



U.S. Citizenship
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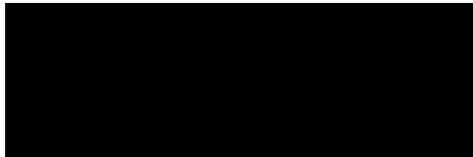
IN RE:

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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Jamaica who is seeking 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 the battered spouse of a United States citizen.

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

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence contained in the record, the petitioner wed United States citizen [REDACTED] on January 20, 1998 in Queens, New York. On March 17, 1999, the petitioner's spouse filed a Form I-130 on the petitioner's behalf. The Form I-130 petition was approved on April 26, 1999. Subsequently, on June 11, 1999, the petitioner filed a Form I-485, Application to Adjust Status. The petitioner filed the instant Form I-360 self-petition on November 19, 2003 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(i) requires the petitioner to show that she is a person of good moral character. Primary evidence of the petitioner's good moral character is an affidavit from the petitioner accompanied by a police clearance from each place the petitioner has lived for at least six months during "the 3-year period immediately preceding the filing of the self-petition." See 8 C.F.R. § 204.2(c)(2)(v).

The alien, in any application where good moral character is a necessary element of eligibility, has the burden of establishing good moral character. See *Brownell v. Cohen*, 250 F.2d 770 (D.C. Cir. 1957); *Estrada-Oreja v. Del Guercio*, 252 F.2d 904 (9th Cir. 1958); *Matter of Turcotte*, 12 I&N Dec. 206 (BIA 1967).

As it relates to her good moral character, at the time of filing, the petitioner submitted "Good Conduct" certificates from the New York City police department, the Newburgh police department, and the Beacon police department. The certificates indicate that no records related to the petitioner were found. However, as the background check performed by the Service as part of the standard processing of the petitioner's case revealed both an arrest and a conviction not disclosed by the petitioner, on August 18, 2004, the director issued a notice of intent to deny the petition.¹ In the notice, the director discussed the petitioner's arrest and conviction and noted that her failure to provide any information regarding her arrest and conviction raised questions about her credibility.² The director then requested that the petitioner submit an affidavit supported by police clearances from each place the petitioner resided as well as copies of arrest reports and court documents related to all of the petitioner's arrests.

The petitioner, through counsel, responded to the director's notice of intent to deny the petition on September 18, 2004. In the response, counsel indicates that the petitioner did not intend to misrepresent any facts and notes that the petitioner discussed her arrest before a Service officer during an interview in October 2000.³ Counsel further

¹ On June 6, 1996, the petitioner was convicted of Criminal Mischief 3rd Degree, a class "E" felony and Criminal Possession of a Weapon 4th Degree, a class "A" misdemeanor. On August 7, 1996, the petitioner was sentenced to a term of five years probation and a term of three years probation to be served concurrently. See County Court of the State of New York, County of Nassau, Certificate of Disposition, Superior Court Information #: 95218.

² The director also noted that the petitioner submitted "a single police clearance letter" issued by the New York City police department. However, as we indicated previously in this decision, although the petitioner did not submit any information related to her prior arrest, the petitioner's initial submission contained three police clearances, not one as indicated by the director.

³ The record contains a request for evidence issued to the petitioner by a Service officer on October 31, 2000, in conjunction with the petitioner's adjustment of status interview. The request asks the petitioner to "submit a court

indicates that the petitioner's failure to submit evidence related to her prior arrest and conviction (which occurred in 1996) was based upon the petitioner's belief that she only had to establish good moral character for the three years immediately preceding the filing of the petition. In addition to her statements, counsel submits an affidavit from the petitioner and court documents related to the petitioner's arrest and conviction.

After reviewing the record, the director denied the petition finding that as the petitioner had been convicted of a crime involving moral turpitude, she could not establish that she is a person of good moral character in accordance with Section 101(f)(3) of the Act.

Section 101(f) of the Act, 8 U.S.C. § 1101, states, in part:

(f) For the purposes of this Act - 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 paragraphs (2)(D), (6)(E), and (9)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) . . . *if the offense*, described therein, for which such person was convicted or of which he admits the commission, *was committed during such period*.

[Emphasis added.]

Section 212(a) of the Act, 8 U.S.C. § 1181(a), provides, in part:

(2) Criminal and related grounds. -

(A) Conviction of certain crimes. -

(i) In general. - Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of -

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime

The director further noted that although waivers are available if the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty, in this instance, the incident which resulted in the petitioner's arrest and conviction involved an individual other than the petitioner's spouse and occurred prior to the petitioner having met her spouse.

On appeal, counsel does not dispute the director's finding that the petitioner was convicted of a crime involving moral turpitude. Instead, counsel argues that the statute only requires the "presence of good moral character" during the "three years residency requirement in the U.S." We are not persuaded by counsel's argument as there is no "residency" provision contained in the classification sought by the petitioner. Unlike the statute and

disposition for the conviction of your arrest on 2/29/96." At the time of the director's issuance of the notice of intent to deny, the record also contained the charging documents and disposition for the petitioner's arrest.

regulations that pertain to eligibility for naturalization which specifically establish a “requirement of good moral character during the statutory period⁴,” there is no similar provision in the instant statute or regulation. Instead, Section 204(a)(1)(A)(iii)(II)(bbb) of the Act states generally that the alien must be “a person of good moral character” and the regulation at 8 C.F.R. § 204.2(c)(2)(v) 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.” While the regulation contains more specific language regarding good moral character than the Act, neither provision prescribes any specific length of time for which the petitioner must demonstrate her good moral character. Accordingly, the fact that the petitioner’s conviction occurred more than three years prior to the filing of the petition does not mean that director is precluded from considering such conviction.⁵

Because the petitioner has failed to overcome the director’s finding that she is statutorily barred from establishing her good moral character as a result of being convicted of a crime involving moral turpitude, we do not need to address counsel’s argument that the director “failed to address factors related to rehabilitation,” such as the petitioner’s “lack of commission of future criminal activities after her last conviction in 1996,” the fact that she has cared “for all her four children,” and participated in volunteer activities. Section 101(f)(8) of the Act, 8 U.S.C. § 1101(f)(8), provides: “[t]he fact that any person is *not* within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” [Emphasis added.] Thus, in this instance, if the petitioner’s conviction had *not* been for a crime involving moral turpitude (one of the “foregoing classes” noted in section 101(f)(8)), we would consider evidence of the petitioner’s reform and rehabilitation and, as a matter of discretion, would weigh both the positive and negative factors contained in the record. See *Torres v. Guzman v. INS*, 804 F.2d 531 (9th Cir. 1986). However, as the director has determined that the petitioner does fall within one of the enumerated classes requiring a statutory bar to good moral character, and counsel has failed to provide any evidence to the contrary, factors such as rehabilitation and reform are immaterial to the outcome of this decision.

Upon review, we find that the petitioner does not dispute the director’s finding that the petitioner was convicted of a crime involving moral turpitude. Further, the petitioner has failed to overcome the director’s finding that the petitioner is statutorily barred from establishing her good moral character.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁴ See Section 316(a) of the Act, 8 U.S.C. § 1427 and 8 C.F.R. §§ 316.2(a)(7) and 316.10(a).

⁵ It should be noted that the naturalization regulation allows the Service to take into account the alien’s conduct and acts at any time prior to the statutory period if the applicant’s conduct during the statutory period does not reflect a reform of character or if the earlier acts or conduct appear relevant to a determination of the alien’s present good moral character.