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U.S. Citizenship  
and Immigration  
Services



Date: JAN 26 2015

Office: VERMONT SERVICE CENTER

File: 

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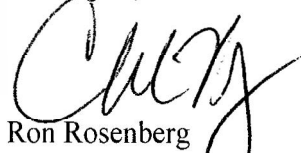
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)


ON BEHALF OF PETITIONER:  


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center acting 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 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 her spouse, a lawful permanent resident of the United States.

The director denied the petition for failure to establish that the petitioner had a qualifying relationship and the corresponding eligibility for immigrant classification, and that the petitioner is a person of good moral character. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

*Relevant Law and Regulations*

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).

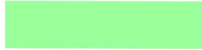
In regards to determining a self-petitioner’s moral character, section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), provides:

Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner’s admissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding the petitioner to be of good moral character under subparagraph (A)(iii) . . . if the [Secretary] finds that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty.

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:



(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(b)(ii) . . . of the Act for his or her classification . . . as a preference immigrant . . . if he or she:

\* \* \*

(B) Is eligible for immigrant classification under section 203(a)(2)(A) . . . of the Act based on that relationship [to the lawful permanent resident spouse].

\* \* \*

(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)(B)(ii) 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by . . . proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

(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.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of Mexico who indicated that she first entered the United States, without inspection, admission or parole when she was a child of six or seven years of age, with her mother, in about 1979 or 1980. The record shows that when the petitioner was 11 years old, A-R-<sup>1</sup>, a U.S. lawful permanent resident 15 years her senior, impregnated her, took her back to Mexico and married her in a church ceremony. The petitioner indicated that she last entered the United States, without inspection, admission or parole, in August 1993 under threat by her abuser husband.

The petitioner filed her first Form I-360 self-petition on July 6, 2012, and it was denied on October 30, 2013. The petitioner filed the instant Form I-360 self-petition on November 13, 2013, and submitted evidence previously determined to be insufficient to establish her claim. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character and a Notice of Intent to Deny (NOID) for failure to establish her marriage to A-R-, residence with A-R- during their marriage, and her good moral character. The petitioner timely responded with evidence the director found sufficient to demonstrate the requisite joint residence, but insufficient to establish that she had a qualifying relationship with A-R- and the corresponding eligibility for preference immigrant classification based on such a relationship. The director further determined that the petitioner did not establish that she is a person of good moral character. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. Upon a full review of the record as supplemented on appeal, the petitioner has overcome all three of the director's grounds for denial as follows.

*Qualifying Relationship and Corresponding Eligibility for Preference Immigrant Classification*

The petitioner has established the validity of her marriage to A-R- on appeal. To establish a qualifying relationship as the intended spouse of a lawful permanent resident, the petitioner must, pursuant to section 204(a)(1)(B)(ii)(II)(aa)(BB) of the Act, show that (1) an actual marriage ceremony took place, (2) she believed she had married A-R-, and (3) the marriage was invalid solely because of A-R-'s bigamy. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) also requires that the petitioner submit evidence of the marital relationship. The petitioner did not submit a marriage certificate or personal affidavit below. However, in an affidavit dated December 14, 2012, submitted in support of her prior Form I-360 petition, the petitioner recounted how she met A-R- in 1985 when she was 11 years old, he impregnated her and took her to Mexico where she gave birth to their son, [REDACTED] when she was 12 years old. The petitioner later gave birth to their daughter, [REDACTED] when she was 15 years old. The petitioner stated that she and A-R- were later married in a church when she was 17 years old. On her Form I-360 self-petition, the petitioner listed "married" as her marital status. She explained in her affidavit that in 2005, she found out that A-R- had previously been married and that he had not yet divorced his prior wife. She recounted she confronted A-R- and he stated he would obtain a divorce from his prior wife. The petitioner explained that she had believed that she was married to A-R- because they had a church ceremony. In denying the petition, the director

<sup>1</sup> Name withheld to protect individual's identity.

noted that A-R- had adjusted to lawful permanent resident status in 1985 as the spouse of a U.S. citizen which supported the petitioner's mother's statement that A-R- was already married to another woman in the United States when he married the petitioner in Mexico. The director found that while Texas recognizes "informal" marriage, the petitioner had not submitted evidence demonstrating that A-R- ever divorced his former spouse.

