



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: OCT 03 2014

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Self-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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center director (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.

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 for failure to establish that the petitioner is a person of good moral character.

On appeal, counsel submits a brief and additional evidence.

*Applicable Law*

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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:

(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.

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(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.

#### *Facts and Procedural History*

The petitioner is a citizen of Brazil who was admitted to the United States on February 7, 2005, as an H-2B nonimmigrant worker. The petitioner married, J-P-, a U.S. citizen, in [REDACTED] Florida on October 1, 2009.<sup>1</sup> The petitioner filed the instant Form I-360 self-petition on December 26, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, 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 timely 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

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<sup>1</sup> 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 December 2009, and ending in December 2012). The petitioner submitted police clearances and affidavits attesting to her good moral character. The director determined the petitioner lacked good moral character because she indicated on her January, 24, 2005 visa application that she was married, but then claimed in these proceedings that she was never married in Brazil.

On appeal, the petitioner submits evidence that she was not married in Brazil. The petitioner submits an affidavit from the man she supposedly married in Brazil, [REDACTED] in which he attests that he and the petitioner were engaged but never married, and that in fact, he married his wife in Spain on August 8, 2008 at which time he had to demonstrate to the Spanish civil authorities that he was single and able to marry. The petitioner also submits a letter from her mother in which she attests to the fact that the petitioner was never married in Brazil. In her own affidavit, the petitioner explains that she was never married to Mr. [REDACTED]. She attests that she hired a company to assist her in obtaining a visa to work in the United States and that when filling out her visa application form, a company employee asked her if she was in a relationship and she said yes because Mr. [REDACTED] was her boyfriend at the time.

On appeal, counsel asserts that the petitioner has never committed or been convicted of any crime that would bar a finding of her good moral character, and that the petitioner did not intentionally misrepresent her marital status on her visa application. In her affidavit on appeal, the petitioner also affirms that she did not intentionally make any misrepresentations about her marital status on her visa application and that any misinformation was the result of a mistake by the company who processed her visa application. The petitioner also submits a copy of the contract she entered into with the visa company.

On appeal, the petitioner has established that she 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 she has engaged in actions that fall below the standards of the average citizen in the community. To the contrary, the record indicates that the petitioner has been consistently employed, often holding down several part-time jobs at one time, and that she also donates her time and money to charitable organizations. The record also contains letters from two of the petitioner's employers and four of

her coworkers and friends who explain their positive experiences with the petitioner and who knowledgably attest to her good moral character. Accordingly, the petitioner has established her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.<sup>2</sup>

*Conclusion*

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met and the appeal will be sustained.

**ORDER:** The appeal is sustained.

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<sup>2</sup> Our decision only applies to the petitioner's moral character under section 204(a)(1)(A)(iii) of the Act. We have no jurisdiction to determine the petitioner's admissibility in these proceedings. Consequently, we do not reach the issue of whether the petitioner's statements at her visa interview and on her visa application would render her inadmissible for willful misrepresentation under section 212(a)(6)(C)(i) of the Act.