

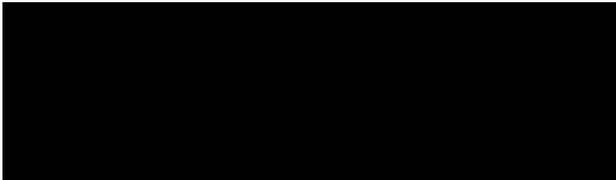


U.S. Citizenship
and Immigration
Services

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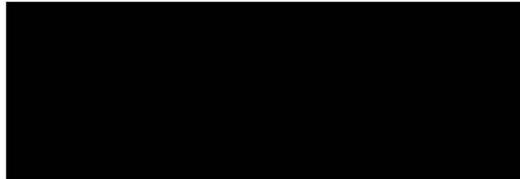
EAC 06 046 51409

Office: VERMONT SERVICE CENTER

Date: FEB 06 2007

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 preference visa petition. 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)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish her good moral character.

On appeal, counsel submits a brief and additional evidence.

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 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 corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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 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 petitioner in this case is a native and citizen of El Salvador who indicates that she entered the United States in 1990 without inspection. On March 16, 1993, the petitioner married J-A-¹, a lawful permanent resident of the United States. The petitioner’s marriage to J-A- was terminated on February 6, 2002, by order of the Circuit Judge for the 19th Judicial Circuit in and for Indian River County, Florida. The petitioner married K-H-², a United States citizen, on March 27, 2003 in Vero Beach, Florida. On November 18, 2005, the petitioner filed this Form I-360.³

With the initial filing, the petitioner submitted no evidence to establish that she was a person of good moral character. Accordingly, on February 9, 2006, the director issued a request for evidence (RFE) of, *inter alia*, the petitioner’s good moral character. Specifically, the director requested an affidavit from the petitioner regarding her good moral character and police clearances from all places the petitioner resided in the three-year period prior to the filing of the petition. The director also indicated that if the petitioner had been arrested or charged with a crime, she must submit copies of the arrest report, relevant excerpts of the law, and court documents showing the final disposition for the charge. The petitioner, through counsel, responded to the RFE on April 4, 2006 and requested an additional 120 days to respond.

¹ Name withheld to protect individual’s identity.

² Name withheld to protect individual’s identity.

³ Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed in the petitioner’s behalf by her former spouse J-A-. The Form I-130 was terminated by the Service on July 17, 2002.

On April 30, 2006, the director issued a Notice of Intent to Deny (NOID). As it related to the petitioner's good moral character, the director notified the petitioner of the deficiencies in the record and again requested police clearances and an affidavit from the petitioner. The petitioner, through counsel, responded to the NOID on June 28, 2006. To support her claim of good moral character, the petitioner submitted copies of her 2005 income tax returns and an attestation from the petitioner that she had requested a police clearance from the state of Florida. No police clearance was submitted.

The director denied the petition on July 27, 2006, finding that the petitioner failed to establish her good moral character. The petitioner, through counsel, timely appealed. Thus, the sole question to be determined on appeal is whether the petitioner has established that she is a person of good moral character.

On appeal, counsel submits a print-out from the Florida Department of Law Enforcement and a brief. The print-out indicates that on March 27, 2001, in the Indian River County Court, the petitioner was convicted of two counts of "Fraud – Insufficient Funds Check" under section 832.05 of the Florida Criminal Code, for passing worthless checks in the amount of \$22.87 and \$84.05.⁴ In her brief, counsel argues that these convictions do not preclude a finding of good moral character as the charges fall outside of the "three year statutory period preceding the filing of the petition" and because "none of the charges fall within any of the classes of offenses described in INA Section 101(f).

The Statute Does Not Prescribe a Time Period During Which Good Moral Character Must be Shown.

Counsel's first argument that the petitioner's charges fall outside the "statutory period," is without merit. Section 204 of the Act contains no specific language regarding the period of time in which a petitioner must establish good moral character. Instead, in reference to good moral character, section 204(a)(1)(A)(iii)(II)(bbb) of the Act states generally that the alien must be "a person of good moral character." Counsel's mistaken assertion regarding the 3-year "statutory period" appears to be based upon the regulatory language at 8 C.F.R. § 204.2(c)(2)(v) which indicates that a petitioner should submit police clearances for each place he or she has resided "during the three year period immediately preceding the filing of the self-petition." Despite the regulation's designation of a 3-year period preceding the filing of the petition, however, the temporal scope of the Service's inquiry into the petitioner's good moral character is not limited to this 3-year period. Citizenship and Immigration Services (CIS) 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). Accordingly, the fact that the petitioner was charged or convicted more than three years prior to the filing of the petition does not mean that director is precluded from considering such conviction.

Do the Petitioner's Crimes Fall Within the Scope of Section 101(f) of the Act

Counsel next argues that the charges against the petitioner do not "fall within any of the classes of offenses

⁴ Given that the petitioner failed to submit the actual dispositions related to the charges, the AAO contacted the Clerk of the Circuit Court for Indian River County to confirm the information contained on the print-out submitted by the petitioner. On January 23, 2007, Ms. [REDACTED], of the Traffic/Misdemeanor Unit of the Indian River Clerk's Office, affirmed that the petitioner had been convicted of two separate counts for passing worthless checks in the amount of \$22.87 and \$84.05, respectively.

described in INA Section 101(f).” However, counsel conducts an analysis only of whether the petitioner’s charges constitute an aggravated felony. While we concur with counsel’s determination that the petitioner’s convictions are not considered to be aggravated felonies, counsel fails to discuss whether the petitioner’s crimes involve moral turpitude. As cited above, section 101(f)(3) of the Act indicates that a person will be found *not* to have good moral character if they are a person described in section 212(a)(2) of the Act, which is “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.”

