

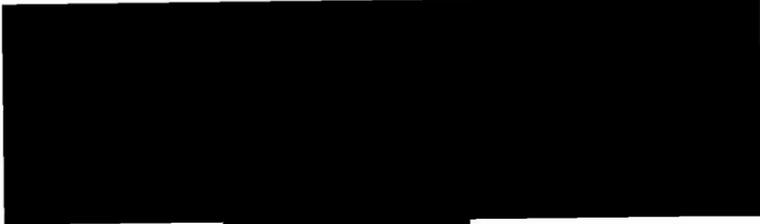


U.S. Citizenship
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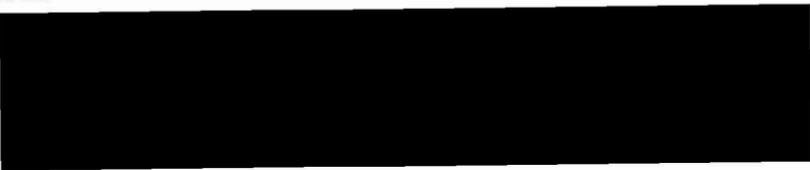
EAC 05 029 51522

Office: VERMONT SERVICE CENTER

Date: MAR 20 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:



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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Portugal who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse. The petitioner filed her Form I-360 on November 8, 2004. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a Request for Evidence (RFE) on March 29, 2005 asking the petitioner to submit evidence of, *inter alia*, her good moral character. The petitioner, through her representative, requested and was granted an additional 60 days to respond. On July 29, 2005, the petitioner submitted evidence relating to her arrests and criminal convictions. On September 15, 2005, the director denied the petition because the record did not establish that the petitioner was a person of good moral character. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish her good moral character and find that the petitioner's claims and the additional evidence submitted on appeal do not overcome this basis for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Evidence Regarding the Petitioner's Criminal Convictions

The record shows that the petitioner entered the United States on November 25, 1995 as a nonimmigrant alien in transit (C-1) and that she married [REDACTED] a United States citizen, on March 29, 1997 in Stark County, Ohio. With her Form I-360, the petitioner submitted no evidence of her good moral character and in her affidavit dated October 20, 2004, the petitioner did not state that she had a criminal record.

In his March 29, 2005 notice, the director informed the petitioner that Citizenship and Immigration Services (CIS) records indicated that she had been charged with criminal offenses on five occasions between 1998 and 2003. The director asked the petitioner to submit full court records regarding these charges and any other incidents in which the petitioner may have been involved as well as her own affidavit explaining these events. The director also asked the petitioner to submit police clearances, criminal background checks or similar reports for every place she had resided for at least six months in the three years preceding the filing of her petition and noted that if the clearance or check was researched by name only, the petitioner should supply the law enforcement agency with all the names she had used including [REDACTED] and [REDACTED]

In response, the petitioner submitted a record from the Summit County, Ohio court of Common Pleas and criminal case dockets from the Massillon, Ohio Municipal Court. These documents, combined with the charging documents and court records obtained by CIS, copies of which were mailed to the

petitioner with the director's decision, show that the petitioner was convicted and sentenced for seven offenses as follows:

- 1) Domestic Violence in violation of section 2919.25(A) of the Ohio Revised Code, a first-degree misdemeanor, on September 8, 1998. For this offense, the court sentenced the petitioner to 180 days in jail and a \$100 fine and court costs, but suspended the jail time and \$50 of the fine on condition that the petitioner engage in no violent or turbulent behavior toward the victim, not use alcohol or drugs, vacate the victim's residence by December 8, 1998 and engage in no further domestic violence for two years.
- 2) Disorderly Conduct while Intoxicated in violation of section 2917.11(B)(1) of the Ohio Revised Code, a first-degree misdemeanor on September 8, 1998. The court sentenced the petitioner to 30 days in jail and \$100 fine and court costs, both of which were suspended under the same conditions as those for the preceding conviction.
- 3) Disorderly Conduct while Intoxicated in violation of section 509.03B of the Massillon City Ordinance, a fourth-degree misdemeanor on October 4, 1999. The court sentenced the petitioner to a \$100 fine and costs and 30 days in jail. The court ordered the petitioner's jail sentence to be suspended upon her completion of 40 hours of community service and completion of an alcohol and anger management counseling assessment.
- 4) Disorderly Conduct in violation of section 2917.11 of the Ohio Revised Code, a fourth-degree misdemeanor on December 13, 1999. The court sentenced the petitioner to a \$100 fine and court costs and 30 days in jail, gave her credit for three days served and suspended the remaining 27 jail days and \$75 of the fine on condition that the petitioner commit no related offenses for two years, report to an assessment and counseling center and follow all recommendations for possible treatment.
- 5) Criminal Trespass in violation of section 2911.21(A)(1) of the Ohio Revised Code, a fourth-degree misdemeanor on January 6, 2003. The court sentenced the petitioner to a \$250 fine and court costs and 30 days in jail, gave her credit for two days served and suspended the remaining 28 days and the fine upon the petitioner's completion of the following conditions on probation: reporting to the Massillon Community Hospital Assessment Center for evaluation and following all recommendations; obtaining no related convictions for two years; and having no contact with the West Side Lounge for six months.
- 6) Two counts of Disorderly Conduct in violation of section 2917.11(A)(2) of the Ohio Revised Code, a fourth-degree misdemeanor on April 17, 2003. On both counts, the court sentenced the petitioner to pay a fine and court costs and to 30 days in jail, which were suspended on condition that the petitioner complete 25 hours of community service, commit no related offenses for five years, and follow all recommendations of the Department of Human Services.

- 7) Domestic Violence in violation of section 2919.25(A) of the Ohio Revised Code, a first-degree misdemeanor on March 9, 2005. The court sentenced the petitioner to six months in jail, but suspended that sentence and placed the petitioner on one year of probation on condition that she pay various fees, attend chemical abuse counseling and/or treatment programs, an anger management counseling program and joint marriage counseling as directed by the Adult Probation Department.

With her RFE response, the petitioner submitted an affidavit dated July 2005 in which she explains the events related to only four of these convictions. Regarding her first two convictions for domestic violence and disorderly conduct while intoxicated on September 8, 1998, the petitioner states that on August 23, 1998, she and her husband were having a few alcoholic drinks at home and had an argument about their infant daughter, Rachael, who was hospitalized at the time. The petitioner reports that her mother-in-law became involved, that her husband pushed her into her mother-in-law who then fell on a chair and that her mother-in-law called the police and told them that the petitioner had pushed her.

The criminal complaint of domestic violence against the petitioner filed in connection with the August 23, 1998 incident charged the petitioner with knowingly causing or attempting to cause physical harm to her mother-in-law and states that the petitioner "was intoxicated and was screaming and getting in the face of the victim with officers present."

The criminal complaint of disorderly conduct while intoxicated filed against the petitioner in connection with the same incident states that the petitioner "became angry and cursed officers and the victim in the living room. She was advised several times to stop screaming and to get away from the victim. She refused to obey officers['] commands. . . . After being arrested suspect still would not stop her actions and had to be separated from the victims [sic] house."

Concerning her fourth conviction for disorderly conduct on December 13, 1999, the petitioner states that on December 9, 1999, she left a battered women's shelter and went back to her husband's home to get some of her belongings. The petitioner explains that her husband was at home and that when the police arrived, he hid in the basement and she said he was not there because she was frightened of the consequences if she told them he was present. The petitioner states that the police searched the house and both she and her husband were arrested.

The criminal complaint against the petitioner filed in connection with this incident states that the petitioner "did communicate false information to a police officer . . . telling this officer repeatedly that her husband (who she was aware had a TPO against having contact with her) was not present in the house. I found the defendant hiding in the basement, and just minutes prior to locating him, had seen the two in the same room within feet of each other speaking with one another."

In regards to her sixth conviction for disorderly conduct on April 17, 2003, the petitioner explains that on March 6, 2003, she was arguing with her husband about eating on paper plates and that her husband

threw her on the floor and was choking her. The petitioner states that she saw her five-year old daughter watching them, asked her mother-in-law to take her daughter out of the room, and that when her mother-in-law did not do so, the petitioner managed to get up and went upstairs with her daughter. The petitioner states that her mother-in-law called the police and told them the petitioner had attacked her husband and their daughter.

