

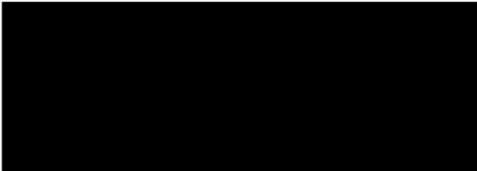


U.S. Citizenship
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FILE:

EAC 04 134 50305

Office: VERMONT SERVICE CENTER

Date: JUL 18 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, 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 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 because the petitioner failed to establish that she was a person of 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 he or she demonstrates that the marriage to the United States citizen spouse was entered into 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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) 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.”

Procedural History

The petitioner in this case is a native and citizen of Trinidad and Tobago who last entered the United States on November 16, 2000 as a nonimmigrant visitor (B-2). On May 4, 1999, the petitioner married [REDACTED] a U.S. citizen, in Maryland. On March 28, 2004, Citizenship and Immigration Services served the petitioner with a Notice to Appear for removal proceedings charging her as removable for violating section 237(a)(1)(B) of the Act, as an alien who had remained in the United States past her period of authorized stay, and section 237(a)(2)(A)(i), as an alien who was convicted of a crime involving moral turpitude. On March 30, 2004, the petitioner filed her Form I-360. On August 18, 2004, the Arlington, Virginia Immigration Court administratively closed the removal proceedings against the petitioner.

On July 6, 2005, the Director issued a Notice of Intent to Deny (NOID) the petition because the petitioner was convicted of a crime involving moral turpitude, namely, misuse of a social security number in violation of 42 U.S.C. § 408(a)(7)(B), and the petitioner consequently was not a person of good moral character. On August 16, 2005, counsel submitted a letter claiming that the petitioner was a person of good moral character despite her conviction because her crime was connected to Mr. [REDACTED] abuse; an affidavit from the petitioner dated August 12, 2005; a letter from the petitioner’s probation officer stating that the petitioner had complied with all court orders and was scheduled to successfully complete probation on May 28, 2004; a copy of her judgment of conviction; and documents concerning the academic achievement of the petitioner’s children. On October 25, 2005, the director denied the petition because the petitioner was convicted of a crime of moral turpitude and the record did not establish a connection between her conviction and Mr. [REDACTED] abuse.

On appeal, counsel again asserts that the petitioner warrants a discretionary finding of good moral character despite her conviction pursuant to section 204(a)(1)(C) of the Act. Counsel submits letters from three friends of the petitioner who all attest to her character. We concur with the director’s determination that the petitioner was convicted of a crime involving moral turpitude and cannot be found to have good moral character pursuant to section 204(a)(1)(C) of the Act because her crime was not connected to Mr. Meachum’s abuse. Counsel’s claims and the evidence submitted on appeal do not overcome this ground for denial.

Petitioner was Convicted of a Crime 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)).

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.”), *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.”).

In this case, the petitioner pled guilty to count two of the indictment filed with the United States District Court for the Eastern District of Virginia, which states:

On or about December 3, 2001 . . . [the petitioner], with the intent to deceive and for the purpose of obtaining an airport identification badge, knowingly and falsely represented social security account number 217-86-9917 to be the social security account number assigned to her by the Commissioner of Social Security, when in fact, as the [petitioner] then and there knew, such number was not the social security account number assigned to her by the Commissioner of Social Security. (In violation of Title 42, United States Code, Section 408(a)(7)(B).)

On May 30, 2002, the petitioner pled guilty, was adjudged guilty of this count and was sentenced to two years of probation and ordered to pay a special assessment of \$100.

The statute under which the petitioner was convicted states, in pertinent part:

Whoever –

* * *

(7) for the purpose of . . . of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose –

* * *

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security number assigned by the Commissioner of Social Security to him or to such other person

* * *

shall be guilty of a felony and upon conviction thereof shall be fined under Title 18 or imprisoned for not more than five years, or both.

42 U.S.C. § 408(a)(7)(B) (West 2004).

Fraud is a statutory element and the *mens rea* of the crime of which the petitioner was convicted. Accordingly, the record shows that the petitioner was convicted of a crime involving moral turpitude.

The Discretionary Provision of Section 204(a)(1)(C) of the Act Does Not Apply

Counsel concedes that the petitioner was convicted of a crime involving moral turpitude, but asserts that she warrants an exercise of discretion under section 204(a)(1)(C) of the Act because her crime was connected to Mr. ██████ abuse. Under section 204(a)(1)(C) of the Act, CIS may 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. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). 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 petitioner's conviction was not connected to her battery or subjection to extreme cruelty by her U.S. citizen husband.

