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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  
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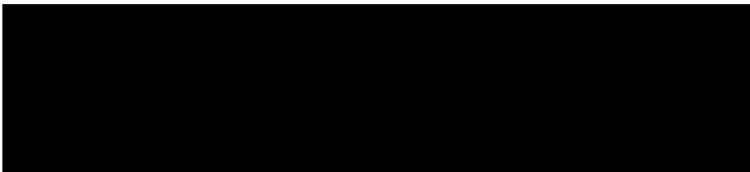
DATE: **MAY 09 2012** Office: VERMONT SERVICE CENTER

File

IN RE: Petitione

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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,

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Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. 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 pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

The director determined that the petitioner had not established she had jointly resided with the United States lawful permanent resident spouse, she is a person of good moral character, or that she had entered into the marriage in good faith. The director also found that the petitioner was in immigration proceedings when she married the claimed abusive lawful permanent resident and had not established that she had entered into the marriage in good faith with clear and convincing evidence. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a supplemental brief. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

#### *Applicable Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident 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 203(a)(2)(A) 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)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

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(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)(B)(ii) 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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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.

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(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.

Section 204(g) of the Act, 8 U.S.C. § 1154(g), states:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act, 8 U.S.C. § 1255(e), provides:

*Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings* –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

*Evidence to establish eligibility for the bona fide marriage exemption.* Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

#### *Facts and Procedural History*

The petitioner is a citizen and native of El Salvador who attempted to enter the United States on or about August 10, 2000. United States Citizenship and Immigration Services (USCIS) records show that the applicant was detained 2000 as she attempted to enter the United States using an alien resident card of another person. Upon questioning, the petitioner acknowledged her true name and identity and she expressed a fear of persecution if she was returned to El Salvador. Accordingly, the petitioner was given a credible fear interview on August 18, 2000. She remained in detention until September 5, 2000 at which time she was issued a Notice to Appear (NTA) and placed in removal proceedings and released on bond. On October 3, 2000 she married C-P,<sup>1</sup> the claimed abusive lawful permanent resident. On November 27, 2000, C-P- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner's removal proceedings were administratively closed on November 19, 2001 as she had filed for temporary protective status (TPS) on May 7, 2001. On March 16, 2002, the petitioner was served with a second NTA.

On January 27, 2005, C-P-'s Form I-130, filed on the petitioner's behalf, was approved. The petitioner subsequently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on January 16, 2006, which was denied on October 18, 2007. The petitioner's application for TPS was denied on July 19, 2009. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 15, 2010. As the initial record was insufficient to

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

establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established: she had jointly resided with the United States lawful permanent resident; she is a person of good moral character; or that she had entered into the marriage in good faith. The director also noted that the petitioner had not established that she had entered into the marriage in good faith with clear and convincing evidence, the required standard when a petitioner enters into marriage while in removal proceedings. As noted above, counsel for the petitioner submits a brief.

Counsel asserts that the photographs submitted, the joint tax returns filed by the couple for the years 2001 through 2005, the statements of [REDACTED], and the approval of the Form I-130 filed by C-P- corroborate the joint residence and the petitioner's good faith intent when entering into the marriage. Counsel contends that the petitioner is not subject to section 204(g) of the Act as she was not placed in removal proceedings until March 16, 2002, a date subsequent to her marriage to C-P-. Counsel avers that the petitioner had to flee from C-P- in 2006 and thus was unable to gather other documentation in support of her claim. Counsel references the petitioner's previously submitted criminal history information from the State of California and notes that no criminal history was found and contends she has established that she is a person of good moral character.

#### *Joint Residence*

The petitioner states on the Form I-360 that she resided with her spouse from October 2000 until July 2006. In the petitioner's personal statement appended to the petition, she stated that the couple moved from California to Texas and that after C-P- hit her she returned to California to live with relatives. The remainder of her personal statement recounts her claims of abuse. The statements of [REDACTED] state generally that they knew the petitioner and C-P- but provide no information regarding the couple's claimed joint residence. Counsel claims on appeal that the petitioner moved from California to Texas in 2004. The record includes copies of certified Internal Revenue Service (IRS) Forms filed by the couple for the years 2001 through 2005 but the copies do not include the couple's address.

