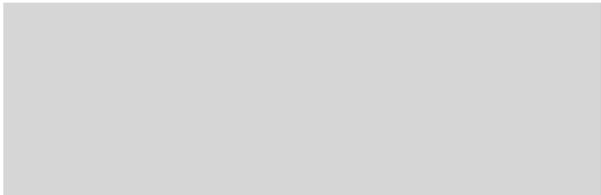




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 16 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

 Ron Rosenberg
Chief, Administrative Appeals Office

ATTACHMENT

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DISCUSSION: The Director, Vermont Service Center (the director), revoked approval of the immigrant petition after properly notifying the petitioner. 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 revoked approval of the petition, finding that the petitioner did not establish a qualifying spousal relationship with a U.S. lawful permanent resident and the corresponding eligibility for immigrant classification based on that relationship, and that she is a person of good moral character.

On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services (USCIS)].

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 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

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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 explained 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:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship.

(ii) *Legal status of the marriage.* The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service.

* * *

(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 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.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act[.]

* * *

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character....

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.

(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. 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, a citizen of Mexico, last entered the United States on July 10, 2009 using a border crossing card at [REDACTED] Texas. The petitioner married R-C-¹, a lawful permanent resident of the United States, on [REDACTED] 2005 in Texas and they subsequently divorced in Texas on [REDACTED] 2010. On May 17, 2010, the petitioner filed the instant Form I-360 self-petition which was approved on November 24, 2010. The director subsequently issued a Notice of Intent to Revoke (NOIR) the approval of the self-petition on June 19, 2014, notifying the petitioner that an investigation revealed that she was previously married to S-R-² in [REDACTED] Chihuahua, Mexico in 1976, the record did not

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

contain evidence that her marriage to S-R- had been lawfully terminated, and thus, the petitioner did not establish that she had a qualifying spousal relationship with R-C- and the corresponding eligibility for immigrant classification on the basis of that relationship at the time of the petition's approval. The director also notified the petitioner in the NOIR that the petitioner provided false testimony for the purpose of gaining an immigration benefit and thus, did not demonstrate her requisite good moral character. In response, the petitioner submitted evidence which the director found insufficient to overcome the proposed grounds for revocation, and revoked approval of the petition.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome all of the director's grounds for revocation. The appeal will be dismissed and approval of the self-petition will remain revoked for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

The director correctly determined that the petitioner did not establish a qualifying spousal relationship with R-C- and the corresponding eligibility for immigrant classification based on that relationship. The relevant evidence below³ included the petitioner's two declarations, a letter from S-R-, and copies of: the petitioner's marriage certificate to S-R-, registered in Chihuahua, Mexico on [REDACTED], 1976; the petitioner's marriage certificate to G-M-⁴ in [REDACTED] Chihuahua, Mexico on [REDACTED] 2003; the certificate of G-M-'s death on [REDACTED], 2003; the petitioner's birth certificate issued by the State of Chihuahua in April 2014 with an annotation of the petitioner's marriage to G-M- on [REDACTED] 2003; and the petitioner's birth certificate issued in August 2000 by the State of Chihuahua without an annotation of any previous marriage. Both the petitioner and S-R- stated that they married when the petitioner was [REDACTED] years old, that S-R- paid the marriage celebrant to perform the ceremony without the consent of the petitioner's parents, and that the petitioner's parents did not consent to the marriage. The director found that the petitioner did not establish the lawful termination of her marriage to S-R- and consequently, her subsequent marriage to R-C- is void.

On appeal, the petitioner cites Article 137 of the Civil Code of the State of Chihuahua, which provides that a female under the age of 18 years must obtain parental consent in order to marry. The petitioner states that the marriage certificate lists her age as [REDACTED] years old, does not indicate that parental consent was obtained, and thus the marriage to S-R- has no legal effect. The petitioner notes that USCIS determines the existence, validity and dissolution of a marriage using the law of the place where the marriage was performed or dissolved. *Matter of Miraldo*, 14 I&N Dec. 704 (BIA 1974).

We requested the United States Library of Congress Law Library Global Legal Research Center (LOC) to provide a legal opinion on whether the 1976 marriage, in Chihuahua, Mexico, of a [REDACTED] year old female without parental consent is void even though the marriage was registered and was not judicially annulled.⁵ The LOC opinion indicates that the Civil Code of the State of Chihuahua

³ The petitioner submitted certified translations of evidence as required.

