

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: MAY 13 2015

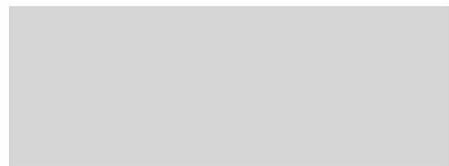
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

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:



INSTRUCTIONS:

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

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) and the matter is now before the 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, and that she has been battered or subjected to extreme cruelty by her U.S. citizen spouse. 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 states, in pertinent part, that:

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:

(vi) *Battery or Extreme Cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(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.

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.

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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 entered the United States with false identification on or around 1995. The petitioner married J-R-,<sup>1</sup> a U.S. citizen, on [REDACTED] 2001, and she filed the present Form I-360 petition on June 22, 2012.<sup>2</sup> On December 23, 2013, the director issued a Request for Evidence (RFE) of the petitioner's good moral character and the requisite battery and/or extreme cruelty, to which the petitioner timely responded with additional evidence. Upon review of the record, the director determined that the petitioner was not a credible witness, and that she provided insufficient evidence to establish her good moral character and that she was battered and/or subjected to extreme cruelty by her spouse during their marriage. The petition was subsequently denied on April 29, 2014. The petitioner timely appealed, asserting that the director improperly discounted her testimony and documentary evidence, and that the record establishes her good moral character and that she was battered and subjected to extreme cruelty by J-R- during their marriage.

### *Petitioner's Credibility*

Section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). "The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

The director discounted the petitioner's testimony and related evidence on the basis that she presented false identification and willfully misrepresented herself in 1995, to gain entry into the United States. The director referred to the petitioner's May 7, 2003 sworn affidavit, in which the petitioner admitted to using another person's identification document to gain entry into the United States. The director then referred to the affidavit from the petitioner submitted in response to the RFE in which she attempted to explain that admission statements made in prior her sworn affidavit were the result of a mistake. The director found the petitioner to have diminished credibility based upon the inconsistencies between the petitioner's statements regarding her entry into the United States 20 years ago, when she was 15 years old and her more recent statement. The director did not identify or discuss any other substantive reason for discounting the credibility of the petitioner's current Form I-360 claims, such as inconsistencies related to her claim of abuse. The diminished credibility finding against the petitioner is withdrawn.

We review these proceedings *de novo*. A full review of the record establishes the petitioner's eligibility.

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

<sup>2</sup> The record contains evidence reflecting that the petitioner filed a petition for divorce from J-R- on [REDACTED] 2011, however the record contains no final divorce decree or other information demonstrating that the divorce has been finalized.

*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 June 2009 and ending in June 2012).

At filing, the petitioner submitted a June 22, 2011 clearance based upon her married name from the [REDACTED] Illinois Police Department. A February 3, 2014 local police clearance from the [REDACTED] Illinois Police Department, submitted in response to the director's Request for Evidence (RFE), reflects that a name-based records search disclosed no conviction or sentence of imprisonment under the petitioner's maiden name "[REDACTED]". On appeal, the petitioner submitted an updated police clearance from the [REDACTED] Illinois Police Department, dated May 30, 2014, reflecting that a name-based records search disclosed no conviction or sentence of imprisonment under the petitioner's married name. The petitioner indicated further, in a January 27, 2014 affidavit submitted in response to the director's RFE, that she has not used any name other than her maiden and married names. The petitioner has not indicated and the record does not show that the petitioner has resided in any place other than [REDACTED] Illinois during the relevant time period. The record therefore contains local police clearances in all of the names that the petitioner has used, and covering the three-year period immediately prior to filing the Form I-360.

