

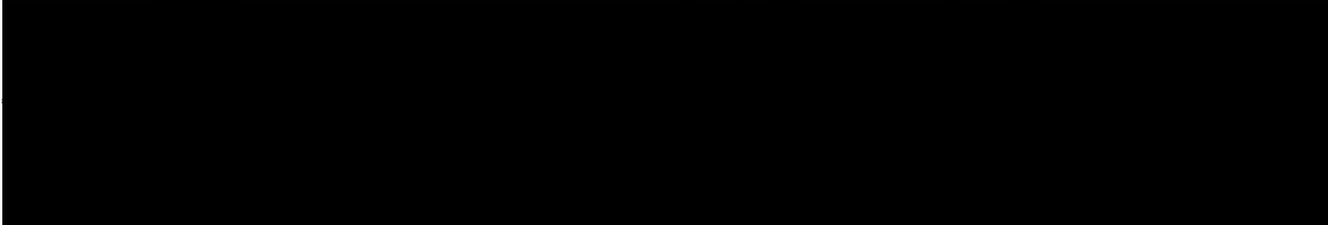
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invasion of personal privacy

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FILE:



Office: VERMONT SERVICE CENTER

Date:

EAC 03 110 52290

IN RE:

Petitioner:

Beneficiary:



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 the Dominican Republic 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 United States citizen.

According to the evidence on the record, the petitioner was [REDACTED] a U.S. citizen, on July 10, 1996, in Bronx, New York. The petitioner's citizen spouse filed a Form I-130 petition on her behalf on April 7, 1997. The district director denied the Form I-130 and accompanying Form I-485 on February 12, 2000. The petitioner filed a Form I-360 petition in October 2000 that was denied on March 27, 2001. She filed the instant petition on February 20, 2003 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The director denied the petition, finding that the petitioner failed to establish that she was a person of good moral character, because she had pled guilty to charges of promoting prostitution and prostitution, and was in fact statutorily ineligible to establish that she is a person of good moral character pursuant to section 101(f) of the Act.

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

(f) For the purpose of this Act, 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 . . . 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) of the Act, 8 U.S.C. § 1181(a), provides, in part:

*Classes of aliens ineligible for visas or admission.* Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States.

(2)(D) *Prostitution and commercialized vice.* Any alien who:

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

\* \* \*

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution.

On appeal, the petitioner asserts that she was denied due to her arrest on assault charges on February 18, 1999 that were later dismissed. She further asserts that more than five years have lapsed since her last arrest.

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.

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. The alien, in any application where good moral character is a necessary element of eligibility, has the burden of establishing good moral character. *See Brownell v. Cohen*, 250 F.2d 770 (D.C. Cir. 1957); *Estrada-Oreja v. Del Guercio*, 252 F.2d 904 (9<sup>th</sup> Cir. 1958); *Matter of Turcotte*, 12 I&N Dec. 206 (BIA 1967).

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 with prostitution on two occasions, she was requested on January 20, 2004, to submit additional evidence including copies of arrest reports and court documents to show the final disposition of each arrest.

The petitioner submitted copies of arrest and court records from New York, New York. The evidence on the record indicates that the petitioner has the following criminal record:

- The New York City police arrested the petitioner on October 8, 1991 and charged her with promoting prostitution (230.25). On March 23, 1992, she pled guilty to the charge and was sentenced to a fine of \$75.00 and 30 days incarceration. (Docket # 91X041465).
- The New York City police arrested the petitioner on June 8, 1993 on the charge of prostitution (230.00). She pled guilty on June 10, 1993 and was sentenced to time served. (Docket # 93K028957).
- The NYC police arrested the petitioner on April 25, 1994 on the charge of prostitution (230.00). She pled guilty and was sentenced to time served. (Docket # 94N029641).
- The NYC police arrested the petitioner on charges of assault and harassment charges against her husband on February 18, 1999 ((criminal possession in the fourth degree (265.01), attempted assault (110-120.00), second degree menacing (120.14), and second degree harassment (240.26)). On July 26, 1999, the charges were dismissed on speedy trial provision (Docket # 99K012920).
- The New York City police arrested the petitioner on April 24, 1999 on charges of assault (120.00), attempted assault (110-120.00), and harassment (240.26). The charges were dismissed on July 26, 1999. (Docket # 99K030092).

On October 28, 2000, the President signed into law an amendment to the Violence Against Women Act. This amendment allows an alien to file a self-petition, despite an arrest and/or conviction, if the criminal act constitutes a ground of admissibility or deportability that is waivable, and the act was connected to domestic violence. The petitioner alleges that her 1999 arrest was connected to domestic violence. Nonetheless, the balance of her criminal history precludes a finding 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.