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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 01 2008

EAC 05 019 52358

IN RE: Petitioner: [redacted]

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

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)(B)(ii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty their lawful permanent resident spouse.

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)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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:

> (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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner

> will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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 –*
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> (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.
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> * * *
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> (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 the 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a

native and citizen of Guyana who married her lawful permanent resident spouse, S-P-,[1] on October 23, 2000.[2] The petitioner was paroled into the United States on October 31, 2000 after she attempted to enter the United States by presenting a fraudulent passport. On July 25, 2001, S-P- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The Form I-130 was approved on August 15, 2005.

In the interim, on October 24, 2004, the petitioner was personally served with a Notice to Appear and charged as removable under section 212(a)(6)(C)(i) of the Act as an alien who, by fraud or willful misrepresentation of a material fact, sought to procure admission into the United States and under section 212(a)(7)(A)(i)(I) of the Act as an alien not in possession of a valid entry document. The petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal that was denied by an immigration judge on September 27, 2004. On April 11, 2006, the Board of Immigration Appeals (BIA) upheld the determination of the immigration judge

The petitioner filed the instant Form I-360 on October 25, 2004. The director issued a Request for Evidence (RFE) on April 8, 2005. The petitioner responded to the RFE on June 7, 2005 and requested additional time in which to respond to the RFE. The director granted the petitioner's request for additional time on June 14, 2005. The petitioner responded with additional evidence on August 12, 2005. On March 16, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, notifying the petitioner of the deficiencies in the record and affording her the opportunity to submit further evidence to establish that she was a person of good moral character.[3] On May 1, 2006, the petitioner, through counsel, submitted further evidence in response to the director's NOID but requested additional time to obtain notarized signatures and additional police clearances. The director denied the petition on June 1, 2006, finding that the petitioner failed to establish that she was person of good moral character.

The petitioner, through counsel, submits a timely appeal and argues that the petitioner is eligible for a waiver and, therefore, may be found to have established that she is a person of good moral character. As will be discussed, we are not persuaded by counsel's argument and find the petitioner is ineligible for the requested immigrant classification.

The Petitioner was Convicted of a Crime Involving Moral Turpitude

The record indicates that on November 8, 2000 the petitioner was charged under, *inter alia,* 8 U.S.C. § 1546(a) for False Use of Entry Documents.[4] The charging document states:

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[1] Name withheld to protect individual's identity.

[2] The petitioner and S-P- were divorced by order of the New York State Supreme Court, Queens County, Matrimonial/IAS Part 53, on December 10, 2007.

[3] The record contains a second NOID, dated February 23, 2006. However, it appears that particular document was sent in error.

[4] Information, District Court of the Virgin Islands, Division of St. Croix, Crim. No. [redacted].

> On or about October 31, 2000, in St. Croix, District of the Virgin Islands, the [petitioner] did willfully and knowingly possess and attempt to use and did use an altered passport, a document prescribed by statute and regulation for entry into the United States (to wit: Republic of Trinidad and Tobago passport # [redacted] in the name [redacted] which had been altered by replacing the photograph in the passport with a photograph of the [petitioner]), which the [petitioner] knew to be altered.

On June 3, 2002, the petitioner pled guilty and was found guilty of this offense.[5] On October 16, 2002, the petitioner was sentenced to time served (233 days plus 7 days) and ordered to pay a fine of $100.[6] She filed this Form I-360 petition two years later on October 25, 2004.

Pursuant to the regulations, relevant case law, and binding administrative decisions, the petitioner's conviction is a crime involving moral turpitude. The regulation at 8 C.F.R. § 204.2(c)(1)(vii) directs that 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 –
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> * * *
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> (3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagrap[h] (A) . . . of section 212(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of thirty grams or less of marijuana), 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)(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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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . .

The petitioner was convicted of willfully and knowingly possessing and attempting to use an altered passport, under 18 U.S.C. § 1546(a). Federal courts and the BIA have determined that a conviction under this section is a crime involving moral turpitude. *See Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir.

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[5] Acceptance of Plea of Guilty and Adjudication of Guilt, District Court of the Virgin Islands, Division of St. Croix, Cr. No. [redacted]

[6] Judgment in a Criminal Case, District Court Virgin Islands, Division of St. Croix, Case Number: [redacted].

2002)(conspiracy to possess and use documents in violation of § 1546); *In re Serna,* 20 I&N Dec. 579 (BIA 1992)(if the conviction includes the use of an altered visa, the BIA would find that conviction was a crime involving moral turpitude).

Section 212(a)(2)(A)(ii)(II) of the Act Does Not Apply

Section 212(a)(2)(A)(ii)(II) of the Act provides an exception to the classification of an alien as one convicted of a crime involving moral turpitude for aliens who are convicted of only one crime, for which the maximum possible penalty does not exceed one year of imprisonment and the alien was not sentenced to a term of imprisonment exceeding six months. In this case, although the petitioner was sentenced to 240 days of time served, the maximum possible penalty for her conviction was 10 to 15 years. 18 U.S.C. § 1546(a). Therefore, section 212(a)(2)(A)(ii)(II) of the Act is inapplicable to the petitioner. Accordingly, the petitioner has been convicted of a crime involving moral turpitude and cannot establish her good moral character pursuant to 101(f)(3) of the Act.

Discretionary Provisions

Section 204(a)(1)(C) of the Act grants Citizenship and Immigration Services (CIS) 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.

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 record does not establish that the petitioner's conviction was connected to her battery or subjection to extreme cruelty by her citizen spouse.

On appeal, counsel argues that the petitioner's "method of entry for which she was convicted was to protect her children from danger that the father subjected them to." We are not persuaded by counsel's argument. Upon review of the record, we find insufficient evidence to establish that the petitioner's attempt to enter the United States with a fraudulent passport was connected to the battery or extreme cruelty of her spouse.

