U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

B6

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 24 2006

EAC 01 131 51549

IN RE: Petitioner: [redacted]

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:

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.

Robert P. Wiemann, Director
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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Canada who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse. The record indicates that the petitioner last entered the United States on October 31, 2000 as a nonimmigrant visitor (B-2). The petitioner married [redacted] a U.S. citizen, on October 11, 2000 in Miami and the couple was divorced on January 7, 2002 by order of the Broward County, Florida Circuit Court. The petitioner filed her From I-360 on March 15, 2001. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on April 8, 2001 requesting the petitioner to submit evidence of, among other issues, her good moral character. On June 2, 2001, the petitioner submitted additional evidence. On March 4, 2004, the director denied the petition because the record failed to establish the petitioner's good moral character due to her criminal convictions for fraud in Canada on September 23, 1994. On appeal, the petitioner submits a letter and additional documents. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish her good moral character and find that her claims and the evidence submitted on appeal do not overcome this basis for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by appropriate authority in each foreign country in which he or she 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 regulation's designation of a three-year period preceding the filing of the petition does not limit the temporal scope of the inquiry into the petitioner's good moral character. 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). *See also* Memo. from William R. Yates, CIS Associate Dir. Operations, *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, 2, (Jan. 19, 2005).

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further explicates the good moral character requirement and 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."

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). The BIA has further stated that "[t]he test to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind. An evil or malicious intent is said to be the essence of moral turpitude." *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980) (internal citations omitted).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If the statute defines a crime "in which turpitude necessarily inheres," then a conviction under that statute constitutes a crime involving moral turpitude. *Id.* **Statutory 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 Gambino v. I.N.S.*, 419 F.2d 1355, 1358 (2d Cir. 1970) (citing *De George* for finding that a conspiracy offense which includes an intent to defraud the United States is a crime involving moral turpitude under the immigration laws); *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."). 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. *Flores*, 17 I&N Dec. at 228, *Matter of Bart*, 20 I&N Dec. 436, 437-438 (BIA 1992).

In this case, the petitioner's CIS records contain a letter dated May 18, 1999 from the Royal Canadian Mounted Police (submitted by the petitioner with her Form I-192), which states that petitioner's fingerprints were identified with a criminal record and that on September 23, 1994 the petitioner was convicted in Quebec Province of five charges of fraud over $1,000 in violation of section 380(1)(A) of the Canadian Criminal Code; one charge of fraud under $1,000 in violation of section 380(1)(B) of the Canadian Criminal Code; six charges of forgery in violation of section 367 of the Canadian Criminal Code; and six charges of uttering forged documents in violation of section 368(1)(B) of the Canadian Criminal Code. The court suspended the petitioner's sentence, placed the petitioner on probation for three years and ordered her to complete 180 hours of community service work.

The petitioner did not submit the sections of the Canadian Criminal Code under which she was convicted. Her conviction record indicates that at least section 380 of the Code, concerning fraud, has been amended since her conviction in 1994. We cite the current statutory sections under which the petitioner was convicted. If the earlier version of the statutory sections under which the petitioner was convicted change the analysis of her crimes, the burden is on the petitioner to present such evidence. The burden of proof in visa petition proceedings lies with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

Section 380 of the Canadian Criminal Code, as current to February 5, 2006, states, in pertinent part:

Fraud

(1) Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service,

(a) is guilty of an indictable offence and liable to a term of imprisonment not exceeding fourteen years, where the subject-matter of the offence is a testamentary instrument or the value of the subject-matter of the offence exceeds five thousand dollars; or

(b) is guilty
(i) of an indictable offence and is liable to imprisonment for a term not exceeding two years, or
(ii) of an offence punishable on summary conviction,

where the value of the subject-matter of the offence does not exceed five thousand dollars.

The offenses of forgery and uttering forged documents are defined in sections 366 through 368 of the Canadian Criminal Code, as current to February 5, 2006, which state:

Forgery And Offences Resembling Forgery

366. (1) Every one commits forgery who makes a false document, knowing it to be false, with intent

(*a*) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or

(*b*) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not.

(2) Making a false document includes

(*a*) altering a genuine document in any material part;

(*b*) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or

(*c*) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.

(3) Forgery is complete as soon as a document is made with the knowledge and intent referred to in subsection (1), notwithstanding that the person who makes it does not intend that any particular person should use or act on it as genuine or be induced, by the belief that it is genuine, to do or refrain from doing anything.