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. See 8 C.F.R. § 204.2(c)(1)(vii). The petitioner asserted in her January 27, 2014 affidavit that she has never been arrested or convicted of any crime, and that she is a person of good moral character. Affidavits from family members, [REDACTED] and from the petitioner's pastor, Reverend [REDACTED] also attest to the petitioner's good moral character. Further, the record does not show that the petitioner has been convicted of any crimes, or that she has engaged in any actions that fall within any of the enumerated bars to a finding of good moral character under section 101(f) of the Act. Accordingly, the petitioner has established her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Battery or Extreme Cruelty*

The petitioner indicated in her initial affidavit submitted with the Form I-360, that she married J-R- in 2001, and that overall, her relationship with J-R- went well for several years. She stated, however, that in 2007, J-R- started drinking alcohol every weekend and on some week days. She indicated that J-R- called her derogatory names, degraded and insulted her, and became aggressive towards her when he was intoxicated. She stated further that after 2007, she had to "go through something" every weekend. The petitioner recounted an incident in February 2007, when J-R- was intoxicated and fell down in front of their house. She stated that their children laughed at this, and that J-R- became angry and yelled at her and the children, and began throwing and breaking things in their home. She stated further that she locked herself and the children into one of the rooms in the house out of fear. The petitioner recounted a second incident that occurred in June 2007, when J-R- insisted on driving the family to a party while

he was still under the influence of alcohol. She stated that J-R- screamed at her and grabbed her by the neck when she suggested that they stay home. The petitioner recounted a third incident that occurred in 2008, when J-R- blamed her for making his brothers leave because they were drinking. She stated that she locked herself and their children in a room in the house out of fear, while J-R- banged on the door and yelled and screamed at her. She stated further that she did not unlock the door until the next day, and that J-R- acted as if nothing had happened. The petitioner indicated that she was afraid to leave their children with J-R- when she worked nights, because he neglected them and the children were afraid to ask him for anything out of fear that he would become angry with them. The petitioner indicated further that in March 2010, she discovered that J-R- was using cocaine. She stated that J-R- denied using cocaine when she asked him about it, and that he became angry and yelled at her when she arranged for their children to stay with a baby-sitter at night when she worked. The petitioner recounted that on April 20, 2010, she returned home with their children to find J-R- under the influence of drugs and alcohol. The petitioner described J-R-'s verbal abuse and further claimed that he became physically aggressive and pushed her into the wall, threatening to have her deported and to take the children away from her. The petitioner stated that out of fear she fled with the children to their car, and that she called the police and remained locked in the car until the police came. She indicated that J-R- was subsequently arrested and taken to jail.

The petitioner added, in a January 27, 2014 affidavit submitted in response to the director's RFE, that she feared for her children's and her own safety during her marriage, because J-R- was abusive when he drank alcohol and took drugs.

A [REDACTED] Police Department incident report reflects that on April 20, 2010, the petitioner flagged the police down on the street and told them that J-R- was under the influence and had threatened to beat her. The police report indicates that J-R- was taken into custody, and that he was charged with Simple Assault. A May 13, 2010 court order from the Circuit Court of [REDACTED], Illinois reflects that the petitioner obtained an Order of Protection against J-R-, valid through February 13, 2011.

The record also contains a July 18, 2011 letter from a counselor at the Metropolitan Family Services (MFS), Family Violence Intervention Program in [REDACTED] Illinois. The letter reflects that the petitioner contacted MFS in June 2010, and that she began attending individual counseling sessions in November 2010. The letter also reflects that the petitioner discussed incidents of abuse against her when J-R- was under the influence of drugs or alcohol, or when things did not go his way including, "hitting, pushing, throwing her against the wall and the bed, and breaking objects." In addition, the counselor related that the petitioner discussed emotionally and verbally abusive behavior by J-R-, including insulting and humiliating the petitioner, degrading and yelling at her, and threatening to take their children and to have her deported. The counselor indicated that the petitioner related that her children were also negatively affected by the abuse that they witnessed, and that they were afraid to ask or tell their father anything. The counselor concluded that the petitioner was a "victim of a repetitive pattern of emotional, verbal, and physical abuse."

Upon review, the evidence demonstrates that J-R- subjected the petitioner to battery and extreme cruelty during their marriage. The petitioner's affidavit described in probative detail multiple acts of battery and extreme cruelty to which she was subjected by J-R-. The record also contains a police report, a protection order, and a detailed letter from a domestic violence counselor describing the incidents and

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*NON-PRECEDENT DECISION*

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behavior to which the petitioner was subjected. Overall, the petitioner established, by a preponderance of the evidence, that J-R- subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

The petitioner has established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The petitioner has also establish that she has been battered and subjected to extreme cruelty by her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has been met. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.