The petitioner's mother, [REDACTED] stated in an affidavit dated September 18, 2013, that when the petitioner was 11 years old, A-R- took her to Mexico and "supposedly" married her there. Ms. [REDACTED] recalled that A-R- returned to the United States within one month because he had another wife in [REDACTED] Texas. She stated that A-R- left the petitioner in Mexico until 1993 when he brought her to the United States and they resided in Ms. [REDACTED] home for a little more than one year.

On appeal, the petitioner submits a personal affidavit in which she provides further probative details concerning her marriage to A-R-. She credibly retells how in June 1985, when she was 11 years old, A-R- took her from her mother's home in Texas to his father's home in Louisiana and impregnated her. She states that A-R- then brought her in October 1985 to Mexico where she gave birth to their son, [REDACTED] on March [REDACTED] when she was 12 years old. The petitioner explains that when she was 15 years old, she gave birth to their daughter, [REDACTED], on March [REDACTED]. She recounts in probative detail how on February [REDACTED] she and A-R- were married in a church ceremony in the parish of [REDACTED] Mexico. The petitioner submits a marriage certificate from the church in which she and A-R- wed, and birth certificates for all four of their children. In addition, the petitioner submits six color photographs from her wedding ceremony along with detailed descriptions of each. The preponderance of the evidence submitted below and on appeal demonstrates that an actual wedding ceremony was performed for A-R- and the petitioner, the petitioner believed they were married, and the sole reason the marriage was not legitimate was because A-R- was still married to his prior wife. Accordingly, the petitioner has established that she had a qualifying spousal relationship with a lawful permanent resident of the United States and was eligible for preference immigrant classification based on such a relationship as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.

In addition, the petitioner submits on appeal a decree of divorce showing that A-R- and his former wife, B-R-<sup>2</sup>, a U.S. citizen, were divorced on December [REDACTED]. The petitioner also submits a certified statement from the District Clerk, [REDACTED] Texas confirming that a final judgment of divorce was entered on December 2, 2005 legally terminating the marriage between A-R- and B-R-. In addition, the petitioner submits public records for the [REDACTED] County, Texas Clerk of Courts showing that the marriage license for A-R- and B-R- was issued on April 9, 1984 and that on December 11, 1985, B-R- filed a petition for divorce from A-R- which was dismissed on August 3, 1987, for want of prosecution.

Under the law in Texas, an "informal marriage," also known as a common law marriage, is formed when a man and a woman mutually agree to be married, live in the state of Texas as a married couple, and represent to others that they are married. *See* TEX. FAM CODE ANN. § 2.401 (West 2012);

<sup>2</sup> Name withheld to protect individual's identity.

see also *Matter of C*, 1 I.&N. Dec. 301, 302 (BIA 1942); *Matter of Garcia*, 16 I.&N. Dec. 623 (BIA 1978).

Texas Family Code section 6.202 states the following regarding marriages where one party has an existing marriage that has not been dissolved:

(a) A marriage is void if entered into when either party has an existing marriage to another person that has not been dissolved by legal action or terminated by the death of the other spouse.

(b) The later marriage that is void under this section becomes valid when the prior marriage is dissolved if, after the date of the dissolution, the parties have lived together as husband and wife and represented themselves to others as being married.

Tex. Fam. Code Ann. § 6.202 (West 2006).

Accordingly, the petitioner's marriage to A-R- became valid on December [REDACTED] the date the [REDACTED] County court dissolved his prior marriage to B-R-, because A-R- and the petitioner resided together and represented themselves to others as being married after that date. The director correctly determined that the petitioner and A-R- resided together and the record shows that they have held themselves out as a married couple from the petitioner's 1993 entry into the United States to at least 2010. The former couple's landlord, [REDACTED] states in his affidavit that the petitioner and A-R- jointly resided in his rental property on [REDACTED] from 1997 through 2011, after which A-R- continued to reside there separately. The record contains multiple joint bank and billing account statements dated after December 2005 and affidavits from family and friends attesting that the petitioner and A-R- have long been, and have long represented themselves to be, married. The petitioner, in her affidavit, stated that she and A-R- still consider themselves to be married even though they are separated.