(4) Forgery is complete notwithstanding that the false document is incomplete or does not purport to be a document that is binding in law, if it is such as to indicate that it was intended to be acted on as genuine.

367. Every one who commits forgery

(*a*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(*b*) is guilty of an offence punishable on summary conviction.

368. (1) Every one who, knowing that a document is forged,

(*a*) uses, deals with or acts on it, or

(*b*) causes or attempts to cause any person to use, deal with or act on it,

as if the document were genuine,

> (*c*) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
>
> (*d*) is guilty of an offence punishable on summary conviction.

The record contains an Information and Summons which states that the petitioner made six false bills for data processing training and data processing equipment between October 26, 1992 and May 3, 1993 and; knowing the bills were false or forged, the petitioner used, dealt with or acted on the bills as if they were genuine (six charges); made the false documents with the intent that they should be used or acted on as genuine to the prejudice of Employment and Immigration Canada (six charges); and defrauded the Canadian Government of sums worth more than $1,000 (five charges).

The petitioner submitted evidence that she was granted a pardon by the National Parole Board under the Criminal Records Act of Canada on March 12, 2003. The "Schedule Respecting a A Pardon Under the Criminal Records Act" lists the petitioner's "Record of Offence(s)" as five offences of fraud over $1,000 and one offence of fraud under $1,000. However, the petitioner's criminal record from the Royal Canadian Mounted Police states that she was convicted of five charges of fraud over $1,000; one charge of fraud under $1,000; six charges of forgery; and six charges of uttering forged documents. The petitioner has not explained this discrepancy. Rather, on appeal, the petitioner states, "I had been convinced [sic] in 1994, 10 years ago of Fraud of a maximum of $1,200 Cad / $800.00 USD." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the petitioner also claims that her pardon, minor offense and light sentence, and her good conduct in succeeding years establish her good moral character. None of these facts extinguish her criminal record and her resultant statutory ineligibility to be found to be a person of good moral character pursuant to sections 101(f)(3) and 212(a)(2)(A) of the Act as an alien convicted of crimes involving moral turpitude. First, it is well established that "for purposes of the United States immigration laws, a foreign pardon, in itself, does not wipe out an alien's foreign conviction or relieve him from the disabilities which flow therefrom." *Marino v. I.N.S.*, 537 F.2d 686, 691 (2d Cir. 1976); *Mullen-Cofee v. I.N.S.*, 976 F.2d 1375 (11th Cir. 1992). While the petitioner's pardon states that it "removes any disqualification to which [the petitioner] is, by reason of the conviction, subject by virtue of any Act of Parliament or a regulation made thereunder[,]" the pardon's absolution does not extend beyond Canada. As the BIA has explained, "foreign pardons are ineffective to erase a foreign criminal conviction for immigration purposes, because of the many differences incidental to their grant and effect." *Matter of M*, 8 I&N Dec. 453, 455 (BIA 1959). *See also Matter of M*, 9 I&N Dec. 132, 134 (BIA 1960) (Italian amnesty of no benefit to respondent for immigration purposes).

Second, the allegedly "minor" nature of the petitioner's offenses, her light sentence and her ensuing moral conduct also do not affect the determination that her crimes involved moral turpitude. We note that the record contains a letter dated January 5, 1999 from [redacted] Agent De Probation, which states that because of the petitioner's good behavior and her completion of her communal works, her probation was ended on January 30, 1995. In addition, the petitioner's criminal record states that the court suspended her sentence and placed her on three years of probation and 180 hours of community service work. The petitioner submitted letters from her former employers, landlords and a friend who all attest to her good conduct. The record also contains a Canadian background verification of police records issued on September 21, 2000, which states that the petitioner has "no state record" and a clearance letter for the petitioner dated December 2, 2002 from the Hollywood, Florida Police Department.

This evidence does not obviate the fact that the petitioner was convicted of crimes involving moral turpitude. Neither the seriousness of the petitioner's offense nor the severity of her sentence determines whether her crimes involve moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Rather, it is the "inherent nature of the crime as defined by statute and interpreted by the courts, and as limited and described by the record of conviction, which determines whether the offense is one involving moral turpitude." *Bart*, 20 I&N Dec. at 437, *Short*, 20 I&N Dec. at 137. Fraud, forgery and intentional deceit with forged documents are statutory elements of the crimes of which the petitioner was convicted. As discussed above, crimes in which fraud is an element necessarily involve moral turpitude. Consequently, the "minor" nature of the petitioner's offenses, her light sentence, and her subsequently moral conduct are all irrelevant to this determination. Because the petitioner was convicted of crimes involving moral turpitude, we are statutorily barred from finding her to be a person of good moral character pursuant to section 101(f)(3) of the Act.