The petitioner in this matter has not identified the claimed joint residence(s) and she has failed to describe when she allegedly lived with C-P-. She does not provide any information regarding the shared residence including the couple's shared routines within the residence. The statements submitted on her behalf also fail to provide any probative information regarding the petitioner's claimed joint residence with C-P-. Although Mr. Flores indicated he was the petitioner's neighbor, he does not describe the dwelling or location of the dwelling. He does not indicate if the claimed joint residence is in California or Texas. The record does not include sufficient probative testimony to establish the couple's claimed joint residence. The director in this matter set out the deficiencies in the documentary evidence submitted and the AAO concurs that the documentary evidence is insufficient to establish that the petitioner jointly resided with C-P-. Neither the tax returns nor the photographs submitted establish the couple jointly resided together. The record does not indicate whether the director reviewed the information submitted in support of the Form I-130; however, the

complete record before the AAO does not include sufficient evidence establishing the couple jointly resided together.

Upon review of the petitioner's statements, the statements submitted on her behalf, and the documentary evidence submitted, the petitioner has not provided probative testimony or evidence establishing that she jointly resided with C-P-.

#### *Good Moral Character*

As the director observed the petitioner's Federal Bureau of Investigation (FBI) fingerprint record shows that the petitioner was charged with falsely making, forging, counterfeiting, mutilating or altering a passport or instrument on August 10, 2000. It appears this charge relates to the petitioner's attempt to enter the United States using the alien resident card of another individual; however, the petitioner has not provided any statement or other information regarding this charge. Rather, she has re-submitted the criminal history information from the State of California. The statements of [REDACTED] state generally that they knew the petitioner but do not provide testimony regarding when they met the petitioner or the circumstances of their relationship. The declarants do not provide probative testimony that demonstrates actual knowledge of the petitioner's character.

The record on appeal does not include evidence to overcome the director's determination that the petitioner did not satisfy the requirement of establishing good moral character. In this matter, the petitioner has not established that she is a person of good moral character as required by section 204(a)(1)(B)(ii) of the Act.

#### *Good Faith Entry into Marriage*

The petitioner indicated generally that she knew C-P- prior to coming to the United States in 2000, but she does not describe how the couple met or provide other information that would offer insight into her intent when entering into the marriage. As the director observed, the petitioner married C-P- on October 3, 2000, after she was placed in removal proceedings on or about August 10, 2000. The petitioner's statement does not provide any probative detail of the couple's courtship, their decision to marry, the couple's shared residence(s) or shared experiences, except as it relates to the claim of abuse. The petitioner's general assertion that she loved C-P- is insufficient to establish her good faith intent when entering into the marriage. The statements of [REDACTED] do not provide probative detail of their knowledge of the interactions of the couple.

The director noted the deficiencies in the documentary evidence submitted and we further observe that the documentary evidence provided does not assist in establishing the petitioner's intent when entering into the marriage. Filing a joint tax return does not establish the petitioner's intent when entering into marriage. Similarly, C-P-'s filing of a Form I-130 on the petitioner's behalf does not demonstrate the petitioner's intent when entering into the marriage. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her United States lawful permanent resident spouse in good faith, as required by section 204(a)(1)(B)(ii) of the Act.

*Section 204(g) of the Act*

The record does not include evidence that the petitioner departed the United States after being placed in removal proceedings on or about August 10, 2000; rather the record shows that she was detained, and once released from detention on bond, the petitioner married C-P- while her removal proceedings were still pending. Thus she was still subject to removal and the order placing her in removal proceedings when she married the claimed abusive United States lawful permanent resident on October 3, 2000. Consequently, the petitioner is subject to section 204(g) of the Act and must establish that her marriage to C-P- was entered into in good faith by clear and convincing evidence. As the petitioner has failed to establish that she entered into her marriage with her husband in good faith by a preponderance of the evidence, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

*Conclusion*

The petitioner has not established that she jointly resided with the claimed abusive spouse, that she is a person of good moral character, that she entered into the marriage in good faith, or that she is exempt from section 204(g) of the Act. 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.