

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave. N.W., Room A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

B9



FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: NOV 22 2004

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

PETITION: Petition for Special Immigrant Battered 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Ghana who is seeking classification as a special immigrant 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 the battered spouse of a citizen of the United States.

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

On appeal, the petitioner submits a statement explaining the circumstances of a prior arrest and conviction and the reason he used a false Liberian passport to enter the United States.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or 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 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

* * *

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

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

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence on the record, the petitioner applied for asylum but was denied. He was served with an Order to Show Cause on August 7, 1995 and was placed in immigration proceedings on August 28, 1995. The petitioner wed [REDACTED] a U.S. citizen, on August 26 or 27, 1995 in Cincinnati, Ohio. The petitioner's wife filed a Form I-130 on September 9, 1995, which was approved. Subsequently, approval of the visa petition was revoked as of the date of approval based upon the petitioner's notice of withdrawal. On October 4, 2002, the petitioner filed a Form I-360 self-petition, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during their marriage.

The record further indicates that the petitioner applied for refugee status in Canada but was denied. He subsequently wed [REDACTED] a Canadian citizen, on November 7, 1992. His Canadian wife filed a petition on his behalf that was denied because the Canadian citizen was not divorced from her first husband. The record further indicates that the petitioner was convicted on March 9, 1994 in Ontario, Canada, on two charges (Case # 10690):

- 1) Assault with a weapon, Section 267(1)(a) Criminal Code of Canada.
- 2) Assault with intent to resist arrest, Section 270(1)(b) Criminal Code of Canada.

He pled guilty to both charges and received a suspended sentence and was placed on probation for two years plus firearms prohibition for 10 years and a \$1,000 fine. As of April 2003, Canada had an outstanding warrant for the petitioner's deportation from Canada.

The evidence on the record further indicates that on November 27, 1995, the petitioner testified under oath to an officer of the Immigration and Nationality Service [formerly INS] that he had never been arrested. He also denied ever having been to Canada.

The petitioner submitted his criminal record in the State of Ohio, which revealed he had several traffic violations and a minor misdemeanor conviction for disorderly conduct (Case # 2001 CR B00206).

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that he 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. 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.

Because the record contains information that the petitioner was arrested and charged in Canada and in the United States, the director requested the petitioner to submit police records and the final disposition of all arrests from his residence in Canada for the 10-year period before filing the Form I-360 petition. The director also requested the petitioner to submit a detailed statement describing why he failed to disclose that he had been to Canada and had a criminal record in Canada in his sworn statement.

The petitioner responded to the request for additional evidence, stating that he was "gripped by fear" during his "first interrogation by INS officials." He further stated that he needed additional time to obtain a copy of his arrest and court records. He subsequently submitted a copy of the final disposition, indicating that the petitioner had been arrested on May 9, 1993 in Mississauga, Ontario, Canada for committing an assault on Donna Anderson, using a weapon (a belt) and that he assaulted a police officer with intent to resist arrest. (Canadian Criminal Code §§ 267(1)(a) and 270(1)(b)). On December 9, 1993, he was found guilty on both counts. On March 9, 1994, he was given a suspended sentence, two-years probation, and was ordered not to possess any weapons, firearms, and ammunition for the period of 10 years for the first charge. On the second charge, he was sentenced to pay a \$1,000 fine.

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

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 –

* * *

(3) a member of one or more of the classes of persons . . . described in paragraphs (2)(D), (6)(E), and (9)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) . . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period.

* * *

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

* * *

(8) one who at any time has been convicted of an aggravated felony.

Section 212(a)(2)(A)(i) of the Act states, in pertinent part:

In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime

The petitioner was convicted of assault with a weapon upon his wife. In a 1996 decision, the Board of Immigration Appeals held that willful infliction of corporal injury on a spouse, cohabitant, or parent of the perpetrator's child in violation of section 273.5(a) of the California Penal Code constitutes a crime involving moral turpitude. *In re Tran*, 21 I&N Dec. 291, 294 (BIA 1996). In the instant case, the petitioner was convicted of committing an assault with a weapon.

Under section 101(a)(43)(F) of the Act, the term *aggravated felony* means a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment [is] at least 1 year. 8 U.S.C. § 1101(a)(43). The petitioner was convicted on two charges of assault. Assault is a crime of violence. In the instant case, the sentence is indeterminate, hence, the maximum span of the term governs. *Matter of D-* 20 I&N Dec. 827 (BIA 1994) (indeterminate sentence under Massachusetts law is a sentence for the maximum term imposed); *Matter of Chen*, 10 I&N Dec. 671 (BIA 1964) (sentence indeterminate; maximum term fixed by statute). In the instant case, the petitioner was convicted of section 267(a) of the Canadian Criminal Code. The maximum sentence for this section is ten years. The petitioner was convicted of section 270(1)(b) for which he is liable to imprisonment for a term not exceeding five years. The petitioner was convicted of two aggravated felonies; hence, he is unable to establish that he is a person of good moral character.

The director determined and the AAO concurs that the petitioner is unable to establish that he is a person of good moral character because he gave false testimony to obtain an immigration benefit. The petitioner provided false testimony in a Record of Sworn Statement, dated and signed by the petitioner on November 27, 1997, in connection with his application for permanent residence. The petitioner falsely testified that he had never been to Canada and had never been arrested.

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.