The Petitioner's Prior Admission as a Nonimmigrant Pursuant to Section 212(d)(3)(B) of the Act

On appeal, the petitioner also contends that we should find her to be a person of good moral character because she previously received a waiver of inadmissibility from the former Immigration and Naturalization Service (INS). The record shows that the petitioner was granted temporary admission to the United States as a nonimmigrant pursuant to section 212(d)(3)(B) of the Act on January 31, 2000[1]. However, section 212(d)(3)(B) of the Act concerns the discretionary, temporary

[1] On appeal, the petitioner states, "INS admited [sic] me in [sic] United States giving to me waivers and two visa[s,] one in 1997 and the other one in 2000 (Waiver and Visa enclosed) after verification of my [C]anadian criminal record." CIS records show that the petitioner was granted temporary admission to the United States pursuant to section 212(d)(3)(B) of the Act on January 31, 2000, which was valid for multiple entries within one year. On appeal, the petitioner submits copies of her Form I-194 dated January 31, 2000 and two I-94 cards, one of which is dated October 31, 2000 and the other of which contains an illegible date stamp. The petitioner's CIS records include copies of the petitioner's passport with a U.S. entry stamp dated April 4, 1997 and admitting the petitioner in

admission of aliens who are inadmissible under section 212(a) of the Act as nonimmigrants. In contrast, section 204(a)(1)(A)(iii) of the Act, under which the petitioner seeks classification in this case, prescribes the eligibility requirements for immigrant status as the spouse of an abusive U.S. citizen. Good moral character is an explicit statutory requirement for classification under section 204(a)(1)(A)(iii) of the Act. Moreover, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

The Relevant Statutory Exceptions and Discretionary Provision Do Not Apply to the Petitioner's Case

Section 212(a)(2)(A)(ii) of the Act provides two exceptions to determining that an alien has committed or been convicted of a crime involving moral turpitude, but neither of these exceptions apply to the petitioner. The first exception is for crimes committed by juveniles under the age of 18 and five years prior to their application for immigration benefits. Section 212(a)(2)(A)(ii)(I) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(ii)(I). The petitioner was 41 years old at the time she committed her offenses and so this exception is inapplicable. The second exception applies when the maximum possible penalty for the crime of which the alien was convicted does not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months. Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(ii)(II). Section 380(1)(A) and section 380(1)(B)(i) of the Canadian Criminal Code, under which the petitioner was convicted for fraud, mandate a maximum penalty of fourteen years and two years of imprisonment respectively. Section 367 and section 368(1)(B) of the Canadian Criminal Code, under which the petitioner was convicted of forgery and uttering a forged document, have a maximum penalty of ten years of imprisonment. Although the petitioner was not sentenced to imprisonment, the statutory provisions under which she was convicted prescribe maximum possible penalties for her crimes of 10 and two years of imprisonment. Accordingly, the second exception to section 212(a)(2)(A)(ii) does not encompass the petitioner.

We are also unable to find the petitioner to be a person of good moral character pursuant to the discretionary provision enacted by Title V of the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000, Pub. L. 06-386. Section 204(a)(1)(C) of the Act, as amended by the VTVPA, provides CIS with the discretion to 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

---

nonimmigrant TN status, a second U.S. entry stamp dated October 21, 1998 and admitting the petitioner in B-2 nonimmigrant status, and two U.S. entry stamps one dated April 14, 2000 and the other dated October 31, 2000, both of which admitted the petitioner in B-2 nonimmigrant status and include a notation of "212(d)(3)(B)."

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 petitioner was convicted on September 23, 1994 for offenses committed between October 26, 1992 and May 3, 1993 in Canada. In her affidavit, the petitioner states that she met her U.S. citizen husband, [redacted] in September 1997 in Florida. The submitted certificate attests to the couple's marriage on October 11, 2000. Hence, the record clearly shows that the petitioner's conviction was unrelated and in no way connected to any battery or extreme cruelty later inflicted upon her by Mr. [redacted] 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 shows that the petitioner has been convicted of crimes involving moral turpitude and is not a person of good moral character pursuant to section 101(f) of the Act. Based on the present record, the petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

> *Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to establish her good moral character.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with this decision.