In her statement on appeal, the petitioner offers the following explanation for coming to the United States with fraudulent documents:

> My father-in-law had petitioned for [my spouse] and our children to immigrate to the [U]nited [S]tates. After [my spouse] came to the [U]nited [S]tates, as a lawful

> permanent resident. In around [M]ay 2001, [my spouse] petitioned fo[r] me to come to the [U]nited [S]tates. [U]nfortunately, there would be a long wait.
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> While [my spouse] was with the kids in the [U]nited [S]tates, I thought of them constantly. However, I began to fear for my children because I heard that [my spouse] was going out often and drinking. [My spouse] was not looking after our children because I heard that [he] was going out often and did not spend time with them. For example, there were times my son had to go to the laundry mat by himself. When I learned that the children went to live with their grandparents and not with [my spouse] due to his drinking, I had come to the [U]nited [S]tates as soon as I could to make sure that they were not harmed and would not be harmed by [my spouse]. Although the visa petition was pending, my fear for my children did not permit me to wait for a visa to become available.

Although the petitioner alleges that the reason she attempted to enter the United States with a fraudulent passport was because she feared for her children, she does not allege that her spouse ever threatened her children or subjected them to physical abuse or extreme cruelty. While the petitioner claims that her spouse did not spend time with the children and that they went to live with their grandparents, these actions do not demonstrate that her children were abused by her spouse or were part of an ongoing pattern of abuse against the petitioner. The petitioner does not indicate, for example, that her spouse attempted to coerce the petitioner or control her behavior with threats against the children or that he actually harmed the children.

In addition, the record contains multiple prior statements made by the petitioner which do not support her appellate claim that the reason for her attempted entry into the United States with a fraudulent passport was because she feared for her children's safety. In the sworn statement taken on November 1, 2000, one day after she attempted to enter the United States, when the petitioner was asked what her intentions were when applying for entry into the United States, the petitioner failed to mention a concern for her children's wellbeing. Rather, she indicated that she was running away from "the political crisis in [her] country." In the statement submitted in support of her asylum application, the petitioner claimed that her "happiness faded when [her] family migrated to the United States" and that she "could not bear the thought of not being able to able to be there for [her] husband and children." Again, the petitioner fails to mention any abuse on the part of her spouse and his mistreatment or neglect of her children. Similarly, during her removal proceedings, the petitioner's attorney asked the petitioner about her decision to come to the United States.[7] When questioned about how she felt with her family in the United States while she remained in Guyana, the petitioner answered that it was "devastating for [her] because [she] spen[t] all of [her] time with them." In anticipation of being separated from her family for so long, the petitioner indicated that she "spoke with [her] brother-in-law

[7] U.S. Department of Justice, Executive Office for Immigration Review, Immigration Court, New York, New York, Transcript of Hearing, January 27, 2004.

and he said he was going to talk to somebody to get [her] over here."[8] The petitioner again does not express a concern that her children were not being cared for or her fear that her spouse was abusing the children. Most significantly, the petitioner's statement, dated October 18, 2004, submitted at the time of filing, provides the following explanation:

> I came to the United States with the assistance of a smuggler on October 31, 2000. My husband filed a petition for me prior to my departure for the United States; however, I missed my children terribly and wanted to be with them, so I did not wait for the visa to be available.

Letters submitted on the petitioner's behalf in support of the instant petition also confirm that the petitioner's reason for coming to the United States was not borne of the fear that her children were being harmed, but rather, because she did not want to be separated from them for the time required for her priority date to be reached. The letter from [redacted] states that the petitioner was "unlucky to be a single mother, for a long time and so she decided to be with her kids together again." Mr. [redacted] then states his belief that the petitioner "deserved her fully [sic] rights like other parents to live with her kids." While some of the letters generally reference abuse perpetrated against the petitioner by her spouse, none of the letters indicate that the abuse was ever directed at the children or that while the petitioner remained behind in Guyana, the petitioner's spouse threatened the children as a way to control the petitioner. Although the petitioner's son submits a letter in which he states that he witnessed his father abuse the petitioner, he does not allege that he was ever threatened, physically harmed or subjected to extreme cruelty by his father. Accordingly, the petitioner has failed to establish that her 2002 conviction for False Use of Entry Documents under 18 U.S.C. § 1546(a) was connected to the battery or extreme cruelty of her citizen spouse. She has, therefore, failed to establish the applicability of section 204(a)(1)(C) of the Act in this case.

Finally, even if the petitioner's conviction did not require an automatic finding of a lack of good moral character under section 101(f)(3) of the Act and we were able to waive her crime involving moral turpitude pursuant to section 204(a)(1)(C) of the Act, we would still find the petitioner to lack good moral character pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act indicates that even if the petitioner is not in any of the classes listed, we are not precluded from finding the petitioner lacks good moral character. Similarly, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part:

> 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.

The petitioner offers no personal statement regarding her good moral character and favorable factors that we should consider on her behalf. While the letters submitted on the petitioner's behalf describe

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[8] *Id. at p.45.*

the petitioner as a "nice," "responsible," and "decent human being" and a devoted mother, these positive attributes are not sufficient to overcome the petitioner's knowing and willful attempt to violate the laws of the United States.

In sum, we find that the petitioner has not established her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. Under section 101(f)(3) of the Act, the petitioner is statutorily barred from establishing that she is a person of good moral character because of her conviction of a crime involving moral turpitude. The petitioner has also failed to establish the applicability of a waiver in this case. Finally, we find as a matter of discretion, that the petitioner failed to establish her good moral character.

Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. 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.