J-T- in good faith, either. The petitioner stated on the Form I-360 that she and J-T- ceased living together in February 2007. Because most of the utility bills were issued long after that date, they do not establish that she married J-T- in good faith. The wedding, anniversary, and Christmas cards addressed to J-T-

and the petitioner speak to the intentions of the individuals who sent them rather than to those of the petitioner, and the pictures of the petitioner and J-T- together establish only that they were together on several occasions. Although the petitioner submitted evidence of a joint banking account, she did not establish that both individuals had access to, and used, the account. While relevant, the remaining utility bills and the tax returns do not, alone, establish the petitioner's good faith entry into the marriage.

Considered in the aggregate, the relevant evidence does not establish that the petitioner married J-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The petitioner has failed to overcome the director's grounds for denial and has not established that J-T- subjected her to battery or extreme cruelty during their marriage; that she is a person of good moral character; or that she married J-T- in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.

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). She has not met her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.