Our inquiry begins first with the question of whether the petitioner was convicted. According to the information provided by the petitioner on appeal, on March 27, 2001, the petitioner pled “*nolo contendere*” to two separate charges under section 832.05(2) of the Florida Criminal Code of passing a worthless check in the amount of \$22.87 and \$84.05, respectively. The document further indicates that the petitioner received “withholding of adjudication” for these two charges. A finding of withholding of adjudication under Florida law has been found to be a conviction for immigration purposes. *See Chong v. INS*, 890 F.2d 284 (11th Cir. 1989)(*per curiam*).

The next question then, is whether the petitioner’s convictions were for crimes 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).

Moral turpitude has also been defined as “an act which is per se morally reprehensible and intrinsically wrong or *malum in se*, so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude.” *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980) (citing *Matter of P*, 6 I&N Dec. 795 (BIA 1955)). The Seventh Circuit Court of Appeals (in which the petitioner resides and from which she filed her petition) has also adopted this analysis, stating that the distinction between crimes which do and do not involve moral turpitude corresponds “to the distinction between crimes that are *malum in se* and crimes that are *malum prohibitum*. The former refer to crimes that because they violate the society’s basic norms are known by everyone to be wrongful, the latter to crimes that are not intuitively known to be wrongful.” *Mei v. Ashcroft*, 393 F.3d 737, 741 (7th Cir. 2004). *See also Padilla v. Gonzales*, 397 F. 3d 1016, 1020 (7th Cir. 2005).

Offenses involving fraud fall squarely within the jurisprudential definition of crimes involving moral turpitude. As the Supreme Court stated in *De George*,

Whatever else the phrase “crime involving moral turpitude” may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . The phrase “crime involving moral turpitude” has without exception been construed to embrace fraudulent conduct.

De George, 341 U.S. at 232. The federal courts of appeals and the BIA repeatedly cite *De George* as authority for the principle that crimes of which fraud is an element necessarily involve moral turpitude. *See e.g. Padilla v. Gonzales*, 397 F.3d 1016, 1020 (7th Cir. 2005) (“[I]t is settled that ‘crimes in which fraud [is] an ingredient’ involve moral turpitude,” quoting *De George*.), *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992) (“Fraud, as a general rule, has been held to involve moral turpitude.”), *Matter of Flores*, 17 I&N Dec. at 228 (quoting the

above cited passage of *De George* as the Supreme Court's definition of moral turpitude). See also *Correa-Garces*, 20 I&N Dec. 451, 454 (BIA 1992) ("Crimes involving fraud are considered to be crimes involving moral turpitude."). Indeed, even when fraud is not an explicit statutory element of an offense, a crime will still be found to involve moral turpitude if fraud is inherent to the proscribed offense. *Matter of Flores*, 17 I&N Dec. at 228, *Matter of Bart*, 20 I&N Dec. 436, 437-438.

Similarly, as it relates to the issuance of worthless checks, court have held that where the law, by its express terms, involves an intent to defraud, then a conviction for a violation of that law constitutes a crime involving moral turpitude for immigration purposes. See *Matter of Khalik*, 17 I&N Dec. 518 (BIA 1980)(Michigan law); *Matter of Logan*, 17 I&N Dec. 367 (BIA 1980)(Arkansas law); *Matter of Westman* 17 I&N Dec. 50 (BIA 1979) (Washington law); *Matter of McLean*, 12 I&N Dec. 551 (BIA 1967)(California and Colorado law).

The Florida statute in question here, however, Fla.Stat.Ann. section 832.05, does not expressly require intent to defraud as an element of the crime, it refers only to the "knowing" issuance of worthless checks. The statute states:

(2) WORTHLESS CHECKS, DRAFTS, OR DEBIT CARD ORDERS; PENALTY

(a) It is unlawful for any person, firm, or corporation to draw, make, utter, issue, or deliver to another any check, draft, or other written order on any bank or depository or to use a debit card, for the payment of money or its equivalent, *knowing* at the time of the drawing, making, uttering, issuing, or delivering such check or draft, or at the time of using such debit card, that the maker or drawer thereof has not sufficient funds on deposit or in credit with such bank or depository with which to pay the same on presentation

In *Matter of Zangwill*, 18 I. & N. Dec. 22 (BIA 1981) *overruled on other grounds by In re Ozkok*, 19 I&N Dec. 546 (BIA 1988), the BIA analyzed whether the offense of issuing worthless checks in Florida is a crime involving moral turpitude and provided the following discussion:

The Florida Supreme Court, in construing section 832.05, has unequivocally answered the question of whether intent to defraud is necessary to a conviction under the statute. The Court has said that the law requires, as an essential element, knowledge of insufficient funds on deposit in the bank on which the check is drawn, but it does not require intent to defraud. *State v. Berry*, 358 So.2d 545, 546 (Fla. 1978). The present case therefore comes within those Board decisions wherein it was held that, with regard to worthless check convictions, moral turpitude is not involved if a conviction can be obtained without prior proof that the convicted person acted with intent to defraud. See *Matter of Colbourne*, 13 I&N Dec. 319 (BIA 1969); *Matter of Stasinski*, 11 I&N Dec. 202 (BIA 202) (BIA 1965). In accordance with these precedents, we find that the respondent's conviction for issuing worthless checks was not a crime involving moral turpitude.

Accordingly, despite the petitioner's submission of evidence on appeal that revealed that she was convicted of two separate counts of issuing worthless checks, she is not precluded from establishing that she is a person of

good moral character. We can find no other grounds precluding approval of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has overcome the findings of the director and sustained that burden.

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