The criminal complaints filed against the petitioner in connection with this incident state that the petitioner “did strike her daughter twice, [REDACTED] in the mouth causing her lip to swell and on the right side of the face causing a red mark” and that the petitioner “did strike her husband in the left side of the face by his eye causing redness and swelling.” The petitioner was initially charged with domestic violence, but the charges were later amended to disorderly conduct, a fourth-degree misdemeanor, to which the petitioner pled no contest and was convicted. In her July 2005 affidavit, the petitioner does not state that her daughter was injured. Although she was provided with a copy of the complaint and court order with the director’s decision, the petitioner has not further explained this incident on appeal.

In her affidavit dated October 20, 2004, the petitioner explains that one of her twin daughters, [REDACTED] was ill at birth, had a heart condition, and died on November 2, 1998 when she was 18 months old. The petitioner states that her daughter’s death caused a lot of stress for both her and her husband, which resulted in arguments that escalated into domestic violence. In her July 2005 affidavit, the petitioner states that she has complied with all court orders she has received and has completed anger management, family, and drug and alcohol counseling. The Massillon, Ohio Municipal court records submitted by the petitioner confirm that she completed community service and all treatment and counseling recommendations as ordered by the court. The petitioner also states that her husband is currently serving a six-month jail sentence for a felony domestic violence conviction and that she recently filed for divorce and separated from her husband on October 5, 2005. The petitioner explains that her husband’s physical and mental abuse over the nine years they were together, combined with the death of their daughter added to her actions, which were “out of character” for her.

The petitioner’s July 2005 affidavit includes no discussion of the events leading to her convictions for disorderly conduct while intoxicated on October 4, 1999; criminal trespass on January 6, 2003; and domestic violence on March 9, 2005¹.

The Relevant Statutory Provisions, Regulations and Caselaw

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the

¹ In her July 2005 affidavit the petitioner discusses another incident in September 2004, when she got into an argument with her husband and was arrested. On appeal, the petitioner submits a copy of the police report of this incident, which states that the petitioner was treated for minor injuries and released. The court records submitted with the petitioner’s RFE response show that the charges against the petitioner in relation to this incident were dismissed on October 27, 2004.

marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which 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 regulation's designation of a three-year period preceding the filing of the petition does not limit the temporal scope of CIS' inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). *See also* Memo. from William R. Yates, CIS Associate Dir. Operations, *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, 2, (Jan. 19, 2005).

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further explicates the good moral character requirement and 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.” However, this subsection will not apply to an alien who committed only one crime if:

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 six months (regardless of the extent to which the sentence was ultimately executed).

Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

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). The BIA has also explained 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).

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.* Where the statute includes offenses that both do and do not involve moral turpitude, we must look to the record of conviction to determine whether the crime committed involved moral turpitude. *Id.* The record of conviction includes the indictment or charging documents, plea, verdict and sentence. *Id.* at 137-38.

The Petitioner’s 1998 and 1999 Convictions for Disorderly Conduct and Her 2003 Conviction for Criminal Trespass under the Ohio Revised Code are Not Crimes Involving Moral Turpitude

The petitioner did not submit the statutory provisions of the Ohio Revised Code under which she was convicted. Although the petitioner bears the burden of proof in these proceedings pursuant to section 291 of the Act, we nonetheless cite the relevant portions of Ohio law. However, we have been unable to obtain a copy section 509.03B of the Massillon City Ordinance under which the petitioner was convicted of disorderly conduct while intoxicated on October 4, 1999. Without the text of the Ordinance, we cannot determine whether this conviction was for a crime involving moral turpitude.

On September 8, 1998 the petitioner was convicted of disorderly conduct under section 2917.11(B)(1) of the Ohio Revised Code, which states:

(B) No person, while voluntarily intoxicated, shall do either of the following:

(1) In a public place or in the presence of two or more persons, engage in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others;

* * *

(2) Disorderly conduct is a misdemeanor of the fourth degree if any of the following applies:

(a) The offender persists in disorderly conduct after reasonable warning or request to desist.

* * *

(c) The offense is committed in the presence of any law enforcement officer . . . or other authorized person who is engaged in the person’s duties at the scene of a fire, accident, disaster, riot, or emergency of any kind.

The criminal complaint for this offense states that the petitioner was intoxicated when police responded to a domestic violence call and that she “became angry and cursed officers and the victim in the living room. She was advised several times to stop screaming and to get away from the victim. She refused to obey officers[’] commands and was placed under arrest for Domestic [V]iolence as well as Disorderly Conduct by Intoxication. After being arrested suspect still would not stop her actions and had to be separated from the victim[’]s house.” The petitioner pled no contest to this charge.