The preponderance of the evidence submitted below and on appeal demonstrates that the petitioner had a qualifying spousal relationship with A-R. They participated in an actual wedding ceremony, the petitioner believed they were married, and the sole reason the marriage was not legitimate was because A-R- was still married to his prior wife. In addition, under Texas law, the petitioner's "informal" marriage to A-R- became valid when his marriage to his former wife was legally terminated on December [REDACTED]. After that date, they continued to reside together and represent themselves to others as a married couple, just as they had consistently done for more than a decade. As such, the petitioner has established that she had a qualifying relationship as the spouse of a U.S. lawful permanent resident and was eligible for preference immigrant classification based on such a relationship as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act. The director's contrary determinations are withdrawn.

#### *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 November 2010 and ending in November 2013). The director determined that because the petitioner had not submitted an affidavit, police clearances or state-issued criminal background checks for all of the aliases she used, she had not established her good-moral character.

On appeal, the petitioner submits a self-affidavit of good moral character; a certified police clearance from the [REDACTED] Police Department; and certified criminal background checks for seven “aliases” (name variants) used by the petitioner. She also submits the affidavits of others attesting to her good moral character and evidence of church membership and payment of church tithes and offerings.

*The Petitioner’s Criminal Record Does Not Preclude a Finding of Good Moral Character*

The record indicates that the petitioner has two criminal convictions. On July [REDACTED] the petitioner pled guilty and was convicted of improper entry by alien, in violation of Title 8 of the U.S. Code, Section 1325, in the United States District Court for the Southern District of Texas. She was given a six-month suspended sentence and three years of unsupervised probation. The maximum sentence for a first-time conviction under 8 U.S.C. § 1325 is six months imprisonment and a fine. The petitioner credibly recounted how her abuser husband gave her the Texas birth certificate of another individual and forced her to use it to enter the United States. The petitioner described in probative detail the interview by border agents to whom she timely retracted her false claim to U.S. citizenship and admitted that she was a Mexican citizen and the birth certificate was not her own. She credibly recounted how about a month after this failed attempt, her abuser husband directed her to cross a river from Mexico into the United States, arranged for someone to take her across the border, and threatened that she had no choice but to cross because he had already brought their young children to Texas. The petitioner has established that her conviction for improper entry by alien was related to the battery or extreme cruelty by her husband.

On November [REDACTED], the petitioner was convicted of parent contributing to nonattendance, a misdemeanor, in violation of section 25.093(a) of the Texas Education Code. She was assessed a \$100 fine plus court costs. The petitioner stated that on September 9, 2010, she received a citation from an officer of the [REDACTED] for contributing to the nonattendance of her daughter, [REDACTED]. Neither of the petitioner’s convictions fall within one of the enumerated subsections of section 101(f) of the Act such that they would automatically bar a finding of her good moral character. While the petitioner’s 1993 improper entry of alien offense may have involved moral turpitude, it falls within the so-called petty offense exception to such classification as the maximum sentence of imprisonment does not exceed one year and the petitioner was given only a six month suspended sentence. Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II). Consequently, section 101(f)(3) of the Act does not bar a finding of the petitioner’s good moral character.

The police clearances and criminal background checks submitted below and on appeal demonstrate that the petitioner has not been arrested or convicted of any further offenses. In addition, the record contains numerous attestations to the petitioner’s good moral character from knowledgeable individuals. For example, her daughter, [REDACTED] stated that the petitioner is her role model, serving both as father and mother and working at least two jobs to support her family. Ms. [REDACTED] praised the petitioner

for setting an example by getting a good education and being a rock through hard times. [REDACTED] D.D.S. stated that the petitioner worked for his group of offices from 2007 to 2012 as a dental health educator and he praised her for her outstanding work ethic, discipline, drive and motivation. The petitioner's workplace manager of two years, [REDACTED] states that she demonstrated good moral character and lauded her work ethic, reliability, trustworthiness and being someone on whom he is able to depend for excellence. The record also documents that the petitioner has regularly filed her income tax returns and she financially supports her church through regular tithes and donations. The favorable evidence of the petitioner's good moral character outweighs the significance of her criminal offenses. Accordingly, the petitioner has established on appeal that she is a person of good character. The director's contrary determination is withdrawn.

*Conclusion*

On appeal, the petitioner has overcome all three of the director's grounds for denial. The petitioner has established that she has a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for preference immigrant classification based on such a relationship as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act. The petitioner has demonstrated that she is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). On appeal, the petitioner has met this burden. She has established her eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act. The appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained.