

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

[REDACTED]

DATE: **MAY 07 2015**

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:

[REDACTED]

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, (“the director”) denied the petition. 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, 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 are further explained 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 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)(A)(iii) 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 is a citizen of Mexico who claims to have entered the United States without inspection, admission or parole in 1995. The petitioner married A-A,¹ a U.S. citizen, on [REDACTED] in [REDACTED] Nevada. The petitioner filed the instant Form I-360 self-petition on September 10, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record, as supplemented on appeal, demonstrates the petitioner's eligibility. The appeal will be sustained for the following reasons.

Good Moral Character

The record before the director contained, in part, two declarations from the petitioner; a Form I-589 Application for Asylum and Withholding of Deportation signed by the petitioner and filed with the former Immigration and Naturalization Service (INS), predecessor agency to United States Citizenship and Immigration Services (USCIS), on November 21, 1995;² USCIS records of the petitioner's applications for employment authorization filed in the years from 1998 – 2005; and a police clearance certificate. The director noted, among other things, that in the asylum application, the petitioner falsely claimed to be Salvadoran, and that in the applications for employment authorization, she also identified herself as Salvadoran. The director thereby found that the petitioner lacked good moral character under the last paragraph of Section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), which provide that a person may be found to lack good moral character even though not listed in one of the enumerated classes at Section 101(f), taking into account the provisions of Section 101(f) and the standards of the average citizen in the community.³ The director found that the petitioner's untruthfulness on the noted applications and providing false information to obtain an immigration benefit were unfavorable factors to be considered.⁴ The director indicated that a waiver of the finding that the petitioner lacked good moral character was not available, as the misrepresentation was not related to the abuse.

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). With the self-petition the petitioner provided a police clearance from the state of California indicating that she had no criminal record. In response to the RFE, the petitioner

¹ Name withheld to protect the individual's identity.

² The application remains open.

³ The director correctly determined that the petitioner was not barred by any of the enumerated classes under Section 101(f) of the Act. As the petitioner did not give oral testimony under oath, she did not give false testimony under section 101(f)(6) of the Act. *See, Kungys v. United States*, 485 U.S. 759, 780 (1988); *Matter of Haniatakis*, 376 F.2d 728, 730 (3d Cir. 1967).

⁴ The director indicated that because the petitioner misrepresented material facts in a previous immigration filing, she lacked credibility in the instant proceeding. The petitioner's credibility in another proceeding is not relevant in this proceeding and this finding of the director is withdrawn.

explained in her second declaration that shortly after arriving in the United States, she went to a notario to obtain a work permit, signed blank forms at his office and thereafter obtained employment authorization. The petitioner stated that she knew nothing about the contents of the Form I-589 application, including the fact that she claimed to be Salvadoran. She indicated that after she learned that the notario submitted fraudulent immigration applications for many people, she no longer applied for work authorization. The petitioner also submitted a psychological evaluation from clinical psychologist, [REDACTED] who indicated, among other things, that the petitioner had been working, was currently unemployed and attended a community school to learn job skills. The director found this information insufficient to establish the petitioner's good moral character.

On appeal, the petitioner submits a third declaration, certificates of training, school records of her three children, a letter of prospective employment, photographs, and individual tax returns. In her declaration, the petitioner indicates that as soon as she saw her employment authorization card identifying her nationality as Salvadoran, she realized she had been defrauded by the notario, and that she renewed her work permit out of fear of not being able to support her children. She submits copies of her individual tax returns from 2000 and 2006-2009.⁵ A letter and certificate from the [REDACTED] reflects that the petitioner participates in case management services, domestic violence training classes, and individual counseling. School records reflect that her three children are doing well in school. A letter and certificates from [REDACTED] certify the petitioner's completion of training programs in Cake Decorating, Event Planning, Balloon Arrangement and Marshmallow Design. A letter from [REDACTED] reflects that the petitioner is a franchise owner and is in training before she receives a salary. The petitioner asserts in her brief that the equities in her case outweigh the acts of misrepresentation.

The petitioner provides a plausible explanation that she did not intend to file a fraudulent application for asylum. The regulation at 8 C.F.R § 204.2(c)(1)(vii) states that 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 actions do not fall under any enumerated bar to a finding of good moral character under section 101(f) of the Act and the record indicates that she last filed for employment authorization over ten years ago and has not falsified information in the current proceeding. Considering that the petitioner has no criminal record, her attempts to rehabilitate her life following the abuse from her U.S. citizen husband, payment of taxes, continuing education and positive influence in her children's lives, as reflected in their accomplishments at school, the petitioner has established her good moral character. The director's decision to the contrary is withdrawn.

On appeal, the petitioner has established her good moral character and eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Conclusion

The petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. See Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Otiende*, 26 I&N

⁵ The petitioner was listed as a dependent on her husband's income tax returns filed in 2010-2012.



Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.