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



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: SEP 08 2004

EAC 02 165 52510

IN RE:

Petitioner:

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:

[Redacted]

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.

Mari Johnson

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 Guatemala 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 determined that the petitioner failed to submit evidence as had been requested to establish that she is a person of good moral character. The director, therefore, denied the petition.

On appeal, counsel submits a brief and additional evidence.

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 wed United States citizen [REDACTED] on April 21, 2001 in Van Nuys, California. The petitioner's spouse filed a Form I-130 petition on her behalf. The petitioner filed a Form I-485 application for adjustment of status to permanent resident but she failed to appear for an adjustment interview. The petitioner filed a Form I-360 on April 15, 2002, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage.

The regulation at 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. 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 was insufficient to establish that the petitioner is a person of good moral character, the director requested the petitioner to submit additional evidence on April 16, 2003. The petitioner requested additional time to respond to the director's request. The director granted the request for additional time. On June 16, 2003, additional evidence was submitted including the petitioner's affidavit in which she states that she has "always been a good person." In her decision dated October 14, 2003, the director noted that the petitioner failed to provide any police clearances or an explanation as to why none had been submitted.

On appeal, counsel for the petitioner submits the petitioner's criminal record.

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, whether inadmissible or not, 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) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana); if the offense described therein, for

which such person was convicted or of which he admits the commission, was committed during such period.

Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) provides, in pertinent part, that an alien is ineligible to receive visas and for admission if the alien is convicted of, or admits having committed, or who admits committing acts which constitute the essential elements of a violation of "a crime involving moral turpitude (other than a purely political offense)."

According to the evidence on the record, the petitioner was charged on April 1, 1993 on two counts in Los Angeles, California ([REDACTED])

1. Theft of property - 484(a) PC
2. Burglary - 459 PC

She was convicted upon a plea of nolo contendere to theft of property. She was sentenced to five days in the Los Angeles County Jail and was placed on probation for two years. The charge of burglary was simultaneously dismissed.

The petitioner was charged in Los Angeles on December 5, 1995 on three charges and was convicted upon a plea of nolo contendere to access card theft [REDACTED]. She was sentenced to five days in the Los Angeles County jail, 100 hours of community service, to pay restitution and was placed on probation for two years. She paid restitution on February 6, 1996. Two separate charges of grand theft of four cards within four months (484E(B) PC) and petty theft of a credit card with the intent to defraud (484E(C) PC) were simultaneously dismissed.

The petitioner was twice convicted of crimes involving moral turpitude; hence, she is statutorily barred from establishing that she is a person of good moral character.

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.