



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 29 2013**

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)

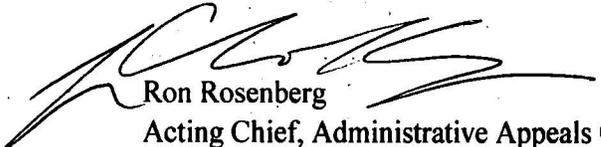
ON BEHALF OF PETITIONER:
[REDACTED]

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 Director, Vermont Service Center, ("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 her U.S. citizen spouse.

The director denied the petition on the basis of his determination that the petitioner failed to establish that she resided with her husband, is a person of good moral character, and entered into her marriage in good faith. On appeal, the petitioner, through 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).

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:

(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.

* * *

(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

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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:

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.

* * *

(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 Germany, married K-H-¹, a citizen of the United States, on June 26, 1998 in Fort Lauderdale, Florida. The petitioner filed the instant Form I-360 on February 28, 2011. The director subsequently issued a request for additional evidence (RFE) of the petitioner's good moral character, residence with K-H- during their marriage, and evidence that she married him in good faith. The petitioner, through counsel, submitted a timely response which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel 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 review of the entire record, we find that the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Joint Residence

The director determined that the petitioner had not resided with her husband, but the director only discussed the documents submitted by the petitioner below. The regulation at 8 C.F.R. § 204.2(c)(2)(iii) lists the types of documents a petitioner may submit to establish joint residence, but because domestic violence may prevent self-petitioner from access to traditional forms of documentation of marital residence, the regulation also prescribes that “any other type of relevant credible evidence of residency may be submitted.” In this case, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner resided with her husband during their marriage.

The petitioner stated on her Form I-360 that she last resided with K-H- in Windsor, South Carolina in November of 2010. The record contains the petitioner’s affidavits, joint rental bill, certificate of title, credit report, joint contract of sale, [REDACTED] bill, two police incident reports, various court documents, and 2010 Federal Income Tax return. The certificate of title, credit report, and [REDACTED] bill though solely issued to the petitioner, are addressed to the petitioner’s shared residence with K-H-. The police incident reports dated July 3, 2007 and December 4, 2009 list the same address for the petitioner and K-H-. In her affidavit, the petitioner credibly described the on-again off-again relationship she had with K-H-. She described how they were initially separated in 2004 after he left her but that she took him back and they resided together again for a year and a half between 2008 and 2010 before he left her again. On appeal, the petitioner submits a letter from a previous landlord, a letter from K-H-, another joint bill, and a medical bill addressed to K-H- at their shared address. The petitioner provided credible, probative information regarding her joint residence with K-H- and when viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner resided with K-H- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director determined that the petitioner did not demonstrate that she married K-H- in good faith, but his decision only addressed the photographs of the petitioner and K-H- at their wedding and letters from the Social Security Administration addressed to K-H- at their shared address. The director concluded these documents were insufficient because the petitioner did “not submit additional evidence to show commingling of funds, shared joint accounts, and beneficiary designation.” However, 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 preponderance of the evidence submitted below and on appeal demonstrates the petitioner’s entry into her marriage in good faith.

The petitioner submitted a self-affidavit and letters from K-H- to the petitioner while incarcerated in October of 2011. In her affidavit, the petitioner recounted how she first met K-H- when she was 18 years old. She described seeing him intermittently through the years until 1996 when they started

dating. She described moving in together, getting married, and relocating to South Carolina. The petitioner provided a credible account of how her relationship with her husband started and progressed to marriage. The letters from K-H- during his incarceration indicate that the two remained in contact during that period with the possibility of reconciliation.

On appeal, counsel asserts that the petitioner has “consistently made decisions and acted in the manner one would expect of a spouse, including moving across state lines to remain with her husband.” He further argues that the petitioner married K-H- in good faith because she has been married to him since 1998, has endured numerous acts of abuse, and did so without applying for an immigration benefit. The record supports counsel’s claims. On appeal, the petitioner submits an additional letter from K-H- and additional family photographs with her and K-H-. The letter from K-H- describes meeting the petitioner, falling in love, and getting married for love and his description of their relationship is consistent with the petitioner’s statements. The photographs show the petitioner and K-H- together with other family members. When viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Nonetheless, the appeal cannot be sustained because the petitioner has not overcome the remaining ground for denial.

Good Moral Character

We find no error in the director’s determination that the petitioner lacks good moral character. The petitioner was arrested five times from April 21, 1987 to February 6, 2009. As a result of these arrests, she was convicted of burglary, hit-and-run, and assault and battery in 1987, simple assault in 2004, and most recently, disorderly conduct in 2009. As evidence of her good moral character, the petitioner submitted the court disposition records for her arrests, her self-affidavit, and letters from her daughter and friends. 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.” In her affidavit, the petitioner described her last arrest in 2009 for disorderly conduct. She explained that she was sleeping in her car when approached by a police officer and the arresting officer mistakenly thought she was drunk. In a prior statement from the petitioner dated December 13, 2010, she credibly described the circumstances surrounding her first arrest. She stated that when she was 21 years old, she moved in with a boyfriend she later discovered was a drug dealer. When she told him she was leaving, he grabbed a gun and shot at her car. She hit a parked car but kept driving out of fear. The petitioner stated that as a result, a warrant was issued for her arrest and she accepted a plea deal at the advice of her attorney. The petitioner did not, in either of her statements, discuss the circumstances surrounding her 2004 conviction for simple assault. The petitioner also submitted letters from family and friends who attested to her good work ethic and upstanding character but did not indicate that they were aware of her criminal record.

Although the petitioner has established that none of her convictions pose a per se bar to a finding of her good moral character under section 101(f) of the Act, she has not demonstrated by a preponderance of the evidence that she has rehabilitated and her unlawful acts adversely reflect upon her moral character. The petitioner has not explained or even acknowledged her 2004 conviction for simple assault and has only briefly addressed her two other convictions. Consequently, the petitioner has not demonstrated

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that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, and has not overcome this ground for denial.

Conclusion

On appeal, the petitioner has overcome the director's determination that she did not establish her joint residency with K-H- and entry into their marriage in good faith. However, the petitioner has failed to establish her good moral character. She is consequently ineligible 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 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will be denied.

ORDER: The appeal is dismissed.