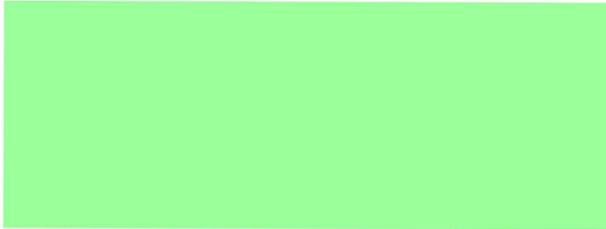


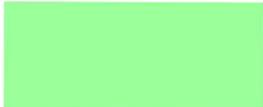
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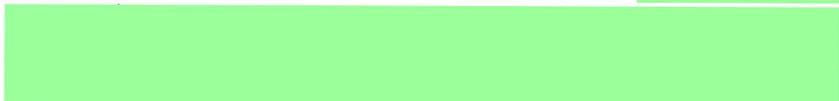


U.S. Citizenship
and Immigration
Services



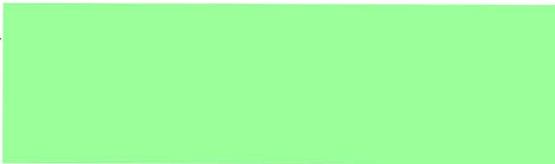
Date: **FEB 05 2013** OFFICE: VERMONT SERVICE CENTER

FILE: 

IN 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)

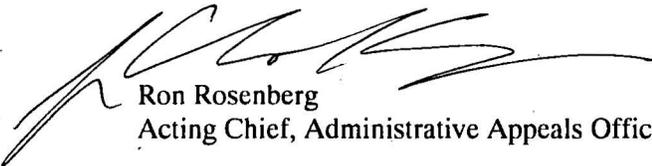
ON BEHALF OF PETITIONER:



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.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center, (“the director”), initially approved the immigrant visa petition, but later revoked the approval after notice to the petitioner. 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 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 revoked approval of the petition on the basis of his determination that the petitioner failed to establish that she resided with her husband and entered into the marriage in good faith. The director also revoked approval of the petition on the basis of his determination that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty during their marriage and failed to establish her good moral character. On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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 further 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 further explicated 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.

(vi) *Battery or extreme cruelty*. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

* * *

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

* * *

(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 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.

* * *

(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.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant; as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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.

* * *

(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 Peru, married T-H¹, a citizen of the United States, on September 22, 2005. The petitioner's husband filed an alien relative immigrant petition (Form I-130) on the petitioner's behalf which was withdrawn on April 18, 2009. The petitioner was later issued a Notice to Appear before the immigration court and placed in removal proceedings. She filed the instant Form I-360 on September 17, 2009 and it was approved on March 8, 2010.

The director issued a Notice of Intent to Revoke (NOIR) approval of the petition on December 23, 2011. The NOIR stated that because the record contained fraudulent documentation to circumvent immigration laws and gain immigration benefits, the petitioner had failed to demonstrate that she resided with T-H- during their marriage, married him in good faith, was subjected to battery or extreme cruelty, and was a person of good moral character. Specifically, the director determined that a letter from former [REDACTED] employee [REDACTED] and [REDACTED] medical records dated May 19, 2006 from a visit to the emergency room, were investigated by U.S. Immigration and Customs Enforcement (ICE) and found to be fraudulent. The petitioner, through counsel, submitted a timely response which the director found to be insufficient to overcome his proposed grounds for revocation. He revoked approval of the petition on April 24, 2012.

Revocation of the Form I-360 was Improper

The director failed to establish that there was good and sufficient cause to determine that the petitioner was not credible and revoke the approved Form I-360. According to the director in his revocation notice, the petitioner failed to overcome charges resulting from an ICE investigation that she submitted fraudulent documents in an attempt to obtain immigration benefits.² A review of the administrative file does not show that an official investigation was conducted. Instead, the investigation appears to be a series of inquiries by the ICE Assistant Chief Counsel (ACC) formerly assigned to the case and responses from administrators at [REDACTED] to determine whether a letter dated August 29, 2009 from [REDACTED] and [REDACTED] records dated May 19, 2006 were fraudulent. The hospital administrators that responded to the ACC pointed out certain inconsistencies in the [REDACTED] letter and offered opinions about its validity but did not conclusively state that the letter was fraudulent. The ACC also questioned why the petitioner initially obtained a letter summarizing her emergency room rather than an actual copy of the medical records. However, the petitioner later submitted those records and no official determination was made regarding the legitimacy of the medical records. A review of the administrative record shows that in response to the ACC's inquiries, hospital administrators could not identify the doctor who signed off on the May 2006 report but there was no admission that the document was fabricated or that the petitioner did not in fact visit the emergency room on May 19, 2006. Based solely on these findings, the ACC requested that approval of the self-petition be revoked and the director concurred.

¹ Name withheld to protect individual's identity.

