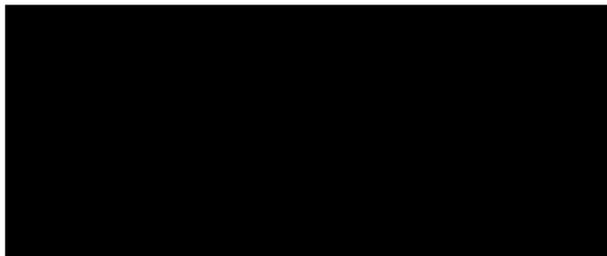


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



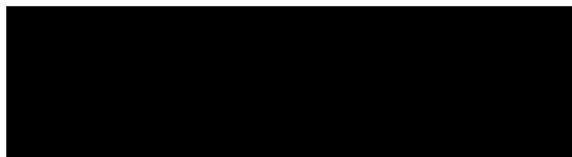
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 15 2010
EAC 09 233 50959

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)

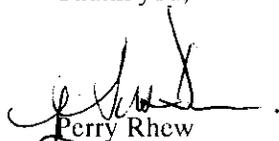
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner seeks immigrant classification pursuant to 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 by a United States lawful permanent resident.

On July 6, 2010, the director denied the petition, determining that the petitioner had failed to establish that she is a person of good moral character.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and additional documentation on appeal.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of 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 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 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 explained 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 explained 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 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guyana. She entered the United States on or about December 1,

1990 as a B-2 visitor with authorization to remain in the United States for a temporary period not to exceed June 30, 1991. The petitioner entered into a relationship with F-M-¹, the claimed abusive United States lawful permanent resident in 1991. She resided with the claimed abusive lawful permanent resident beginning in July 1991. She married F-M- on July 17, 1996. On June 10, 2009, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, based on an approved Form I-130, Petition for Alien Relative. The Form I-485 was denied on March 10, 2010. Also on June 10, 2009, the petitioner filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, which was denied on February 16, 2010. On August 25, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director denied the Form I-360 on July 6, 2010, determining that the petitioner had not established that she is a person of good moral character.

Good Moral Character

The record in this matter shows that the petitioner was arrested on four separate occasions for shoplifting, to-wit:

1. On September 16, 1998, the petitioner was arrested by the Kearny Police Department in Hudson County, New Jersey and charged with shoplifting in violation of New Jersey Criminal Code 2C:20-11B(1). A certified court disposition shows that on September 24, 1998 the petitioner was convicted of the charge and fined \$500.
2. On September 21, 1998, the petitioner was arrested by the Wayne Township Police Department in Passaic County, New Jersey and charged with shoplifting in violation of New Jersey Criminal Code 2C:20-11B(1). A certified court disposition shows that on December 10, 1998, the petitioner was convicted of shoplifting and fined \$648.
3. On September 22, 1998, the petitioner was arrested by the Wayne Township Police Department in Passaic County, New Jersey and charged with shoplifting in violation of New Jersey Criminal Code 2C:20-11B(1). A certified court disposition shows that on October 1, 1998, the petitioner was convicted of shoplifting and fined \$248.
4. On October 29, 1998, the petitioner was arrested by the Kearny Police Department in Hudson County, New Jersey and charged with shoplifting in violation of New Jersey Criminal Code 2C:20-11B(1). A certified court disposition shows that on November 12, 1998, the petitioner was convicted of shoplifting and fined \$500.

New Jersey Criminal Code 2C:20-11B provides that shoplifting consists of any one or more of the following acts:

For any person purposely to take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored, or offered for sale

¹ Name withheld to protect the individual's identity.

by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the full retail value thereof.

Pursuant to the regulations, binding administrative decisions and relevant federal case law, the petitioner's 1998 shoplifting convictions were for crimes 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 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."

