

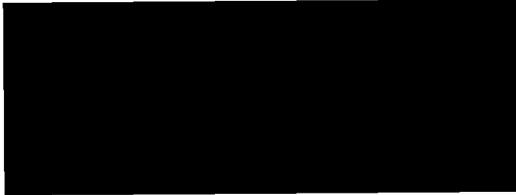
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 26 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 or 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 brief, 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 Morocco, who entered the United States on April 7, 2007 as a B-2 visitor with temporary authorization to remain in the United States until October 6, 2007. On January 30, 2009, she married K-L-¹ the claimed abusive United States citizen (USC) spouse. On September 22, 2009, 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 2009 until May 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 or that she had entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that the petitioner had submitted a local police clearance from the New York City Police Department and that United States Citizenship and Immigration Services (USCIS) had accepted such clearances in the past as evidenced by approvals of other self-petitions. Counsel submits approval notices for other self-petitioner's in support of his assertion. Counsel contends that the petitioner's personal declaration and that of another USC is sufficient to establish that the petitioner entered into the marriage in good faith, especially as the petitioner has established that she was subjected to battery or extreme cruelty. Counsel also submits the petitioner's additional personal statement. Counsel avers that as the director did not issue a Notice of Intent to Deny (NOID) the petition prior to entering his decision, the decision is void and warrants reversal upon appeal.

Preliminarily, the regulatory requirement to issue a NOID prior to issuing a decision does not exist for petitions filed on or after June 18, 2007. As this petition was filed on September 22, 2009, the director was not required to issue a NOID prior to rendering his decision.

Good Moral Character

¹ Name withheld to protect the individual's identity.

The director in this matter specifically noted that the petitioner had not provided evidence of good moral character for the three years preceding the filing of the Form I-360 petition. The director accepted the New York City Police Department Good Conduct Certificate as evidence that the petitioner had not committed any crimes in the New York area for the two years she lived in the New York area prior to filing the Form I-360. In the RFE, the director specifically requested evidence of the petitioner's good moral character for the time period from September 2006 (three years prior to filing the Form I-360) until April 2007, the month and year she entered the United States. The regulation at 8 C.F.R. § 204.2(c)(2)(v), states in pertinent part: "Self-petitioners who lived outside the United States during this time [referring to the three-year period immediately preceding the filing of the petition] 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." The petitioner acknowledges that she lived all her life in Morocco prior to entering the United States; however, she did not provide a background check or report from the local Moroccan officials regarding her criminal history in Morocco. The petitioner notes that she was able to obtain a nonimmigrant visa at the U.S. Embassy because she did not have prior criminal infractions; however, the record does not include the petitioner's application for a U.S. visa and does not include an underlying report of her criminal history in Morocco, if any. The petitioner does not provide further information in her personal statement regarding her good moral character prior to entering the United States, except to state she did not have prior criminal infractions. The petitioner does not provide statements from others who knew her in Morocco regarding her criminal history, if any. The record on appeal does not include sufficient evidence to overcome the director's determination that the petitioner did not satisfy the requirement of establishing good moral character from each locality the petitioner lived in for more than six months for the three years prior to filing the Form I-360 petition. Counsel's reference to previously approved Form I-360 petitions filed by others has no probative value. In this matter, the petitioner has not established that she is a person of good moral character as required by Section 204(a)(1)(A)(iii)(II) of the Act.

Good Faith Entry Into Marriage

In the petitioner's initial August 28, 2009 personal statement she indicated that she met her claimed abusive USC spouse in September of 2008 when she boarded his taxi. The petitioner noted that she and K-L- struck up a conversation and exchanged contact information and that a friendship ensued. The petitioner noted that they constantly went on dates to get to know one another and they spent a great deal of time together and after a brief courtship they married. She noted that a few family members and friends attended the wedding. As the director observed, the petitioner did not provide further detail regarding the couple's meeting, courtship, or shared experiences in response to the RFE. Similarly, the statement submitted by [REDACTED] did not provide probative information regarding personal observations of the couple prior to or during their marriage.

The director noted that the lack of documentation was not disqualifying but found that the petitioner had not provided probative details regarding her intention when entering into the marriage.

On appeal, the petitioner states that she is unable to provide any documentation of her good faith intent when entering into the marriage as she met and married her husband within five months of the two meeting each other. The petitioner indicates she met K-L- by chance in his cab and that finding out that they were both from Morocco began their romance. The petitioner avers that their courtship was short because she was interested only in a monogamous union and would not engage in pre-marital sex. Counsel asserts that once abuse is established the issue of a good faith marriage must be viewed with flexibility and that it is the intent of the parties at the time of marriage that governs good faith, not a paper trail.

The director specifically observed that the lack of documentary evidence is not disqualifying when establishing the petitioner's intent when entering into the marriage. The director found however that the petitioner had not provided detailed probative testimony regarding her interactions with K-L- prior to or subsequent to the marriage sufficient to assist in ascertaining her actual intent when entering into the marriage. We concur with the director's decision. The petitioner 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 statement of [REDACTED] is general and does not contain probative information regarding her personal observations of particular or specific incidents or social occasions with the couple and their interactions with each other. As the director found, the photographs provided show the couple were together on one or two occasions, but do not demonstrate the petitioner's intent when entering into the marriage.

The petitioner does not provide additional probative 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 fails to provide a probative account of her courtship, wedding ceremony, shared residence, and experiences with K-L- sufficient to establish her intent when entering into the marriage. Counsel's implication that once a petitioner has established abuse, the issue of good faith is less relevant is unpersuasive. The petitioner must establish each element, including her intent when entering into the marriage. In this matter, the record does not include sufficient probative evidence to ascertain that she entered into the marriage with K-L- 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 reasons. 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.