The records of the petitioner's December 13, 1999 conviction for disorderly conduct do not specify under which subsection of section 2917.11 of the Ohio Revised Code the petitioner was convicted. However, the criminal complaint states that the petitioner repeatedly told a police officer that her husband was not present, although the officer found her husband hiding in the basement and previously observed the petitioner and her husband speaking while standing within a few feet of each other. The complaint states that the petitioner knew her husband was under a temporary protection order not to have contact with her. These statements indicate that the petitioner was convicted under section 2917.11(A) of the Ohio Revised Code, which states, in pertinent part:

No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following:

- (1) Engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior;
- (2) Making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person;
- (3) Insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response[.]

The court records show that the petitioner was initially charged with obstruction of justice and pled not guilty to this charge. The charge was later amended to disorderly conduct and the petitioner pled no contest to, and was found guilty of, this amended charge.

On April 17, 2003, the petitioner was convicted of criminal trespass under section 2911.21(A)(1) of the Ohio Revised Code, which states, in pertinent part, "No person, without privilege to do so, shall . . . [k]nowingly enter or remain on the land or premises of another." Ohio Rev. Code Ann. § 2917.11(A)(1) (2001). The related criminal complaint states that the petitioner was asked to leave the West Side Lounge by an employee of the bar and officers on numerous occasions, but was found inside the bar a short time later. The petitioner pled no contest to, and was found guilty of, this charge.

The petitioner's September 8, 1998 and December 13, 1999 convictions for disorderly conduct and her April 17, 2003 conviction for criminal trespass indicate that she engaged in offensive behavior, but the statute and conviction records do not establish that her conduct was inherently base, vile, or depraved and committed with a vicious motive, corrupt mind or evil intent such that they would involve moral turpitude. The petitioner's September 8, 1998 and December 13, 1999 convictions for disorderly conduct are not comparable to those that are considered crimes involving moral turpitude because of the specific intent included in the statute under which the alien was convicted. *See e.g. Hudson v. Esperdy*, 290 F.2d 879 (S.D. NY 1961) (disorderly conduct under a section of the New York Penal Law that included a "purpose of committing a crime against nature or other lewdness" was a crime involving

moral turpitude). Similarly, the statutory provision under which the petitioner was convicted of criminal trespass is not comparable to burglary and includes no intent to commit larceny or other morally bereft *mens rea*. See *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982) (burglary with intent to commit theft is a crime involving moral turpitude) and *Matter of Moore*, 13 I&N Dec. 711 (BIA 1971) (attempted breaking and entering with intent to commit larceny is a crime involving moral turpitude).

The Petitioner's Convictions for Domestic Violence are for Crimes Involving Moral Turpitude

The petitioner was twice convicted of domestic violence under section 2919.25(A) of the Ohio Revised Code, which states, "No person shall knowingly cause or attempt to cause physical harm to a family or household member." On appeal, the petitioner's representative claims that the petitioner's "misdemeanor crimes of domestic violence, because they contain the same elements of crimes of simple assault, do not constitute crimes of moral turpitude." In support of her position, counsel cites *Matter of Fualaau*, 21 I&N Dec. 475 (BIA 1996). In that case, the Board of Immigration Appeals (BIA), held that assault in the third degree under section 707-712 of the Hawaii Revised Statute was not a crime involving moral turpitude because the offense was similar to simple assault. As it addressed an offense significantly different from the domestic violence crimes involved here, *Fualaau* is not on point.

The statutory provision under which the petitioner was convicted of domestic violence shares an element with simple assault, knowingly causing physical harm, but domestic violence under Ohio law also requires a familial or household relationship between the perpetrator and the victim. The BIA and federal courts of appeals have found that the special relationship between the perpetrator and the victim in domestic violence crimes distinguish them from simple assault offenses and render them crimes of moral turpitude. In *Grageda v. I.N.S.*, the Ninth Circuit held that a conviction for spousal abuse under California law was a crime of moral turpitude because the relationship between a husband and wife "makes the crime of spousal abuse different from violence between strangers or acquaintances, which, depending on the wording of the statute, is not necessarily a crime of moral turpitude." *Grageda v. I.N.S.*, 12 F.3d 919, 922 (9th Cir. 1993). See also *Guerrero de Nodahl*, 407 F.2d 1405 (9th Cir. 1969) (child abuse under California law is a crime of moral turpitude) and *Garcia v. Att'y Gen.*, 329 F.3d 1217, 1222 (11th Cir. 2003) (aggravated child abuse under Florida law is a crime of moral turpitude). In *Matter of Tran*, the BIA held that willful infliction of injury upon a cohabitant or parent of the offender's child in violation of section 273.5(a) of the California Penal Code also constitutes a crime involving moral turpitude. *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996). The BIA stated:

A person who cohabits with or is the parent of the offender's child maintains a relationship of a familial nature with the perpetrator of the harm. This relationship is likely to be one of trust and possibly dependency, similar to that of a spousal relationship. Violence between the parties of such a relationship is different from that between strangers or acquaintances, which may or may not involve moral turpitude, depending on the nature of the offense as delineated by statute. . . .

In our opinion, infliction of bodily harm upon a person with whom one has such a familial

relationship is an act of depravity which is contrary to accepted moral standards. . . . When such an act is committed willfully, it is an offense that involves moral turpitude.

Id. at 294 (internal citations omitted).

The California statutes involved in *Grageda*, *Guerrero*, and *Tran* all included willful infliction of corporal injury resulting in a traumatic condition and the Florida statute addressed in *Garcia* required either aggravated battery, willful torture, malicious punishment or willful and unlawful caging of a child. *See Grageda*, 12 F.3d at 921; *Guerrero*, 407 F.2d at 1405; *Tran*, 21 I&N Dec. at 292; and *Garcia*, 329 F.3d at 1222. Although the Ohio statute under which the petitioner was convicted includes no such specification of the degree of physical harm inflicted on the victim or other aggravating factors, the petitioner presents no compelling reasons why we should not follow these cases. On appeal, the petitioner's representative contends that crimes of domestic violence, like crimes of assault, "are a matter of degree" and that the petitioner's misdemeanor crimes of domestic violence are analogous to simple assault, an offense that the BIA has determined is not a crime of moral turpitude. *See e.g. Matter of Short*, 20 I&N Dec. 136, 139 (BIA 1989). As explained above, we find that the special relationship between family and household members inherent to domestic violence under the Ohio statute distinguishes that crime from simple assault. The petitioner's representative also asks that consideration be given to the fact that the petitioner was only convicted of misdemeanor offenses, that there is no evidence that the petitioner's acts caused any serious injury to her victims and that she was not incarcerated for more than a few days. As the BIA stated in *Tran*, "Neither the seriousness of a criminal offense nor the severity of the sentence imposed therefore is determinative of whether a crime involves moral turpitude." *Tran*, 21 I&N Dec. at 293 (citing *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992)).

The petitioner was twice convicted, in 1998 and 2005, of domestic violence under Ohio law, which forbids the knowing causation or attempt to cause physical harm to a family or household member. *See* Ohio Rev. Code Ann. § 2919.25(A) (2004). These convictions were for crimes of moral turpitude given the familial or household relationship between the petitioner and her victims, a statutory element which distinguishes domestic violence from simple assault.

Sections 101(f)(7), 212(a)(2)(A)(ii)(II) and 204(a)(1)(C) of the Act do Not Apply to This Case

On appeal, the petitioner's representative cites section 101(f)(7) of the Act in support of her claim that the petitioner is not statutorily barred from establishing good moral character. Section 101(f)(7) of the Act states that a person confined to a penal institution as a result of a conviction for an aggregate period of 180 days or more will not be regarded as a person of good moral character. We agree that the petitioner does not fall within section 101(f)(7) because she has not served 180 days in jail. However, section 101(f)(7) of the Act does not preclude our determination that the petitioner lacks good moral character under section 101(f)(3) of the Act because she falls under section 212(a)(2)(A) of the Act as an "alien convicted of . . . a crime involving moral turpitude."

Section 212(a)(2)(A)(ii)(II) of the Act provides an exception to the classification of an alien as one convicted of a crime involving moral turpitude for aliens who are convicted of only one crime, for which the maximum possible penalty does not exceed one year of imprisonment and the alien was not sentenced to a term of imprisonment exceeding six months. This provision only applies to aliens who have been convicted of just one crime involving moral turpitude. The petitioner has been convicted of two crimes involving moral turpitude.

