



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 05 036 53299

Office: VERMONT SERVICE CENTER

Date: JUN 08 2006

IN RE: Petitioner: [REDACTED]

PETITION: 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)

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

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

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii) as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

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

On appeal, the petitioner submits a transcript of her criminal court docket.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a U.S. lawful permanent resident is eligible to self-petition under these provisions if he or she is an alien:

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.

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."

The regulation at 8 C.F.R. § 204.2(c)(2) further states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(v) *Good moral character*. 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 from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The petitioner in this case is a native and citizen of Mexico who states that she entered the United States without inspection in 1989. On December 1, 1991, the petitioner married [REDACTED], who was a lawful permanent resident of the United States at that time. The petitioner is the beneficiary of a

Form I-130 petition filed by Mr. [REDACTED] which was approved on August 25, 1994. The petitioner's priority date based on the approved Form I-130 petition is April 21, 1994. Records of Citizenship and Immigration Services (CIS) show that Mr. [REDACTED] lost his lawful permanent resident status on December 11, 2003 when an immigration judge ordered his removal as an aggravated felon due to his conviction for domestic violence assault. The petitioner filed this Form I-360 on November 19, 2004.

The petitioner initially submitted no evidence of her good moral character. In response to the director's December 28, 2004 notice requesting such evidence, the petitioner submitted her Chelan County (Washington) District Court Criminal Conviction Record Check. The Record Check included a copy of the petitioner's criminal court docket transcript showing that she was convicted of disorderly conduct by the Chelan County District Court on November 23, 2004. The court sentenced the petitioner to 90 days imprisonment, but suspended all 90 days of that sentence and imposed a fine of \$1,000 with \$750 suspended. In the course of the petitioner's criminal proceedings, a two-year no contact order was issued against the petitioner on July 23, 2004. The record contains no evidence that the petitioner has violated that order.

On April 18, 2005, the director requested the petitioner to submit copies of her arrest records and the relevant excerpts of law showing the maximum penalty for the offense of which the petitioner was convicted. The petitioner failed to submit the requested documents. On November 3, 2005, the director denied the petition because the record failed to establish that she was a person of good moral character. On appeal, the petitioner submits the full record of her criminal court docket, which shows that she complied with the court order and paid her fine in full on September 15, 2005.

We take administrative notice of the fact that Section 84.030 of the Washington Criminal Code states:

Disorderly conduct

(1) A person is guilty of disorderly conduct if he:

- (a) Uses abusive language and thereby intentionally creates a risk of assault; or
- (b) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or
- (c) Intentionally obstructs vehicular or pedestrian traffic without lawful authority.

(2) Disorderly conduct is a misdemeanor.

Rev. Code of Wash. Ann. § 9A.84.030 (West 2006).

Section 92.030 of the Washington Criminal Code states:

Punishment of misdemeanor when not fixed by statute

Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine.

Rev. Code of Wash. Ann. § 9.92.030 (West 2006).

Although the petitioner's crime may involve moral turpitude, the record shows that she falls within the exception at section 212(a)(2)(A)(ii) of the Act, which states, in pertinent part:

Exception. – Clause (i)(I) [inadmissibility of alien convicted of a crime involving moral turpitude] shall not apply to an alien who committed only one crime if –

* * *

(II) the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record indicates that the petitioner has committed only one crime. The maximum penalty possible for the petitioner's crime is 90 days of imprisonment (and/or a fine of not more than \$1,000). The petitioner was sentenced to 90 days imprisonment, with 90 days suspended. Accordingly, she falls within the exception at section 212(a)(2)(A)(ii) of the Act and is not an alien convicted of a crime involving moral turpitude under section 212(a)(2) of the Act. Section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii) thus do not bar a finding that the petitioner is a person of good moral character. The record contains no evidence that the petitioner has violated her no contact order or has committed other unlawful and immoral acts. Accordingly, the record establishes that the petitioner is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

We concur with the director's determination that the petitioner meets all the other statutory requirements. The petitioner has established her eligibility for immigrant classification under section 204(a)(1)(B)(ii) of the Act and her petition will be approved.

As noted on the petitioner's Prima Facie Case Notice dated February 16, 2005, the petitioner's two children, [REDACTED] and [REDACTED], are derivative beneficiaries of her petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(4). The children's birth and parentage are documented in the record and they were both under 21 years of age when this petition was filed.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.