



U.S. Citizenship
and Immigration
Services

(b)(6)



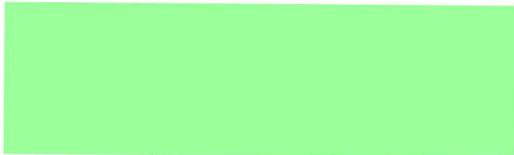
Date: **OCT 23 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

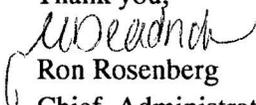
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS: Enclosed please find the decision of the Administrative Appeals Office (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The acting 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 dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish the petitioner's good moral character. On appeal, the petitioner submits additional evidence.

Applicable Law

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, 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 further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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:

(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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are further explained 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.

* * *

(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 was born in the Dominican Republic and entered the United States on June 8, 2010, as a B-2 nonimmigrant visitor. The petitioner married her second spouse, a lawful permanent resident, on November 22, 2010. She filed the instant Form I-360 self-petition on January 23, 2013. The director

issued two requests for evidence (RFE) that, among other things, the petitioner is a person of good moral character. The petitioner timely responded but did not provide the requested personal affidavit and police clearances. The director determined that the petitioner did not submit evidence that she has good moral character and denied the petition. The petitioner filed a timely appeal.

We review 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, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reason.

Good Moral Character

Primary evidence of a self-petitioner's good moral character is the self-petitioner's affidavit, which should be supported by local police clearances or state-issued criminal background checks. 8 C.F.R. § 204.2(c)(v). Although the petitioner provided an affidavit in support of her Form I-360 self-petition, she did not discuss her good moral character and instead focused on describing the abuse to which her spouse subjected her. She also did not include the required police clearances or state-issued criminal background checks.

On January 30, 2013, the director requested that the petitioner provide, among other things, an affidavit attesting to her good moral character and criminal history clearances or records from each place she resided for a least six months during the three-year period prior to filing the petition. The director specifically indicated that if the petitioner received a clearance based upon her name only, she must include all aliases. The petitioner did not provide a personal affidavit attesting to her own good moral character and did not submit the requested police clearances. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). She provided a name check from the Connecticut State Police and another from the [REDACTED] Connecticut Police Department; however, each check was made under only one of her many aliases.

On June 10, 2013, the director issued a second RFE again requesting, among other things, an affidavit from the petitioner attesting to her good moral character and criminal history clearances or records from each place she resided for a least six months during the three-year period prior to filing the petition. The petitioner again failed to provide the requested personal affidavit attesting to her own good moral character as well as the requested police clearances. Instead, she provided an affidavit discussing her residence with her second spouse, and a letter indicating that she was waiting on fingerprint results from the Federal Bureau of Investigation (FBI).

The director found that the petitioner's evidence was insufficient to establish her good moral character and denied the petition. The director also noted that the petitioner was required to provide a clearance from the Dominican Republic; however, the petitioner did not reside in the Dominican Republic for six or more months during the three-year period prior to filing the petition. She entered the United States on June 8, 2010, and filed the petition on January 23, 2013. Based on this timeline, she resided in the Dominican Republic for less than six months during the three-year period prior to filing the petition, and is not required to provide a clearance from that location.

On appeal, the petitioner does not dispute the director's finding and provides no explanation for her failure to provide the requested documents below. In addition, although the petitioner provides an FBI clearance, she still has not provided her personal affidavit attesting to her good moral character. Because the petitioner has failed to provide primary evidence of her good moral character in response to the director's RFE, the petition may not be approved. Consequently, the petitioner has not demonstrated that she is a person of good moral character, as required section 204(a)(1)(B)(ii)(II) of the Act.

Conclusion

The petitioner has not demonstrated that she is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reason.

ORDER: The appeal is dismissed.