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U.S. Department of Justice  
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

**PUBLIC COPY**



File [REDACTED] (AC 01 246 54975)

Office: VERMONT SERVICE CENTER

Date:

16 DEC 2002

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

APPLICATION: Petitioner for Special Immigrant Battered Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iv)

IN BEHALF OF APPLICANT:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native of the former Soviet Union and citizen of Ukraine who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(iv), as the battered child of a United States citizen.

The director determined that the petitioner failed to establish that she is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel for the petitioner provides the Service with evidence that the petitioner was sentenced to three years and four months as a juvenile. Counsel included a brief captioned "Respondent's Motion to Terminate." In the brief, counsel asserts that deportation of the petitioner would result in great hardship and that the petitioner is trying to build a new life as a married woman.

8 C.F.R. 204.2(e)(1) states, in pertinent part, that:

(i) A child may file a self-petition under section 204(a)(1)(A)(iv) or 204(a)(1)(B)(iii) of the Act if he or she:

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

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident parent;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident while residing with that parent;

(F) Is a person of good moral character; and,

(G) Is a person whose deportation would result in extreme hardship to himself or herself.

The petitioner was born on January 22, 1982 in the former Soviet Union. The petitioner's mother married a United States citizen in the Ukraine on February 17, 1995. The petitioner accompanied her mother and stepfather to the United States. The record reflects that the petitioner entered the United States on July

21, 1995, as an immigrant. The petitioner resided with her mother and stepfather. According to the record, the petitioner's mother separated from the petitioner's stepfather on May 1, 1996 and they were divorced in October 1996. On August 6, 2001, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen stepfather.

The director denied the petition, finding that the petitioner failed to establish that she is a person of good moral character.

8 C.F.R. 204.2(e)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. According to 8 C.F.R. 204.2(e)(1)(vii), 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. According to section 101(f)(7) of the Act, no person shall be regarded as a person of good moral character who was confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more. In the instant case, the petitioner was convicted for the offenses of grand theft of an automobile, receiving stolen property and first-degree residential burglary. She was sentenced to confinement for a period of three years and four months,<sup>1</sup> more than one hundred and eighty days, so she cannot be regarded as a person of good moral character.

Beyond the decision of the director, the self-petitioning child must be unmarried, and otherwise qualify as the abuser's child under the definition of child contained in section 101(b)(1) of the Act when the petition is filed and when it is approved. 8 C.F.R. 204.2(e)(1)(A)(ii). In the instant case, the petitioner's mother and the petitioner's stepfather were divorced in October 1996, thereby terminating the parent-child relationship between the petitioner and her abuser. Furthermore, the record contains a marriage certificate of the petitioner. Since the appeal will be dismissed for the reason stated above, these issues will not be discussed further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> According to petitioner's counsel, the petitioner spent some of her sentence in an adult correctional facility and the balance in the custody of the California Youth Authority at the Ventura Correctional Facility.