

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

[REDACTED]

FILE: [REDACTED]
EAC 06 092 51504

Office: VERMONT SERVICE CENTER

Date: **AUG 04 2008**

IN RE: Petitioner:

[REDACTED]

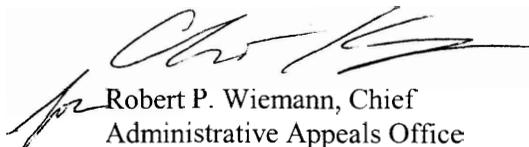
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]

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 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 dismissed.

The petitioner seeks immigrant classification under 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 battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition finding that the petitioner failed to establish that she resided with her spouse during their marriage, was battered or subjected to extreme cruelty, was a person of good moral character and entered into her marriage in good faith.

The petitioner, through her attorney, timely appealed.

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 or a child of 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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain

circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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.

* * *

(iii) *Residence.* One or more document may be submitted showing that the self-petitioner and the abuser have resided together. . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence or residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Yugoslavia, who entered the United States on October 9, 1998 as a B-2 nonimmigrant visitor. On October 3, 2002, the petitioner married R-S-¹, a United States citizen, in Illinois. On December 6, 2002, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a corresponding Form I-485, Application to

¹ Name withheld to protect individual's identity.

Adjust Status, on the same date. On June 18, 2004, the district director acknowledged R-S-'s withdrawal of the Form I-130 petition and denied the corresponding Form I-485 application.

The petitioner filed the instant Form I-360 on February 3, 2006. On April 27, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's residence with her spouse, her good moral character and good faith entry into her marriage. The petitioner, through her attorney, responded to the RFE on June 27, 2006. On July 28, 2006, the director issued a Notice of Intent to Deny (NOID), the petition, notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence. In the NOID, the director notified the petitioner that her testimony regarding her residence with R-S- was not credible based on inconsistencies between her statement and other evidence in the file. The director also noted that the petitioner's testimony regarding the alleged abuse by R-S- and her good faith entry into the marriage was not credible because of the inconsistencies between her testimony and other records in the file. The director also notified the petitioner that the police clearance from the City of Chicago was insufficient to establish her good moral character because the report did not include the petitioner's other names. The director then afforded the petitioner the opportunity to submit independent evidence to clarify the inconsistencies. The petitioner, through her attorney, responded to the NOID on September 26, 2006. On November 13, 2006, the director denied the petition finding that the petitioner failed to establish that she resided with her spouse during their marriage, that she was battered or subjected to extreme cruelty by her spouse, that she was a person of good moral character, and that she entered into her marriage in good faith. Additionally, the director deemed the petitioner not to be a reliable witness, and discounted the weight accorded to the petitioner's statement and statements made by others on the petitioner's behalf which were based solely on what the petitioner told them. The petitioner, through her attorney, timely appealed. As will be discussed, we concur with the determination of the director and find that the petitioner has failed to establish her eligibility on appeal.

Residence

The petitioner submitted the following evidence relevant to her claim that she resided with her spouse:

- The petitioner's affidavit dated December 14, 2005, undated statement in response to the RFE, and personal statement submitted in response to the NOID;
- Affidavit of the petitioner's friend, [REDACTED] dated December 14, 2005 and statement dated September 2006;
- Affidavit of the petitioner's sister-in-law, [REDACTED] dated December 14, 2005;
- Affidavit of the petitioner's friend, [REDACTED] dated December 21, 2005;
- Affidavit of the petitioner's friend, [REDACTED], dated December 21, 2005;
- Statement from [REDACTED];
- Statement from [REDACTED];
- Copy of Form 1040, U.S. Individual Income Tax Return for 2004 and 2004 Internal Revenue Service (IRS) Form 1099-INT;
- Copies of Citibank savings account statements;

- Letter from Social Security Administration, (SSA) dated March 13, 2003;
- Two envelopes addressed to the petitioner;
- Statement from [REDACTED] dated September 2006 (submitted in response to the NOID);
- Copy of the petitioner's Illinois identity card (submitted in response to the NOID).

On the Form I-360, the petitioner indicates that she resided with her spouse from October 2002 to May 2005, and that they last resided together at [REDACTED]. In her December 14, 2005 affidavit, the petitioner generally states that after their marriage, she moved in with her spouse at his home on [REDACTED]. The petitioner provides no further probative details regarding her claimed joint residence with her spouse. In support of her claim, the petitioner submitted statements from her friends and family. These statements however, do not provide specific information about the petitioner's residence. Rather the statements generally indicate that the friends and family visited the petitioner at her home with her spouse but provide no probative details regarding specific times, events, or a description of their home.