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. 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 record does not establish that the petitioner's convictions for domestic violence were connected to her battery or subjection to extreme cruelty by her U.S. citizen husband.

In regards to the August 23, 1998 incident that led to her conviction for domestic violence on September 8, 1998, the petitioner states that she had "a few alcoholic drinks" with her husband, got into an argument with him, that her mother-in-law became involved, that her husband pushed her mother-in-law, but that her mother-in-law told the police that the petitioner had pushed her. Although she was given a copy of the criminal complaint for this incident with the director's decision, the petitioner does not explain on appeal why the complaint states that she was "screaming and getting in the face of the victim [her mother-in-law] with officers present." The petitioner also does not explain why, if she did not assault her mother-in-law as charged, she nonetheless pled no contest to the domestic violence charge. For example, the petitioner does not state that she feared violent reprisal from her husband if she pled not guilty.

In her July 2005 affidavit and on appeal, the petitioner provides no explanation of her March 9, 2005 conviction for domestic violence. The petitioner submitted a copy of the Summit County, Ohio Court of Common Pleas journal entry of this conviction, but she did not submit a copy of the indictment referenced in the journal entry or any other relevant portions of the conviction record. The record is devoid of any evidence that this conviction was connected to the petitioner's subjection to battery or extreme cruelty by her husband.

In her July 2005 affidavit, the petitioner explains that the death of her daughter, [REDACTED] was very stressful and led to arguments between her and her husband that escalated into domestic violence. She also states that her husband's physical and mental abuse over nine years, combined with the death of their daughter, affected her actions, which she describes as "out of character" for herself. We acknowledge the emotional trauma undoubtedly caused by the death of the petitioner's young daughter

and we concur with the director's determination that the petitioner was subjected to battery or extreme cruelty by her husband. While these circumstances may have greatly impacted the petitioner's behavior, she provides no detailed, credible explanation of how her own convictions for domestic violence were connected to her husband's abuse. Accordingly, section 204(a)(1)(C) of the Act is inapplicable to her case.

Additional Issues

The petitioner was convicted of two counts of disorderly conduct on April 17, 2003 under section 2917.11(A)(2) of the Ohio Revised Code, which forbids "[m]aking unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person." The criminal complaints arising from this incident initially charged the petitioner with domestic violence and state that the petitioner struck her daughter [REDACTED], in the mouth, causing her lip to swell and leaving a red mark on one side of her face and that the petitioner struck her husband on one side of his face causing redness and swelling. The court transcript states that the petitioner entered no plea to these charges, which were amended to disorderly conduct under the section cited above. The petitioner pled no contest to the amended charges of disorderly conduct. The record contains no copy of the amended charges and the amended complaint, if any, and does not indicate whether the petitioner's plea of no contest to the amended charges included an admission of the facts as stated in the original criminal complaint. It appears unlikely that the petitioner admitted to those facts because the statutory provision under which the petitioner was convicted includes no element of the infliction of physical harm, but the present record does not clarify this issue. Without a clarification of the relevant facts, the petitioner's 2003 conviction for disorderly conduct could be another basis for finding that she lacks good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii), which provides that unless an alien establishes extenuating circumstances, he or she may be found to lack good moral character if the alien "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 good moral character."

While the statutory provision under which the petitioner was convicted for disorderly conduct in 2003 does not by itself describe a crime of moral turpitude, the petitioner has not explained why she was charged with striking her husband and daughter or how her daughter was injured and the present record does not establish that extenuating circumstances impacted the petitioner's behavior. In her July 2005 affidavit, the petitioner states that her husband attacked her, was choking her on the living room floor and that she tried to defend herself and managed to get up, and take her daughter upstairs. The petitioner does not acknowledge the reported injury to her daughter and does not explain or submit evidence that, for example, her husband was charged and/or convicted of domestic violence against her or her daughter in connection with this incident.

The petitioner also failed to submit police clearance records, state criminal background checks or similar records for every place she had resided for at least six months in the three years preceding the

filing of her petition, as specifically requested by the director in his March 29, 2005 RFE and as required by the regulation at 8 C.F.R. § 204.2(c)(2)(v).

The present record does not establish that the petitioner is a person of good moral character. She is thus ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the case must be remanded for issuance of an NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with this decision.