⁴ Name withheld to protect the individual's identity.

⁵ The LOC opinion, issued in response to our inquiry, is attached to this decision (names redacted).

provides that a woman younger than 18 years of age may not marry without parental consent, and such consent must be stated in the marriage certificate. *See* CÓDIGO CIVIL DEL ESTADO DE CHIHUAHUA, articles 99, 137 (1974). PERIÓDICO OFICIAL DEL ESTADO, March 23, 1974, available at <http://www.congresochihuahua.gov.mx/biblioteca/codigos/archivosCodigos/13.pdf>. Further, if parental consent is required to marry due to the age of the parties, lack of parental consent is grounds for declaring a marriage void. *Id.*, articles 144-II, 223-II. Nevertheless, a marriage is presumed to be valid unless declared void by a judicial ruling not subject to appeal. *Id.*, article 241. *See* Letter from Law Library of Congress, Global Legal Research Center (May 28, 2015) (on file with the Law Library of Congress, LL File No. 2015-012330). As the petitioner has not asserted that she obtained a judicial annulment of her marriage to S-R- prior to marrying R-C-, she was not free to marry R-C- and her marriage to him in Texas is void. *See* TEX. FAM. CODE ANN. § 6.202(a) (West 1997), which states: “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.”

The petitioner has not demonstrated that her marriage to S-R- was judicially annulled prior to her subsequent marriage to R-C-, and consequently, her marriage to R-C- is void. The petitioner, therefore, has not established a qualifying spousal relationship with a U.S. lawful permanent resident and the corresponding eligibility for immigrant classification based on that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act.

Good Moral Character

The director found that the petitioner gave false testimony for the purpose of obtaining a benefit under the Act, and thus lacked good moral character. On appeal, the petitioner has overcome this ground for denial.

Section 101(f)(6) of the Act provides that a person who has given false testimony for the purpose of obtaining a benefit under the Act may not be found to have good moral character. The director found that the petitioner gave false testimony during a USCIS interview on April 10, 2014 when she told the interviewing officer that she did not marry the father of any of her daughters.⁶ Interview notes in the administrative record indicate that the petitioner testified under oath during an interview before USCIS that she did not marry S-R-, the father of her first child, and that she had only been married twice, once to G-M- and once to R-C-. In response to the director’s NOIR, the petitioner explained that she was convinced that the 1976 marriage to S-R- did not exist because S-R- told her that there was no record of it in the civil registry, and that the marriage was unlawful. S-R- stated in his letter that he discovered that there was no record of his marriage to the petitioner when he wanted to marry another woman and was informed that he did not need a divorce from the petitioner because there was no record of their marriage.

On appeal, the petitioner states that she did not intentionally deceive immigration officials during her

⁶ The record reflects that the petitioner and S-R- had a daughter together in [REDACTED]

interview. She states that she knew S-R- had bribed an official at their 1976 marriage, she was not of legal age to marry, and her parents' consent had not been obtained. The petitioner states that the information from S-R- to the effect that the civil registry had no record of the marriage was consistent with her birth certificates from the State of Chihuahua, one obtained in 2000 which did not contain an annotation of her marriage to S-R- in Chihuahua, and another obtained in 2014 which annotated her 2003 marriage to G-M- in Chihuahua. She explains that she has a fifth grade education and genuinely believed the marriage to S-R- was invalid and thus, she was never married to him.

The petitioner's explanation that she did not believe she was ever legally married to S-R- is reasonable and supported by the evidence of record. As stated at 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 petitioner's testimony that she was not married to S-R- was incorrect, but the record does not establish that in so testifying, she intended to deceive for the purpose of obtaining a benefit under the Act. Nor does her testimony fall below the standards of the average citizen in the community. As this was the only hindrance identified by the director to demonstrating the petitioner's good moral character, the petitioner has overcome the ground for denial on appeal and established that she is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act. The director's contrary finding will be withdrawn.

Conclusion

On appeal, 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. The findings by the director to the contrary are withdrawn. The petitioner has not, however, demonstrated that she had a qualifying spousal relationship with a lawful permanent resident of the United States and the corresponding eligibility for immigrant classification based on that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) 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). Here, that burden has not been met and the director had good and sufficient cause to revoke approval of the petition. Accordingly, the appeal will be dismissed and the approval of the petition will remain revoked for the reasons stated above.

ORDER: The appeal is dismissed.