The other, relevant documents submitted by the petitioner are also insufficient to establish her claim. The two envelopes and letter from the SSA are addressed to the petitioner individually at the [REDACTED] residence and do not establish that the petitioner resided with her husband during their marriage. The copy of the petitioner's 2004 income tax return, dated April 13, 2005, lists the petitioner's address as [REDACTED] Illinois. This document contradicts the petitioner's claim on the Form I-360, her affidavit and other evidence in the file which indicate the petitioner's address as [REDACTED]. The director specifically notified the petitioner of the discrepancy in the record and requested that the petitioner submit independent evidence to clarify this inconsistency. In response, the petitioner submitted a statement from [REDACTED] and [REDACTED] and a copy of the Illinois identity card issued to the petitioner on August 26, 2003 listing her address as [REDACTED] Illinois. [REDACTED] claim that the petitioner did not reside with them, but used their Brookfield address to safeguard important documents because she was afraid that her husband would destroy them as he had done before. This statement contradicts the 2004 IRS Form 1099 -INT addressed to the petitioner and [REDACTED] at the [REDACTED] address, and the State of Illinois identity card issued to the petitioner in 2003. The petitioner did not provide any clarification for the inconsistencies or explain why she listed the Brookfield address as her home address for income tax purposes. Given these unresolved inconsistencies, the Citibank savings account statements from September 13, 2004 to January 11, 2005, addressed to the petitioner and her spouse at the Berwyn, Illinois address are not sufficient evidence by itself to establish joint residency of the petitioner and her spouse during their marriage.

On appeal, counsel claims that the director abused his discretion and misapplied the regulations and case law in finding that the petitioner did not meet her burden of proof. Counsel refers to the Form I-765, Application for Employment Authorization, addressed to the petitioner at the [REDACTED] [REDACTED] dated January 5, 2005, as evidence of the petitioner's residence with her spouse. We

are not persuaded by counsel's claim. First, counsel does not cite to any specific regulation or case law in support of his assertions that the director abused his discretion in denying the petitioner's claim and we find no such abuse in the director's decision. Second, while the Form I-765 Notice of Action may show that the notice was sent to the Berwyn address on January 5, 2005, it does not establish that the petitioner and her spouse actually resided together during their marriage as required by the statute and regulation.

Counsel further asserts that the petitioner was unable to submit other documentary evidence of her joint residence with her spouse because most of the documents were in the petitioner's spouse's name only which he withheld from the petitioner. The petitioner herself did not provide such an explanation as to why she failed to submit additional evidence of joint residency. Without documentary evidence to support counsel's claim, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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).

As discussed above, the evidence submitted by the petitioner relevant to her alleged joint residence with her spouse is both insufficient and contradictory and the petitioner has not resolved significant discrepancies in the record. Accordingly, the petitioner has failed to establish that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's affidavit dated December 14, 2005, undated statement in response to the RFE and statement in response to the NOID;
- Affidavit of [REDACTED], dated December 14, 2005 and statement dated September 2006 (submitted in response to the NOID);
- Affidavit of the petitioner's former sister-in-law [REDACTED] dated December 14, 2005;
- Affidavit of [REDACTED] dated December 21, 2005;
- Affidavit of [REDACTED] dated December 21, 2005;
- Letter from the petitioner's physician [REDACTED] dated October 24, 2005, and September 23, 2006 (submitted in response to the NOID);
- Letter from [REDACTED] Counselor at Hamdard Center, dated August 29, 2005;
- Berwyn Police Department Incident Report, dated May 31, 2005;
- Undated statement from the petitioner's daughter, [REDACTED] (submitted in response to the NOID);
- Undated statement from the petitioner's son, [REDACTED] (submitted in response to the NOID).

