

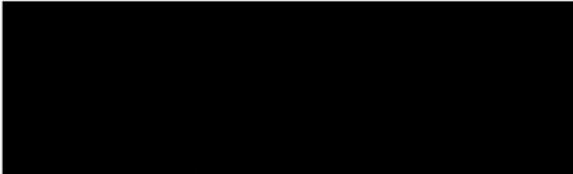
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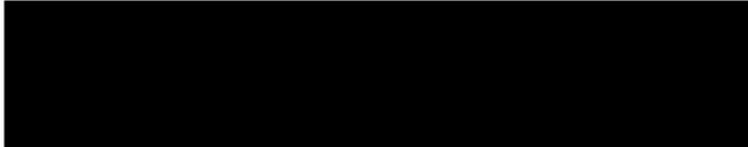
Office: VERMONT SERVICE CENTER

Date:

AUG 03 2006

IN RE:

Petitioner:



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, Chief
Administrative Appeals Office

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

The petitioner is a native and citizen of Ecuador 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 she is a person of good moral character.

On appeal, the petitioner submits a brief and additional evidence.¹

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;

* * *

¹ Although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) has been submitted, the individual is not authorized under 8 C.F.R. § 292.1 or § 292.2 to represent the applicant. Therefore, this decision will be furnished to the applicant only.

(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)(vii) states, in pertinent part:

Good moral character. 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. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

Section 101(f) of the Act 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 . . . subparagraphs (A) and (B) of section 1182(a)(2) of this title [section 212(a)(2) of the 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)(2)(A) of the Act includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

According to the evidence on the record, the petitioner entered the United States on April 14, 2002 as a B-2 nonimmigrant visitor. She married naturalized United States citizen [REDACTED] on May 12, 1994 in New York. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on July 16, 1996. The petitioner's marriage to [REDACTED] ended in divorce on July 21, 2003. On March 11, 2005, the petitioner filed a self-petition, 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. On March 24, 2005, the director requested the petitioner to submit evidence (RFE) that she is a person of good moral character. The petitioner responded to the RFE on May 9, 2005 by providing the director with an indictment, complaint, a cooperation agreement, and the final court disposition plus a letter from her probation officer. The indictment provides that on or about January 17, 1994 and January 27, 1994, the petitioner and [REDACTED] a co-defendant, conspired to make false and fictitious oral and written statements and to furnish and exhibit false, fictitious and misrepresented identification with the intent to deceive a firearms dealer to a fact material to the lawfulness of the sale in violation of sections 922(a)(6), and 371 of Title 18, United States Code. The petitioner plead guilty to making false representations and making a false document knowing that the document contained a false statement in violation of 18 U.S.C. § 1001. On October 6, 2004, the petitioner was convicted of making a false statement on a firearm application, a violation of 18 U.S.C. § 1001 in the Eastern District of New York U.S. District Court (Court # [REDACTED]).

On June 29, 2005, the director sent the petitioner a notice of intent to deny the petition because the petitioner had been convicted of a crime involving moral turpitude; hence, could not establish that she is a person of good moral character as defined in section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3).

In response to the notice of intent to deny, the petitioner's unauthorized attorney wrote that the petitioner plead guilty because she was forced by her ex-husband to lie. Without documentary evidence to support the claim, the assertions of counsel, much less one who is not authorized to represent the applicant in any immigration matter, will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner's unauthorized attorney also provided CIS with a letter from the petitioner's probation officer indicating that she had successfully completed probation and two additional letters regarding the petitioner's good moral character.

[REDACTED]

The director denied the petition. On appeal, the petitioner's unauthorized attorney submitted another letter to CIS and six almost identical letters from the petitioner's friends that state that she met Mr. [REDACTED] sometime in 1993."

The Petitioner Lacks Good Moral Character Because She was Convicted of a Crime Involving Moral Turpitude

The term "crime involving moral turpitude" is not defined in the Act or the regulations, but has been part of the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude "refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Matter of Franklin*, 20 I&N Dec 867,868 (BIA 1994), *aff'd*, 72 F.3d 571 (8th Cir. 1995). When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If the statute defines a crime "in which turpitude necessarily inheres," then a conviction under that statute constitutes a crime involving moral turpitude. *Id.* The BIA has stated that "[t]he test to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind. An evil or malicious intent is said to be the essence of moral turpitude." *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980) (internal citations omitted).

In *Jordan v. De George*, 341 U.S. 223 (1951), the Supreme Court stated that fraud has consistently been regarded as such a contaminating component in any crime that American courts have without exception include such crimes within the scope of moral turpitude.

The Relevant Statutory Exceptions and Discretionary Provision Do Not Apply to the Petitioner's Case

Section 212(a)(2)(A)(ii) of the Act provides two exceptions to determining that an alien has committed or been convicted of a crime involving moral turpitude, but neither of these exceptions apply to the petitioner. The first exception is for crimes committed by juveniles under the age of 18 and five years prior to their application for immigration benefits. Section 212(a)(2)(A)(ii)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(I). The petitioner was 27 years old at the time she committed her crime and so this exception does not apply to her. The second exception applies when the maximum possible penalty for the crime of which the alien was convicted does not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months. Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II). The petitioner was convicted of making false representations and making a false document under 18 U.S.C. § 1001, which prescribes a maximum penalty of five years of imprisonment.³ Accordingly, the second exception to section 212(a)(2)(A)(ii) does not apply to the petitioner.

³ The maximum penalty is eight years if the offense involves national or international terrorism.

We are also unable to find the petitioner to be a person of good moral character pursuant to the discretionary provision enacted by Title V of the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000, Pub. L. 06-386. Section 204(a)(1)(C) of the Act, as amended by the VTVPA, provides CIS with the discretion to find a petitioner to be a person of good moral character if: 1) the petitioner's conviction for a crime involving moral turpitude is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) the conviction was connected to the alien's battery or subjection to extreme cruelty by his or her U.S. citizen or lawful permanent resident spouse or parent. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). Although inadmissibility due to a conviction for a crime involving moral turpitude is waivable for self-petitioners under section 212(h)(1)(C) of the Act, the petitioner's conviction was not connected to [REDACTED]'s alleged battery or extreme cruelty. The petitioner committed her crime in 1994. In a psychological evaluation dated July 29, 2003, the evaluator reported what the petitioner had told her, that she met [REDACTED] in 1994 and they wed soon after that (May 12, 1994). The evaluation is silent on the subject of the petitioner's arrest. In a sworn statement dated January 17, 1994, the petitioner said she bought 30 firearms for her co-defendant [REDACTED] on behalf of a security firm in Ecuador. She averred that she bought the firearms for [REDACTED] because he lacked a license for identification. Hence, the record clearly shows that the petitioner's conviction was unrelated to her husband's purported abuse. We are thus barred from finding the petitioner to be a person of good moral character as a matter of discretion pursuant to section 204(a)(1)(C) of the Act.

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.