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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: **FEB 28 2012** Office: VERMONT SERVICE CENTER

FILE:



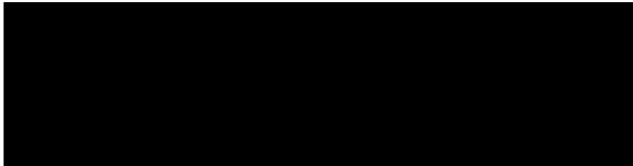
RE:

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 determined that the petitioner had not established that she is a person of good moral character and that she had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a statement and additional documents in support of the appeal.

#### *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 based on his or her relationship to the abusive spouse, 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 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 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 under section 204(a)(1)(A)(iii) of the Act are set forth 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.

### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico, who claims to have entered the United States in or about July 2000. On [REDACTED] she claimed abusive United States citizen (USC) spouse. On February 3, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner stated on the Form I-360 that she had resided with her USC spouse from January 2007 until October 2009. Based on the insufficient information in the record, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she is a person of good moral character and that she had entered into the marriage in good faith. On appeal, counsel for the petitioner asserts that the petitioner had previously presented two local police clearances and now submits a third local police clearance. Counsel contends that additional evidence shows the couple continues to have an ongoing relationship even though they do not share property or bank accounts and provides the petitioner's statement and a utility bill on appeal.

### *Good Moral Character*

Based on the lack of information in the record, the director determined that the petitioner had not established that she is a person of good moral character as she had not provided a timely local police clearance. The petitioner provides a City of San Antonio police clearance record on appeal. The record on appeal includes sufficient evidence to overcome the director's decision on this issue.

### *Good Faith Entry Into Marriage*

In the petitioner's initial December 2, 2009 statement she indicated that she met her husband at a club in September 2002. She stated that the couple dated for about a year until she learned that he was living with a woman. The petitioner stated that [REDACTED] moved to Michigan at some point

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

but when he returned to Texas they began dating again. The petitioner noted that years passed and then the couple married. In an October 1, 2010 personal statement, the petitioner declared that she married [REDACTED] because she loved him and wanted a life and family with him and that he treated her son with love. The petitioner indicated that they did not have bills in their name because they lived with her parents as they were trying to save money to buy a house. The petitioner stated generally that prior to the marriage, she spent most of her time with family and friends and that [REDACTED] attended her son's first communion in 2007, attended school events and games with her, and that they took a trip to Michigan to meet his parents. The petitioner reported that she and [REDACTED] attended family events together and visited places and did normal things a couple would do like go out with friends to clubs, parties, and games.

The petitioner also provided affidavits from friends and family who reported on [REDACTED] infidelity and the unhappiness he caused the petitioner. As the director noted some affiants stated generally that the petitioner met [REDACTED] in 2002, the couple dated and broke up, and then got back together again to marry. The petitioner provided translated text of electronic mail exchanges between the petitioner and [REDACTED] and the petitioner and others regarding [REDACTED] infidelity and threats. The record also included a Sprint telephone bill sent to [REDACTED] at the petitioner's address.

The director determined that the record was insufficient to establish that the petitioner had entered into the marriage in good faith and noted that the petitioner's statements were not supported by sufficient documentary evidence. The director determined that the statements of the petitioner's friends and family failed to include sufficient details to evaluate the credibility of the statements. The director determined that the petitioner had not established that she had married [REDACTED] in good faith.

On appeal, counsel asserts that the petitioner has established that she entered into the marriage in good faith as she allowed her son to develop a relationship with [REDACTED] and that this action demonstrates that [REDACTED] truly loved the petitioner. Counsel submits additional text messages and electronic mail to show that [REDACTED] continued to profess his love for the petitioner and her son. In the petitioner's statement on appeal, she reiterates that [REDACTED] loved her, went to her son's activities, and was always around her family. She states that she loved [REDACTED] and that he was a very important man in her life and the life of her family. The record on appeal includes another Sprint telephone bill sent to [REDACTED] at the petitioner's address.

To the extent the director indicated that documentary evidence was required to support the petitioner's statements, that portion of his decision is hereby withdrawn. The regulations do not require a self-petitioner to submit primary, corroborative evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Upon review of the petitioner's statements, however, she has not provided detailed probative testimony regarding her interactions with [REDACTED] prior to or subsequent to the marriage sufficient to assist in ascertaining her actual intent when entering into the marriage. Although the petitioner provides a general statement regarding activities the couple engaged in at various times during the eight years she knew [REDACTED], she does not provide probative testimony of her courtship leading up to the wedding, the wedding ceremony, the shared residence, or shared experiences except as it relates to the claim of abuse.

Similarly, the statements of her parents and sister and her friends contain no probative information regarding the petitioner's intentions in marrying her spouse. In this matter, none of the declarants describe particular or specific incidents or social occasions which include their personal observations of the petitioner's relationship with [REDACTED] in probative detail. The photographs provided and the Sprint telephone bills, while showing the couple were together on several different occasions, do not demonstrate the petitioner's intent when entering into the marriage.

The petitioner does not provide evidence on appeal sufficient to overcome the director's decision on the issue of good faith intent when entering into the marriage. In the petitioner's personal statement on appeal, she stresses [REDACTED] continued love for her; however, his intent in entering into the marriage is not the issue. The petitioner has not provided a probative account of her courtship, wedding ceremony, shared residence, and experiences with [REDACTED] sufficient to establish her intent when entering into the marriage. Thus, the record is insufficient to establish she entered into the marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The petition will be denied and the appeal dismissed for the above stated reason. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.