

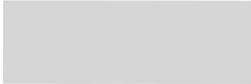


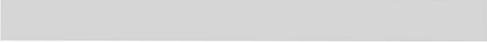
U.S. Citizenship
and Immigration
Services

(b)(6)



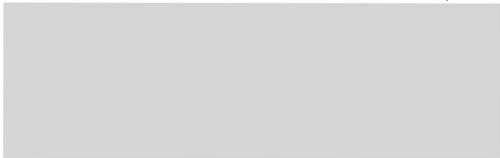
Date: **APR 03 2015**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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 (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,

for 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 as moot.

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 denied the petition based on the petitioner's failure to establish her good moral character. On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 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)(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 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.

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.

* * *

(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.

Facts and Procedural History

The petitioner, a citizen of Mexico, represents that she first entered the United States in 1997 without inspection, admission, or parole. She married, J-A-, then a lawful permanent resident (LPR) of the United States, on [REDACTED] 1999, in [REDACTED] California. The couple has four children, three of whom were born in the United States. J-A- became a naturalized citizen on April 20, 1999, and subsequently filed an immigrant visa petition on behalf of the petitioner. The petitioner became an LPR on March 24, 2004. In July and October of 2009, and in January of 2010, the petitioner was arrested on charges related to alien smuggling; however, none of the arrests resulted in prosecution or conviction. The petitioner was placed in removal proceedings after the third incident and charged with removability under section 237(a)(1)(E)(i) of the Act (alien smuggling). The petitioner filed the instant Form I-360 self-petition on January 24, 2014. The director subsequently issued a request for evidence (RFE) of the petitioner's good moral character. The petitioner responded with additional evidence, which the director found did not establish eligibility for the benefit sought. The director denied the petition, concluding that the petitioner's 2010 arrest for smuggling evinced a lacked good moral character as a person described in section 101(f) of the Act.

The petitioner timely appealed the director's decision. On appeal, the petitioner submits a personal affidavit, in which she provides credible, detailed testimony regarding the smuggling incidents, which were planned and executed by her abusive husband.

Analysis

We review these proceedings *de novo*. We note that the regulation at 8 C.F.R. § 204.2(c)(1)(vii) states that "[e]xtenuating 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.” We further note that on appeal, the petitioner has submitted relevant evidence regarding the circumstances of the smuggling offenses. However, we do not reach the merits of the petitioner’s appeal for the following reasons.

The petitioner became a lawful permanent resident of the United States in 2004. The record contains no evidence that the petitioner has lost her lawful permanent resident status. Lawful permanent resident status terminates upon entry of a final administrative order of removal. 8 C.F.R. § 1.2 (noting the definition of *Lawfully admitted for permanent residence*); *Matter of Gunaydin*, 18 I&N Dec. 326 (BIA 1982). Lawful permanent residency may also be lost through abandonment, rescission, or relinquishment. *See id.* at 327 n.1. However, none of those circumstances exist in this matter. As of the date of this decision, the petitioner remains in removal proceedings, and a final administrative order of removal has not been issued. Consequently, the petitioner remains a lawful permanent resident, and is therefore currently ineligible for immigrant classification under to section 204(a)(1)(A)(iii) of the Act. The issues in this proceeding are therefore moot.

ORDER: The appeal is dismissed as moot.