In her December 14, 2005, affidavit, the petitioner states that during her first year of marriage, she realized that her spouse consumed more alcohol than normal, was jealous and started to “act mean” toward her and “insulted” her children and her family. The petitioner claims that on January 24, 2003, her spouse’s behavior became “worse and things became very bad.” The petitioner claims that she cleaned the home, cooked and washed her spouse’s clothes that her spouse did not provide for her financially, and forbade her from visiting her family and friends and from calling her children on the telephone. The petitioner claims that when she got a job as a babysitter in March of 2003, her spouse began to demand money from her. She further claims that when her daughter came to visit her from [REDACTED] her spouse was very unfriendly to her daughter, was “more drunk than he was sober,” became violent, started acting arrogantly, hitting things, throwing things, and yelling at her and her daughter. As a result of her spouse’s behavior, the petitioner claims that she started to suffer psychologically and began visiting a doctor, who prescribed medication for anxiety and depression. The petitioner claims that her spouse threatened her with deportation, which put her under stress and worsened her psychological condition. The petitioner claims that in May 2004, her husband allowed her to go back to work only on the condition that she had to give him all the money she made, and he would open a bank account for them. The petitioner claims that when her relatives gave her a cellular telephone in September 2004, her spouse became extremely angry and yelled and threatened her, by saying that he was the boss and should decide when the petitioner could get a cellular telephone. The petitioner claims that she contacted the police and made a report. The petitioner claims her spouse withdrew the relative visa petition he filed on her behalf, yelled at her, threatened to throw her out of the house, threatened her life, pulled her by the arm and pushed her so she called the police. The petitioner claims that on March 28, 2005, her spouse informed her that he was selling the house and in May of 2005, her spouse sold the house and threw her things out leaving her on the street without a home.

The petitioner submitted a Berwyn Police Department Incident Report dated May 31, 2005. The report states that the department received a “walk in complaint in regards to Domestic trouble.” The report further indicates that the petitioner reported having “marital problems with her husband,” and states that her spouse changed all the locks to the house, refused her entry, and moved all her personal belongings into the garage. The report states that when the petitioner attempted to collect her belongings from the garage, she found the garage to be empty. The reports states that the petitioner informed the officers that she only wanted to “document the incident for future records.” The report, does not describe any specific threats, physical abuse or extreme cruelty perpetrated against the petitioner by her spouse.

The statements from the petitioner’s friend, [REDACTED] convey that on one of [REDACTED] visits to the petitioner’s home, she thought the petitioner’s spouse may have been drunk, told her that she was a bad person and that he would not allow her into his home again. [REDACTED] states that she felt very threatened by the petitioner’s spouse’s statement but do not indicate that the petitioner’s spouse threatened the petitioner or perpetrated any physical or extreme cruelty against her. Ms. [REDACTED] further states “I know that [the petitioner] called the police on more than one occasion when her husband threatened and physically abused her, and I also know that she sought help from a women’s shelter after one of the violent incidents.” This latter claim is repeated in the affidavits of [REDACTED] and [REDACTED]. [REDACTED] claims to have witnessed the

petitioner's spouse raise his voice, yell at the petitioner, and drink excessively. [REDACTED] further states that he knew "through his conversation with the petitioner" that she suffered "extreme emotional pain and physical pain" due to the mistreatment that her husband was inflicting on her. [REDACTED] and [REDACTED] state that the petitioner informed them that her spouse threatened her with "violence" for no apparent reason. They further claim the petitioner had been suffering extreme psychological and emotional pain and that she visited a doctor for treatment due to the mistreatment that her spouse inflicted upon her.

The statement of the petitioner's daughter, [REDACTED], submitted in response to the NOID indicates that in the summer of 2003, she visited and stayed at the home of the petitioner and her spouse. Ms. [REDACTED] claims "my mother was pressured from [R-S-]. He wanted my mother to make us leave, not to have contact with us, not to give us anything, and to stop calling us and so on." [REDACTED] claims that the petitioner often cried because of her spouse, that the petitioner's spouse was always "mean" and always "shouted" at the petitioner. [REDACTED] also claims that although the petitioner's spouse did not mistreat the petitioner physically he psychologically did so. [REDACTED] statement contradicts the petitioner's claim and the claims made on her behalf, that her spouse physically abused her.

The statement of the petitioner's son, [REDACTED], indicates that he visited the petitioner sometime in 2004. [REDACTED] claims that the petitioner was living with her spouse in a "terrible situation" and that the petitioner's spouse wanted the petitioner to give all her money to him because he wanted to control the petitioner. [REDACTED] claims that one time when he came to the petitioner's house, "all [the petitioner's] things and clothes were inside in front of the house," and that he, his uncle and the petitioner went to the police. [REDACTED] further claims that the petitioner's spouse told the petitioner not to give her children money or presents, and that the petitioner's spouse was always causing "stress" to the petitioner by shouting at her. [REDACTED] do not describe any specific instance of battery or extreme cruelty they witnessed being perpetrated against the petitioner in any probative detail. The statements fail to establish that the non-physical acts of the petitioner's spouse rose to the level of extreme cruelty.