² The petitioner was issued a Notice to Appear on May 19, 2009 and is currently in removal proceedings before the Immigration Court in Philadelphia, Pennsylvania. The petitioner's next hearing is scheduled for August 21, 2013.

The director erroneously relied on the ACC's subjective determinations to find the petitioner's testimony incredible. Regardless of any purported inconsistencies in the letter from [REDACTED] and the medical report, the petitioner otherwise met her burden of proof. In response to the NOIR, the petitioner adequately addressed the director's concerns regarding the letter and the medical report. On appeal, the petitioner explains again that she has had trouble obtaining a copy of her full medical record from [REDACTED] and submits receipts of her file copy requests. She also submits a second letter from [REDACTED] who addresses the points raised in the notice of revocation. The petitioner also resubmits a medical report for her visit to the emergency room in November of 2007 which does not appear to have been considered by the director.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The evidence submitted below and the additional evidence submitted on appeal overcomes the director's determinations and the appeal will be sustained for the following reasons.

Joint Residence

The relevant evidence submitted below and on appeal demonstrates that the petitioner resided with T-H-. The petitioner stated on her Form I-360 that she resided with T-H- from September of 2005 to September of 2008. The record contains the petitioner's affidavit, a letter from the petitioner's former landlord, letters from T-H-, bills addressed to T-H- at their shared address, a letter from Safe Auto Insurance Company addressed to T-H- at their shared address, and affidavits from the petitioner's family and friends. In her first affidavit, the petitioner stated that after they became engaged, she moved in with T-H- at his parent's home in August of 2005. The petitioner further stated that after they were married, the petitioner and T-H- moved into the petitioner's mother's home due to problems with T-H-'s parents. The petitioner gave probative details regarding their joint residential routines. She also explained that in December of 2006, T-H- was arrested and sentenced to house arrest for approximately five months. During this time, T-H- moved back with his parents. He later returned to his home with the petitioner in October of 2007 until his subsequent arrest in 2008 at which time the petitioner and her mother moved out. The petitioner gave credible, probative information regarding her joint residence with T-H-.

The director also incorrectly dismissed the remainder of the petitioner's evidence submitted below to show joint residence. The petitioner submitted a letter from her former landlord, [REDACTED] who attested that he initially rented out his property to the petitioner's parents and then to the petitioner and her mother after the petitioner's father abandoned the family. [REDACTED] attested to his personal knowledge that T-H- moved in with the petitioner and her mother, residing at the [REDACTED] address until 2008. Additionally, the petitioner submitted a letter from her mother, [REDACTED] who attested that the petitioner and T-H- resided with her for most of their marriage. The petitioner also submitted letters from friends [REDACTED]

[REDACTED] All credibly attested to visiting the petitioner at her marital residence and witnessing the petitioner and T-H- residing together. The dentist bills and automobile insurance letter addressed to T-H- at the [REDACTED] address further corroborated that the petitioner and T-H- resided together during their marriage. On appeal, the petitioner submits another personal affidavit and a letter from T-H- both credibly attesting to the fact that they lived together during their marriage at the [REDACTED] location. She also gives

reasonable explanations for the lack of additional documents evidencing their joint residence. Accordingly, the record establishes that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In revoking the Form I-360 approval, the director found the petitioner not to be credible due to submission of claimed fraudulent documents and determined that the evidence submitted to establish her good-faith entry into marriage with T-H- was insufficient. The record contains the petitioner's affidavits and letters from the petitioner's family and friends. In her first affidavit, the petitioner stated that she met T-H- in a Mexican restaurant in July of 2003. She stated that they saw each other again a few days later at the home of a mutual friend and got to know each other more. She credibly described their friendship and subsequent relationship, giving probative information about their courtship and shared experiences. She described spending holidays with him and her family and that it was not until the summer of 2005 that she met his family. She stated that the meeting did not go well but that she moved in with him at the basement apartment he rented from his parents in August of 2005 because she was in love with him. The petitioner then stated that they were married the following month and subsequently moved in with her mother due to T-H-'s issues with his parents.

The petitioner's mother and friends also attested to her good-faith entry into marriage. [REDACTED] stated that the petitioner and T-H- dated for many months before getting married. She stated that she was initially happy with her daughter's relationship with T-H- because he professed to love the petitioner very much. The petitioner's friends all attested to knowing the petitioner and T-H- as a couple and witnessing their relationship progress to marriage. [REDACTED] stated that she went to movies and baseball games with the petitioner and T-H- who were big baseball fans. She stated that she observed T-H- treat the petitioner poorly even before their engagement but that since the petitioner was so in love with T-H-, [REDACTED] supported her decision. She further described attending the wedding and visiting their marital residence regularly after the wedding. [REDACTED] stated that he was friends with the petitioner and met T-H- soon after the petitioner and T-H- began dating. He stated that when the petitioner and T-H- became engaged, the petitioner was very happy and that anybody who spent any time with them would see how much in love they were with each other.

