

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: **DEC 08 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)

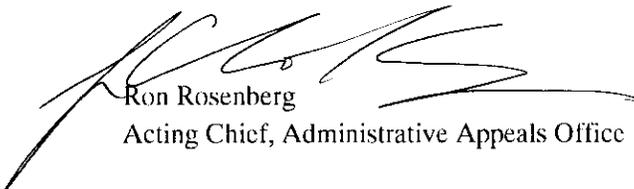
ON BEHALF OF PETITIONER:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Acting 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 pursuant to 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 his U.S. citizen spouse.

The director denied the petition on the basis of his determination that the petitioner failed to establish that he is a person of good moral character and that he married his wife in good faith.

On appeal, counsel 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(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.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

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 –

\* \* \*

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraph[] (A) . . . of section 212(a)(2). . . .

\* \* \*

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. . . .

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:

(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.

#### *Pertinent Facts and Procedural History*

The petitioner, a citizen of Peru, married ██████████ a citizen of the United States, ██████████ in Miami, Florida.<sup>2</sup> The petitioner filed the instant Form I-360 on October 9, 2008. The director subsequently issued a request for additional evidence (RFE) of, *inter alia*, the petitioner's good moral character and good faith entry into marriage with ██████████. The petitioner timely responded with additional evidence which the director found insufficient to establish his good moral character and good faith marriage. The director denied the petition and the petitioner timely appealed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

#### *Good Moral Character*

The petitioner failed to establish that he is a person of good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit. 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance from each place the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.*

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

<sup>2</sup> The petitioner indicated in his RFE response that he is divorced from ██████████. However, the petitioner did not submit a divorce certificate nor did he specify the date of his final order of divorce.

The record documents the petitioner's criminal history as follows:

- 1) On July 3, 1989, the petitioner was arrested and charged with shoplifting in violation of section 812.014 of the Florida Statutes. The disposition of the case is unknown.
- 2) [REDACTED] was arrested by the Osceola County, Florida Sheriff's office and charged with driving under the influence (DUI). The disposition of the case is unknown.
- 3) On March 31, 1991, the petitioner was arrested and charged with driving under the influence of alcohol or drugs in violation of section 316.193 of the Florida Statutes. On June 6, 1991, the petitioner pled guilty and he was fined \$1,082.50 due by August 8, 1991.

As referenced in section 101(f)(3) of the Act regarding those who may not be found to have good moral character, section 212(a)(2)(A) of the Act states, in pertinent part:

(i) In General

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . .

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if –

. . . .  
(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record shows that the applicant was arrested in Miami, Florida [REDACTED] and was charged with petit theft under section 812.014 but it is unclear if he was convicted of this charge. On appeal, the petitioner submits a letter from the Eleventh Judicial Circuit of Florida for Miami-Dade County stating that pursuant to Florida Rules of the Court, records of misdemeanor cases are retained for five years and felony cases (not adjudicated guilty) are retained for ten years.

The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that “[p]rimary evidence of the self-petitioner’s good moral character is the self-petitioner’s affidavit.” The petitioner submitted one affidavit below but did not explain the circumstances surrounding any of his arrests. In his affidavit, the petitioner did not attest to his good moral character nor did he address either of his arrests or his conviction. A complete

record for the petitioner's 1989 shoplifting charge is not available and the petitioner does not explain the circumstances surrounding it. He submits an arrest record and a letter stating that a court disposition of the case is unavailable due to how long ago the case occurred. On appeal, counsel argues that it is unlikely that the petitioner was convicted because the disposition shows the case as "closed" and not guilty. She further argues that even if he was arrested and convicted in 1989 for shoplifting, the arrest report indicates that the petitioner could only have been charged with a misdemeanor in the second degree. She argues that the petitioner's theft offense would therefore fall within the petty offense exception from classification as a crime involving moral turpitude at section 212(a)(2)(A)(ii)(II) of the Act because the maximum term of imprisonment for a misdemeanor in the second degree is 60 days.<sup>3</sup>

The arrest report does not specify the sub-section of the statute under which the petitioner was charged and possibly convicted. Therefore it cannot be concluded whether or not this offense falls within the petty offense exception. The petitioner also failed to disclose his 1990 arrest for DUI, did not submit documentation showing the outcome of this charge, and failed to provide testimony or evidence that he paid his fine for his 1991 DUI conviction. In his affidavit submitted on appeal, the petitioner explains only that he did not mention his 1989 arrest for shoplifting because at the time he filed his self-petition, he could not recall exactly how many times he had been arrested. However, he fails to provide any testimony explaining his actions or asserting his good moral character. Consequently, the petitioner failed to submit the primary evidence of his good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v) and his criminal record adversely reflects upon his moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner has thus failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

#### *Entry into the Marriage in Good Faith*

The petitioner failed to establish that he married [REDACTED] in good faith. The relevant evidence in the record contains the following: the petitioner's affidavit; a copy of the Form I-130 Petition for Alien Relative filed by [REDACTED] on the petitioner's behalf; copies of the petitioner's and [REDACTED] drivers licenses showing their shared address; a copy of the petitioner's [REDACTED] card; a Chase bank statement addressed to the petitioner; copies of various travel documents; copies of joint documents pertaining to their car; copies of two Washington Mutual bank statements; a copy of a voided check; photographs of the petitioner and [REDACTED] wedding and several unidentified occasions; and four letters from family and friends. The director properly reviewed the record and addressed its deficiencies. The Chase bank statement is addressed to the petitioner and does not demonstrate an intent to commingle finances or indicate that the petitioner and [REDACTED] used it for shared financial interests. Likewise, the Washington Mutual bank statements, although the account was jointly held, show minimal activity and do not demonstrate that the account was used by both parties. The photographs show that the petitioner and [REDACTED] were photographed together on several occasions but are insufficient to establish that the petitioner married [REDACTED] in good faith. The remaining documents also fail to establish the petitioner's good faith marital intentions.

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<sup>3</sup> See F.S.A. § 775.082 (West 1989).

In his affidavit, the petitioner stated that he met [REDACTED] through a friend in Miami, Florida where he was visiting from Louisiana. He stated that they met for drinks the night before he had to leave, and spent the evening getting to know each other. He stated she drove him to the airport the next day and they continued to speak regularly on the phone. He further recounted that she visited him once in August and he visited her once in October. During his October trip to Miami, he stated that they got married "in the spur of the moment." He further explained that he had to return to his residence in Louisiana and so they kept their marriage a secret until he relocated to Miami in February of 2008. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the abuse.

The letters of the petitioner's friends and family submitted on appeal do not contain probative information regarding the petitioner's intentions in marrying [REDACTED] states that the petitioner told her about [REDACTED] and that she helped the petitioner buy a ring for [REDACTED] states that he could see that the petitioner was happy during his marriage to [REDACTED] the petitioner's sister, describes spending time with the petitioner and [REDACTED] as a married couple. [REDACTED] the petitioner's former minister, describes meeting [REDACTED] with the petitioner once and that they seemed happy. None of the support letters describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's affidavit and statement on appeal are brief and do not provide sufficient detail to adequately address his good faith intent upon marrying [REDACTED] The letters from friends also failed to provide relevant, substantive information and did not show that the authors had any personal knowledge of the relationship. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish his 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 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.