In a letter dated October 24, 2005, [REDACTED] the petitioner's physician, states that the petitioner was "under my general medical care and treatment, and was last seen on October 21, 2005." [REDACTED] letter states that the petitioner was presenting "an emotional state characterized by a disturbance of mood with major depressive episodes associated with marital and partner problems that she has been subjected to by her husband," and that the petitioner "exhibits a pattern of psychological and behavioral symptoms found in individuals who are involved in abusive relationships." [REDACTED] concludes that based on a review of the petitioner's past medical history, her subjective symptoms, and the related objective findings, the petitioner is suffering from "Severe Major Depressive Disorder, Recurrent, Severe Anxiety, and Severe (severe marital conflict and separation, alleged verbal and emotional abuse, immigration problems)."

In a second letter, dated September 23, 2006, [REDACTED] refers to follow-up visits with the petitioner on March 2, 2006, July 7, 2006 and September 23, 2006. In this letter, [REDACTED] provides the same

general claims regarding the petitioner's mental health and the alleged abuse by her spouse. Similarly, the letter from [REDACTED] states that the petitioner came to see her for counseling due to "being a victim of domestic violence in the hands of her husband." While [REDACTED] generally reference "domestic violence," mental health issues and abuse, neither person discusses any specific incident or events which establish that the petitioner was battered or subjected to extreme cruelty by her spouse during her marriage.

As discussed above, the general statements made by the petitioner and on her behalf do not establish that the petitioner was battered by her spouse or that the petitioner's spouse's actions were aimed at maintaining control over the petitioner and rise to the level of the acts described in the regulations at 8 C.F.R. § 204.2(c)(1)(vi) as extreme cruelty, which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that she was battered or subjected to extreme cruelty by her former spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that "[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." Citizenship and Immigration Services (CIS) "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" when the petitioner has explained that police clearances are unavailable.

As evidence of her good moral character, the petitioner submitted an affidavit in which she generally claims that she is a person of good moral character. The petitioner did not submit a detailed statement attesting to her good moral character or testimony from friends or people who know her attesting to her good moral character. The petitioner submitted a police clearance from the City of Chicago, a Certified Statement of Conviction /Disposition from the Circuit Court, Cook County, Illinois.² The director accepted the Chicago police clearance as sufficient evidence of the petitioner's good moral character in the city of Chicago. As the record reflected the petitioner's use of names in addition to her married surname, the director also requested the petitioner to submit police clearances from other jurisdictions where she had resided. In his decision, the director specifically noted the petitioner's failure to submit clearances from Cook County and Berwyn, Illinois.

The Certified Statement of Conviction/Disposition indicates that the petitioner was convicted of retail theft on July 25, 2000, in violation of section 720/ 5/16A-3A of the Illinois Criminal Code.³

² People of the State of Illinois vs. [REDACTED]
Number [REDACTED]

Circuit Court of Cook County, Illinois,

³ Offense of Retail Theft: A person commits the offense of retail theft when he or she knowingly: (a)

The court sentenced the petitioner to six months of supervised probation and ordered her to perform five days of community service. The petitioner complied with the terms of her sentence and on January 17, 2001, the court discharged the petitioner from probation and terminated her case.

The petitioner claims that she did not intentionally steal the merchandise, but pled guilty to the crime on the advice of her defense attorney and asserts that she should not be penalized for an offense that occurred more than six years ago. We lack the authority to look behind the petitioner's disposition and reassess her guilt or innocence. *See In re Calvo*, 21 I&N Dec. 323, 327 (BIA 1996).

Misdemeanor theft under Illinois law is a crime involving moral turpitude. *Hashish v. Gonzales*, 442 F.3d 572 (7th Cir. 2006). An alien's conviction for a crime involving moral turpitude generally bars a finding of his or her good moral character pursuant to section 101(f)(3) of the Act. However, section 212(a)(2)(A)(ii)(II) of the Act provides that an alien will not be considered to have been convicted of a crime involving moral turpitude if the maximum penalty possible for the crime did not exceed imprisonment for one year, the alien was not sentenced to a term of imprisonment in excess of six months and the alien committed only one crime of moral turpitude. Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

Although the petitioner's conviction may have fallen under the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act, she failed to provide other evidence specified in the director's NOID and final decision. The petitioner failed to submit a full clearance from Cook County with her other names as indicated by the director in his decision, and failed to submit a police clearance from the city of Berwyn as requested. On appeal, counsel asserts that the petitioner need not provide further evidence of her good moral character because her conviction occurred over five years prior to the filing of the petition and she was recently fingerprinted for her employment authorization. Nothing in the statute or regulation precludes CIS from considering offenses committed beyond the three-year period prior to the filing of a petition. Counsel also does not cite to any authority that provides for acceptance of fingerprint results submitted in support of the petitioner's employment authorization in lieu of the evidence listed in the regulations at 8 C.F.R. § 204.2(c)(2)(v).