The statute and regulations do not define what constitutes a connection between a self-petitioner's crime and his or her subjection to battery or extreme cruelty. However, CIS policy guidance states:

In order for an act or conviction to be considered sufficiently "connected" to the battering or extreme cruelty, the evidence must establish that the battering or extreme cruelty experienced by the self-petitioner compelled or coerced him/her to commit the act or crime for which he/she

was convicted. In other words, the evidence should establish that the self-petitioner would not have committed the act or crime in the absence of the battering or extreme cruelty.

William R. Yates, CIS Assoc. Dir., Operations, *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, 3, (Jan. 19, 2005)

The record in this case does not establish the requisite causal connection between the petitioner's crime and Mr. ██████ abuse. Evidence in the petitioner's administrative record directly contradicts her assertion that she obtained a false social security card from Mr. ██████ 2001. On June 19, 2006, the AAO, pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), provided the petitioner with copies of her statement to an agent of the Federal Bureau of Investigation (FBI) and related documents. The AAO informed the petitioner that it intended to dismiss her appeal based, in part, upon the derogatory information contained in these documents. The AAO granted the petitioner 15 days to respond. To date, the AAO has received nothing further from counsel or the petitioner.

In her August 12, 2005 affidavit, the petitioner states:

We worked on reconciling the marriage for several months and it was during this time that I came about obtaining the social security number, which is the basis for my conviction, from my husband. In late summer of 2001, my husband told me that he could obtain documents for me to work. My husband assisted me in getting a social security card and told me I could begin looking for work.

However, in her sworn statement to an FBI agent dated April 23, 2002, the petitioner states, "I obtained a false social security number about 3 years ago from a man in Washington, D.C. I used this false social security number to obtain an ID badge at Dulles Airport for work purposes." The petitioner initialed each line of this statement, affirmed that the statement was "true, accurate, and complete to the best of [her] knowledge," and signed a waiver of her right to be represented by an attorney during the interview. The petitioner's April 23, 2002 statement that she obtained a false social security number in approximately 1999 from a man in Washington, DC directly contradicts her statements made in this case. In her August 12, 2005 affidavit, the petitioner states that Mr. ██████ obtained a social security card for her in 2001, not 1999. The record also shows that Mr. ██████ resided in Laurel, Maryland, not Washington, DC, from 1990 through 2001. These discrepancies indicate that the petitioner obtained her false social security card from another individual, not Mr. ██████

Neither counsel nor the petitioner explains these discrepancies. Rather, counsel asserts on appeal that Mr. ██████ abused the petitioner from May 2001 through August 2002, "the period that Mr. ██████ secured a social security card for his wife and the period of her employment." Counsel contends that Mr. ██████ "subjected [the petitioner] to extreme emotional abuse because she was not contributing financially to the household and he badgered her to seek employment. It was in the midst of this physical and emotional violence that [the petitioner] was convicted of misuse of a social security number." Counsel further asserts that the petitioner "believed that going to work would

alleviate the emotional battering, keep the physical abuse at bay and satisfy the abuser. [The petitioner] was coerced and compelled to work and in order to work she needed a social security card. . . . [her] resulting conviction was the direct result of the abusive home environment.”

The record does not corroborate counsel’s statements. In her affidavits, the petitioner does not state that Mr. [REDACTED] “badgered,” “coerced and compelled” her to work, as asserted by counsel. Although she states that Mr. [REDACTED] substance abuse caused financial difficulties, arguments and eventually abuse, she does not indicate that Mr. [REDACTED] ever compelled her to work or obtain a false social security card. The record is devoid of any other evidence that Mr. [REDACTED] abuse included badgering, coercing or compelling the petitioner to work. Hence, counsel’s statements are unsupported by the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

The record does not establish that the petitioner’s crime was connected to Mr. [REDACTED] battery or extreme cruelty. We are thus barred from finding the petitioner to be a person of good moral character as a matter of discretion pursuant to section 204(a)(1)(C) of the Act.

The record demonstrates that the petitioner was convicted of a crime involving moral turpitude. The relevant discretionary provision does not apply to the petitioner’s case and she is consequently ineligible for classification as an immigrant under section 204(a)(1)(A)(iii) of the Act. Her petition must therefore be denied.

The burden of proof in visa petition 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.