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U.S. Department of Justice  
Immigration and Naturalization Service

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

19 JUN 2002

FILE: [Redacted]  
EAC 99 192 53918

Office: Vermont Service Center

Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:

[Redacted]

Public

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted and the previous decision of the Associate Commissioner will be affirmed.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director denied the petition after determining that the petitioner failed to submit police clearances as had been requested to establish that she is a person of good moral character.

Upon review of the record of proceeding, the Associate Commissioner noted that although counsel states that a brief and documentary evidence are forthcoming, none had been received in the record of proceeding. He, therefore, concurred with the director's conclusion and denied the petition on July 19, 2001.

On motion, counsel submits a letter of clearance from the Fort Worth Police Department indicating that they have no record of the petitioner having been arrested and convicted of a misdemeanor or a felony.

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), 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 for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition.

The Federal Bureau of Investigation report, contained in the record of proceeding, reflects that on January 13, 1993, in Houston, Texas, the applicant was arrested and charged with theft-shoplifting. Although this arrest occurred more than three years prior to the filing of the petition, theft or larceny, whether grand or petty, is a crime involving moral turpitude, and such conviction may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. See Matter of Scarpulla, 15 I&N Dec. 139 (BIA 1974); Morasch v. INS, 363 F.2d 30 (9th Cir. 1966).

Section 212(a)(2)(A)(ii) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral



turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months. The petitioner, however, failed to submit the arrest report and the court's final disposition of this charge.

Accordingly, the decision of the Associate Commissioner dated July 19, 2001, will be affirmed.

**ORDER:** The decision of the Associate Commissioner dated July 19, 2001, is affirmed.