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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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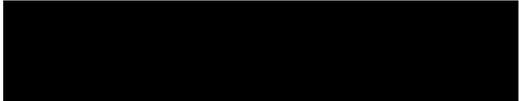
**U.S. Citizenship  
and Immigration  
Services**

B9



Date: **MAR 08 2012** 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 Vermont Service Center director denied the immigrant petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner is a person of good moral character. On appeal, counsel submitted police clearances for the petitioner. The AAO subsequently issued a Request for Evidence (RFE) to the petitioner for an additional police clearance. The petitioner has submitted the requested evidence.

*Relevant 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).

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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. . . . 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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico. She stated that she entered the United States without inspection in 1996. On April 3, 2001, the petitioner married M-A-<sup>1</sup>, a United States citizen, in Brownsville, Texas. On October 6, 2009, the petitioner filed the instant Form I-360. The director subsequently issued RFEs of the petitioner's good moral character and good faith marriage. Current counsel responded to the second RFE with additional evidence, which the director found insufficient to establish the petitioner's good moral character. The director denied the petition and counsel timely appealed.

Upon a full review of the record as supplemented on appeal, the petitioner has overcome the director's ground for denial and the appeal will be sustained for the following reasons.

*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, during the period beginning in October 2006 and ending in October 2009).

The petitioner did not submit any local police clearances or state-issued criminal background checks with the Form I-360 or in response to the first RFE. In the second RFE, the director reiterated his request for police clearances and notified the petitioner that if a clearance is researched by name only, she must supply the law enforcement agency with all aliases she has used, including maiden and/or married name(s). The record reflects the petitioner's name on her birth certificate and passport as "Irma Buenrostro Rivera." She listed her name on her Form I-360 as "Irma Ayala." However, in response to the second RFE, counsel submitted a local police clearance from the Brownsville, Texas Police Department searched only under the name "Irma Buenrostro." The police clearance states that there is no criminal record on file under this name.

In denying the petition, the director determined that since the petitioner had not provided a clearance for all of her aliases of record, she failed to establish that she is a person of good moral character. On appeal, counsel initially submitted two additional local police clearances from the Brownsville Police Department searched under the names "██████████" and "██████████" respectively. Both police clearances reflect no criminal records on file under the respective names. On January 26, 2012, the AAO requested the petitioner to submit an additional police clearance from the Brownsville, Texas Police Department searched under the petitioner's

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

maiden name, [REDACTED] as stated on her birth certificate and passport. In response to the RFE, the petitioner submitted a police clearance from the Brownsville Police Department searched under her maiden name, which states that there is no criminal record on file under this name. The petitioner has now submitted police clearances for all of her aliases, including her maiden and married names. With this additional evidence, the petitioner has established her good moral character under section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has overcome the director's ground for denial and she is consequently eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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). Here, that burden has now been met. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.