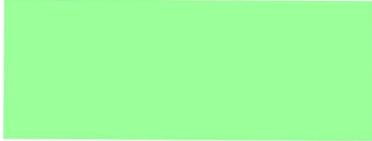
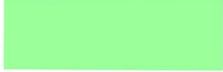


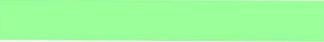


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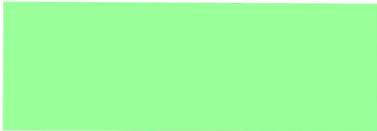


DATE: **FEB 19 2013** OFFICE: VERMONT SERVICE CENTER FILE: 

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)

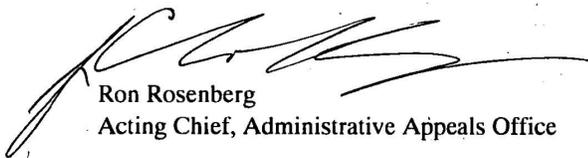
ON BEHALF OF PETITIONER:



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 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 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 his 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 submits a statement and additional 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).

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:

(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.

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. 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Brazil who was admitted to the United States on May 22, 2001 as an F-1 student. The petitioner married, R-H, a U.S. citizen, in Chula Vista, California on July 14, 2006.¹ The petitioner filed the instant Form I-360 on July 1, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, establishes the

¹ Name withheld to protect the individual's identity.

petitioner's eligibility. Counsel's claims and the evidence submitted on appeal have 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 July 2007 and ending in July 2010). The director determined that since the petitioner had not submitted local police clearances or state-issued criminal background checks, he had not established his good-moral character.

On appeal, the petitioner submits a local police clearance from the [REDACTED], California Office of the Sheriff, dated February 23, 2012. The police clearance reflects that the petitioner was arrested on September 21, 2010 for a violation of a promise to appear for a hearing on a traffic violation under section 40508(a) of the California Vehicle Code. The record contains a criminal history report from the Federal Bureau of Investigation (FBI), which also shows that the petitioner was arrested on September 21, 2010 for a violation of section 40508(a) of the California Vehicle Code. U.S. Citizenship and Immigration Services (USCIS) records indicate that the underlying charge was dismissed by the [REDACTED] Superior Court on September 24, 2010.

On appeal, counsel asserts that the petitioner has never committed or been convicted of any crime that would bar a finding of his good moral character. Counsel states that the petitioner has been found to be a fit parent and he was granted custody of his child and stepchild. The petitioner also affirms in his August 26, 2011 letter that he was granted custody of his son and his stepdaughter to ensure their safety away from his abusive wife. The record contains reports from Children's Protective Services (CPS) of [REDACTED], California Health and Human Services finding that the petitioner's wife abused her children. The reports recommend that the children remain in the custody of the petitioner and the record shows that the petitioner continues to retain custody. The petitioner also submitted seven letters of support from members of his community attesting to his good moral character, including a letter from the Superintendent of his children's school district.

On appeal, the petitioner has established that he is a person of good moral character. As stated by 8 C.F.R. § 204.2(c)(1)(vii), 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. The record does not show that the petitioner has been convicted of any crimes or engaged in any actions that fall within any of the enumerated bars to a finding of good moral character under section 101(f) of the Act. Nor does it show that he has engaged in actions that fall below the standards of the average citizen in the community. To the contrary, the record shows that the petitioner was granted custody of his son and his wife's daughter from another relationship to protect them from his wife's abuse. The petitioner's statement and the letters of support from members of his community also attest to his good moral character. Accordingly, the petitioner has established his good moral character, as required by section

204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that he is a person of good moral character and overcome the sole ground for denial of his petition. He 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 his 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.