

U.S. Citizenship  
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FILE: [REDACTED]  
EAC 04 224 53189

Office: VERMONT SERVICE CENTER

Date: **MAR 26 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

*Maura Deadnick*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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

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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on July 20, 2005 for failure to establish the requisite battery or extreme cruelty, entry into the marriage in good faith and good moral character. In its March 27, 2006 decision on appeal, the AAO concurred with the director's determinations, but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on November 13, 2006, which informed the petitioner that he had failed to establish the requisite battery or extreme cruelty, good-faith entry into his marriage and his good moral character. The petitioner timely responded with additional evidence. The director considered the evidence submitted in response to the NOID, found it sufficient to establish the petitioner's good-faith entry into the marriage, but insufficient to demonstrate the requisite battery or extreme cruelty and good moral character. The director denied the petition on June 4, 2007 on these last two grounds and certified his decision to the AAO for review. On certification, the petitioner submits additional evidence and copies of documents previously submitted.

The pertinent facts and relevant evidence submitted below were addressed in our prior decision, incorporated here by reference. Accordingly, we will only address the relevant evidence submitted after that decision was issued.

*Good Moral Character*

We concur with the director's determination that the petitioner has not established his good moral character. The record shows that the Supreme Court of New York State, Bronx County convicted the petitioner of criminal possession of a controlled substance in the fifth degree on April 15, 1991.<sup>1</sup> The petitioner was convicted under section 220.06(1) of the New York Penal Law, which states:

A person is guilty of criminal possession of a controlled substance in the fifth degree when he knowingly and unlawfully possesses:

1. a controlled substance with intent to sell it [.]

N.Y. Penal Law § 220.06(1) (McKinney 1991).

The petitioner's offense is a class D felony, which is punishable by a maximum of seven years of imprisonment under New York law. N.Y. Penal Law §§ 70.00(2)(d), 220.06 (McKinney 1991).

Under immigration law, the petitioner's offense is a crime involving moral turpitude, a controlled substance offense and an aggravated felony, which bars a finding of his good moral character. The regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, "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." Section 101(f) of the Act, 8 U.S.C. § 1101(f), 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 . . . subparagraph[h] (A) . . . of section 212(a)(2) . . . if the offense described therein, for which such person was convicted . . . was committed during such period;

\* \* \*

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43))[.]

\* \* \*

Section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), describes, in pertinent part:

[A]ny alien convicted of . . .

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<sup>1</sup> Supreme Court of New York, Bronx County, Criminal Division, Superior Court Case Number SCI- [REDACTED] and Certificate of Disposition Number [REDACTED]

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substance Act (21 U.S.C. 802)).]

The petitioner was convicted of a crime involving moral turpitude. *See Matter of Khourn*, 21 I&N Dec. 1041, 1047 (BIA 1997) (possession of a controlled substance with intent to distribute is a crime involving moral turpitude). The petitioner's offense is also a violation of a state law relating to a controlled substance, as described in section 212(a)(2)(A)(II) of the Act. Hence, section 101(f)(3) of the Act bars a determination that the petitioner has good moral character.

In addition, the petitioner has been convicted of an aggravated felony. Section 101(a)(43)(B) of the Act, 8 U.S.C. § 1101(a)(43)(B), defines an aggravated felony as, in part: "illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code)." Section 924(c)(2) of Title 18 defines a "drug trafficking crime" as "any felony punishable under the Controlled Substances Act." 18 U.S.C. § 924(c)(2). Accordingly, an offense is a "drug trafficking crime" if it is punishable as a felony under the Controlled Substances Act. *Lopez v. Gonzales*, 127 S.Ct. 625, 633 (2006). The petitioner's conviction for possession of a controlled substance with intent to sell it under New York law is analogous to the federal offense of possession of a controlled substance with intent to distribute, a felony violation of the Controlled Substances Act. *See* 21 U.S.C. §§ 841(a)(1), 841(b). Consequently, the petitioner's crime constitutes an aggravated felony under section 101(a)(43)(B) of the Act, which prevents a finding of his good moral character pursuant to section 101(f)(8) of the Act.

Although the petitioner's conviction occurred in 1991, long before this petition was filed, the statute does not prescribe a specific time period during which good moral character must be established. *See* Section 204(a)(1)(A)(iii)(II)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(bb). Accordingly, we may examine a petitioner's conduct beyond the three years preceding the filing of the petition when there is reason to believe that the petitioner may not have been a person of good moral character in the past. *See Preamble to Interim Rule*, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996) (explaining the scope of the inquiry into a petitioner's moral character).

Moreover, even if the petitioner's conviction did not require an automatic finding of a lack of good moral character, we would still find the petitioner to lack good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii) because he has not established extenuating circumstances. The petitioner has submitted no personal statement explaining the circumstances of his conviction, which occurred a decade prior to his allegedly abusive marriage. Although the petitioner submitted a letter stating that his probation was terminated on May 27, 1996, the petitioner submitted no other evidence of his rehabilitation, reformation and subsequent good moral character.

In response to the NOID and on certification, the petitioner submits his November 28, 2006 certificate from the New York City Police Department documenting his conviction. The petitioner has submitted no evidence or claim that his conviction does not bar a finding of his good moral character. Accordingly, the petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Battery or Extreme Cruelty*

With his response to the NOID, the petitioner submitted no evidence relevant to his claim of battery or extreme cruelty. On certification, the petitioner submits a letter dated June 15, 2007 from [REDACTED], a clinical social worker with the Adult Outpatient Psychiatry Department of the Bronx-Lebanon Hospital Center who confirms that the petitioner was treated for major depression at the clinic from April 14, 2005 to October 10, 2006. [REDACTED] states that the petitioner “has a history of being physically and emotionally abused,” but does not identify the petitioner’s abuser or provide any further, probative information.

The petitioner also submitted copies of cards reminding him of his appointment at the clinic on June 19, 2006 and a copy of a discharge form dated February 25, 2001 and signed by the petitioner, which states, “forehead lac[,] wound care & head injury sheets F/U [illegible] Ctr 1 week[.]” The form does not state how the injury was inflicted and provides no further details.

The documents submitted on certification indicate that the petitioner was treated for a head injury in February 2001 and for major depression from April 2005 to October 2006. The evidence does not, however, identify the petitioner’s spouse as his abuser or as being involved in his February 2001 injury. Despite the director’s specific requests, in the second RFE and the NOID, that the petitioner submit a detailed, personal statement describing the abuse, the petitioner submitted no personal testimony below, on appeal or upon certification attesting to his wife’s battery or extreme cruelty. Without such testimony, it is impossible for us to determine if any connection exists between the actions of the petitioner’s wife and his medical treatment in 2001 and his treatment for depression in 2005 and 2006. Accordingly, we concur with the director’s determination that the petitioner has not demonstrated that his wife battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has failed to establish his good moral character and that his wife battered or subjected him to extreme cruelty during their marriage. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The denial of the petition will be affirmed for the two reasons discussed above, with each considered 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. The petitioner has not sustained that burden.



**ORDER:** The director's decision of June 4, 2007 is affirmed. The petition is denied.