In this matter, the record is sufficient to establish that the petitioner's four 1998 convictions for shoplifting in New Jersey were for crimes of moral turpitude. *Matter of Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude."); *Matter of De La Nues*, 18 I&N Dec. 140, 145 (BIA 1981) ("Burglary and theft or larceny, whether grand or petty, are crimes involving moral turpitude."). As the petitioner's four 1998 convictions for shoplifting in New Jersey require proof of such malevolent intent, her offenses constitute crimes involving moral turpitude and prevent a finding of her good moral character pursuant to section 101(f)(3) of the Act.

On appeal, counsel does not dispute that the petitioner's four crimes are crimes involving moral turpitude and preclude a finding of good moral character pursuant to section 101(f)(3) of the Act; counsel asserts, however, that the director failed to consider the relevant subsection of section 212(h)(1) of the Act, which states that the inadmissibility bar due to a conviction for a crime of moral turpitude may be waived if:

(C) the alien is a VAWA self-petitioner; and

(2) the [Secretary of Homeland Security], in his discretion, and pursuant to such terms,

conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

Counsel contends that United States Citizenship and Immigration Services (USCIS) failed to: consider the petitioner's affidavit where she explained the circumstances surrounding her criminal conduct; make a determination whether the offenses are waivable; determine whether the conduct was connected to battery and extreme cruelty; consider whether the petitioner warrants approval in the exercise of discretion. Counsel avers that the failure of the director to consider these factors requires a remand of the matter so that the director may consider these factors.

In this matter, remanding the matter to the director would serve no useful purpose. Counsel has noted the applicable factors that should be considered when a VAWA self-petitioner has engaged in criminal conduct that preclude a finding of good moral character under section 101(f) of the Act, and upon the AAO's *de novo* review, we find that that the petitioner has established that her criminal conduct was connected to the battery or extreme cruelty perpetrated by her lawful permanent resident spouse and that the petitioner warrants approval in the exercise of discretion. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Section 204(a)(1)(C) of the Act allows USCIS to find, as a matter of discretion, that a self-petitioner is a person of good moral character despite his or her conviction of a crime of moral turpitude if the crime is waivable for purposes of determining admissibility under section 212(a) of the Act and the crime was connected to the self-petitioner's having been battered or subjected to extreme cruelty.

The petitioner, in her November 12, 2009 affidavit acknowledged her bad moral character behavior in September and October 1998 and explained that her marital relationship with F-M- had almost completely ruptured and that he rarely gave her money to sustain household expenses which included sustaining their two minor children. She also stated that she was unable to work extra hours to increase her income and she indicated that she was afraid of asking authorities for help because of her lack of legal status in the United States. The petitioner also declared her regret for her involvement in criminal activity and noted that she had not been involved in other criminal activity before or since that two-month period in 1998. The petitioner expresses her feelings at that time, indicating that she was mentally drained by her situation and although she now realizes that she had other options, she was led by her desperation to engage in the criminal behavior.

We observe that according to the record, the petitioner and her spouse were in family court in 1994 which resulted in the petitioner's removal from her house and relocation to a domestic abuse shelter with her two children and that she resided at the safe house from June 23, 1994 to July 25, 1994. The record also included a letter from the City Clerk, Newark, New Jersey, dated August 12, 2009, informing the petitioner that the Newark Police Department has a record showing that F-M- had been arrested on October 29, 1998 but that the records department did not include a report regarding the arrest.

Upon review of the petitioner's affidavit, she has explained her criminal conduct during one six-week period over ten years ago. The record demonstrates that the petitioner's abusive husband had been in and out of her life for many years and that the petitioner was living in a very dysfunctional situation at the time she was arrested for and convicted of shoplifting. A review of the record and the petitioner's affidavit is sufficient in this matter to establish that her brief and limited criminal conduct was connected to the battery and extreme cruelty perpetrated by her husband. As the petitioner has no other criminal conduct and her offenses were very specific and during a finite period, and as the petitioner has expressed her remorse at her limited criminal activity, we find that the petitioner also warrants a favorable finding of good moral character as a matter of discretion.

As the record demonstrates that the petitioner has met all other elements necessary to establish eligibility for this benefit, the petition will be approved.

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. The petitioner has met her burden of proof.

ORDER: The decision of the director is withdrawn and the petition is approved.