A determination of good moral character under section 204(a)(1)(A)(iii)(II)(bb) of the Act requires consideration of all relevant evidence, the weight and credibility of which are within the sole discretion of CIS, as delegated by the Secretary of Homeland Security. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). While the petitioner's conviction for a crime involving moral turpitude might qualify for the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act, that eligibility alone would not mandate a finding of the petitioner's

takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

good moral character. *See Matter of Turcotte*, 12 I&N Dec. 206, 208 (BIA 1967). The fact that an alien does not fall within one of the enumerated bars to good moral character at section 101(f) of the Act, “shall not preclude a finding that for other reasons such person is or was not of good moral character.” Section 101(f) of the Act, 8 U.S.C. § 1101(f).

In this case, the petitioner failed to provide complete clearances from Cook County and Berwyn, Illinois and has not submitted an explanation of why such clearances are unavailable pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). The statements of the petitioner’s friends and relatives focus on the alleged abuse and provide no substantive information regarding her moral character. For example, Ms. Josipovic merely states that the petitioner is “a very nice person.” The petitioner has failed to establish by a preponderance of the evidence that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Good Faith Entry into Marriage

The petitioner submitted the following evidence relevant to her claim that she entered into marriage with her husband in good faith:

- The petitioner’s affidavit, dated December 24, 2005 and an undated statement submitted in response to the NOID;
- Affidavit from the Petitioner’s friend, [REDACTED], dated December 14, 2005;
- Affidavit from [REDACTED], dated December 21, 2005;
- Affidavit from [REDACTED], dated December 21, 2005;
- Affidavit of [REDACTED], dated December 14, 2005;
- Photographs of the petitioner and her spouse;
- Form 1040 Individual Income tax Return for tax year 2004;
- Citibank savings account statement dated September 13 through October 12, 2004, November 10 through December 9, 2004 and December 10 through January 11, 2005.

In her affidavit, the petitioner generally states that she met her spouse at the home of her sister-in-law, that she found him to be charming and outgoing and “quickly fell in love with him.” The petitioner indicates she “agreed” to marry her spouse seven months after they met, because he promised to take care of her and love her children. The petitioner does not provide any further details regarding their seven-month courtship, their wedding, or shared experiences apart from the alleged abuse.

The relevant affidavits of the petitioner’s friends and family fail to provide probative details sufficient to support the petitioner’s claim that she entered into her marriage in good faith. [REDACTED]

[REDACTED] generally claim that they met the petitioner’s spouse when the petitioner started dating him that they have been to their home and observed the petitioner’s relationship with her spouse. While they also claim that the petitioner married her spouse out of love, they provide no explanation regarding how they have knowledge of the petitioner’s feelings toward her spouse or her intent in marrying him. [REDACTED] also claim that they met the petitioner’s spouse during the former couple’s courtship

and further indicate that they attended the petitioner's wedding. Although the petitioner's friends and family claim to have observed the relationship of the petitioner and her spouse, none of them describe in any detail what they observed, how the petitioner and her spouse related to each other, or provide any probative information of the petitioner and her spouse's intentions to marry to support her claim of good faith marriage.

The petitioner did not provide any background description of the photographs, which fail to provide sufficient, probative evidence of her good faith entry into her marriage. The 2004 income tax return filed separately by the petitioner does not show that she and her spouse shared financial responsibilities. The Citibank savings account statements also do not indicate that the petitioner and her spouse commingled their assets. The account statement dated September 13 to October 12, 2004 with an ending balance of \$837.75 shows only one transaction on October 7, 2004. The statement dated November 10 to December 9, 2004 shows no transactions and the December 10 to January 11, 2005 statement reflects only a single withdrawal. Other evidence shows that the petitioner had another bank account which she opened with someone other than her spouse. In response to the director's inquiry on this issue in the NOID, the petitioner stated that she had the separate account before she married and that she left the money in the account so that her spouse would not take the money from her. The petitioner further claimed that her spouse withdrew all the money from their joint account, yet the latest statement listed a balance of \$639.41.

The petitioner provides no detailed description of how she met her husband, their courtship, wedding, joint residence and shared experiences, apart from her husband's alleged abuse. The relevant documentary evidence also fails to provide probative information sufficient to establish the petitioner's claim. Accordingly, the present record fails to demonstrate that the petitioner entered into marriage with her spouse in good faith, as required by section 204(a)(1)(iii)(I)(aa) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.