De novo review of all of the relevant evidence submitted below establishes the petitioner's good-faith entry into the marriage. 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." 8 C.F.R. § 204.2(c)(2)(vii). Here, the petitioner submitted numerous letters from friends who credibly attested to her good-faith intent upon marrying T-H- and established the basis of their personal knowledge of the relationship. The discrepancies found by the director in the documents he deemed fraudulent do not discredit the entire record and the petitioner has reasonably explained

the discrepancies on appeal. She has also described in credible, probative detail, her feelings for T-H- and her reasons for marrying him. 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.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal demonstrates that the petitioner was subjected to battery and extreme cruelty by her husband. The petitioner initially submitted: a personal affidavit; a letter from [REDACTED] who was formerly employed by [REDACTED] a psychological evaluation from Dr. [REDACTED]; a letter from [REDACTED] Advocate/Counselor at the [REDACTED] and letters from friends attesting that the petitioner was subjected to battery and extreme cruelty T-H-. In her first affidavit, the petitioner stated that T-H- came from a broken home whose mother was abusive and whose father was an alcoholic. She stated that T-H- also developed a bad drinking problem and became verbally abusive. The petitioner stated that he frequently threatened to have her deported if she reported his abuse to the police. She probatively described specific instances of strangling and marital rape. On two occasions, the petitioner stated that she had to go to the emergency room due to the injuries T-H- inflicted on her. She stated that he also regularly assaulted her mother, stole from them both to buy drugs, repeatedly called them derogatory names, and threatened them with deportation. She stated that she suffers from depression and anxiety. The petitioner's statement provided a detailed and credible account of the physical, emotional, and sexual violence she suffered during her marriage to T-H-.

Because the petitioner had difficulties obtaining a copy of her medical reports for her two visits to the emergency room, she submitted a letter from former [REDACTED] employee, [REDACTED]. In her first letter, [REDACTED] summarized the petitioner's two visits to the emergency room at [REDACTED] recounting that the first visit was in May of 2006 and the last visit was in November of 2007. Based on a review of the medical report notes, [REDACTED] described the petitioner as bruised, in pain, and that there was evidence of sexual trauma at both visits. In the psychological evaluation, Dr. [REDACTED] diagnosed the petitioner with Post-Traumatic Stress Disorder and Major Depressive Disorder as a result of T-H-'s abuse. [REDACTED], Advocate/Counselor with the [REDACTED] verified that the petitioner had been receiving services from the [REDACTED] since September of 2008 after enduring abuse by T-H- during their marriage. The petitioner also submitted letters from friends who all attested to witnessing specific incidents of battery and extreme cruelty inflicted by T-H- on the petitioner. The petitioner submitted a letter from T-H- as well in which he admitted to emotionally and physically harming the petitioner.

After the Form I-360 was approved, the ACC formerly assigned to the petitioner's removal case requested that the petitioner submit medical records before the ACC would agree to terminate the removal proceedings before the Immigration Court. The petitioner complied but the ACC discredited [REDACTED] letter and determined that the May 2006 medical report was false. The director concurred and revoked the Form I-360 on this basis. Even when taking into consideration the director's determination that the petitioner submitted false documents, a review of the evidence shows that the petitioner submitted sufficient documentation apart from the allegedly false letter and May

2006 medical report that established she suffered from battery and extreme cruelty at the hands of her husband. Further, on appeal, the petitioner submits another self-affidavit, a second letter from [REDACTED] and resubmits the petitioner's medical record from her November 2007 visit to the emergency room that does not appear to have been considered by the director. Upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director's revocation of the Form I-360 approval. The affidavits of the petitioner and her friends submitted below and on appeal, describe in probative detail the physical, emotional, and sexual violence she suffered by her husband. The petitioner submitted evidence to show that she received medical treatment from [REDACTED] and has undergone long-term counseling with the [REDACTED] as a survivor of domestic violence. She also submitted a detailed psychological evaluation, which concluded that she is suffering from Post-Traumatic Stress Disorder due to having been abused by her husband. This documentation and the petitioner's affidavits demonstrate by a preponderance of the evidence that the petitioner's husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The director determined that the petitioner's submission of fraudulent documents to obtain an immigration benefit precluded a finding of her good moral character. However, the director's determination was not based on any official finding that the documents in question were fraudulent. The record contains no formal finding of fraud or any fraud investigation conducted by fraud officers within the USCIS, or any agency within the Department of Homeland Security or any other law enforcement agency. Although inconsistencies existed, these inconsistencies were not material to the petitioner's eligibility and did not provide good and sufficient cause to revoke the approved Form I-360 and determine that the petitioner is not a person of good moral character. 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." The petitioner attested to her good moral character, submitted a Pennsylvania Response for a Criminal Record Check showing no history of arrests, and submitted numerous affidavits from family, friends, landlords, and her former employer attesting to her good moral character. On appeal, the petitioner submits another affidavit attesting to her good moral character and a second letter from [REDACTED] addressing the issues raised regarding her first letter. When viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

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 been met. Accordingly, the appeal will be sustained and approval of the petition shall be reinstated.

ORDER: The appeal is sustained.