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

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 28 2010

EAC 08 092 50190

IN RE: [redacted]

PETITION: Petition for Immigrant Abused 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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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)(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 on the basis of his determination that the petitioner had failed to establish that she is a person of good moral character. Counsel submitted a timely appeal on June 26, 2009.

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 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 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).

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

> (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

> *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 of proceeding establishes the following pertinent facts and procedural history. The petitioner, who was born in the Dominican Republic on February 5, 1952, entered the United States as

a nonimmigrant visitor on or around April 21, 1988. She married B-R-,[1] a citizen of the United States, on May 29, 1992. B-R- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on July 15, 1992, and it was approved on April 14, 1994. According to Service records, the petitioner became a permanent resident on April 14, 1994 based upon her marriage to B-R-.

The petitioner filed the instant Form I-360 on February 6, 2008. On March 17, 2009, the director issued a notice of intent to deny the petition (NOID), which notified the petitioner of deficiencies in the record and afforded her additional time in which to submit additional evidence to establish that she was still married to B-R-; that she had shared a residence with B-R-; that B-R- subjected her to battery or extreme cruelty; that she is a person of good moral character; and that she married B-R- in good faith. The petitioner responded to the NOID on April 17, 2009.

After considering the evidence of record, the director denied the petition on May 27, 2009. Upon review, the AAO agrees with the director's decision to deny the petition.

Good Moral Character

The sole issue before the AAO is whether the petitioner has established that she is a person of good moral character. As noted previously, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, 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, the following:

> (f) For the purposes of this chapter--
>
> 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) . . . of section 212(a) of this Act; or subparagraphs (A) . . . of section 212(a)(2). . . .
>
> * * *
>
> The fact that any person is not within any of the forgoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

The "classes of persons" referenced at section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3) includes these described at section 212(a) of the Act, 8 U.S.C. § 1182(a), in pertinent part, as follows:

---

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

(a) Classes of aliens ineligible for visas or admission

* * *

(2) Criminal and related grounds

(A) Conviction of certain crimes

(i) In general

Except as provided in clause (ii),[2] any alien convicted of, or who admits to having committed, or who admits having 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. . . .

* * *

is inadmissible.

* * *

(D) Prostitution and Commercialized Vice

Any alien who—

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purposes of prostitution, or receives or (within such 10-year period) received, in whole or in part, the proceeds of prostitution, or

[2] The exceptions referenced at section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i) do not apply here.

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

The record indicates that the petitioner has at least four criminal convictions relevant to the determination of whether she is a person of good moral character:

Date of Arrest	Date of Conviction	Statute under which Convicted
April 3, 1995	May 16, 1995	New York Penal Law § 230.20 – Attempting to promote prostitution in the fourth degree.
July 13, 1995	July 14, 1995	New York Penal Law § 230.20 – Promoting prostitution in the fourth degree.
February 24, 1997	March 4, 1997	New York Penal Law § 230.20 – Promoting prostitution in the fourth degree.
March 27, 1998	April 13, 1998	New York Penal Law § 230.20 – Promoting prostitution in the fourth degree.
December 21, 2000	March 2, 2001	New York Penal Law § 240.30 - Aggravated Harassment

The record also indicates that the petitioner was arrested on at least two additional occasions and charged with crimes for which, if convicted, could also be relevant to the determination of whether she is a person of good moral character. The disposition of these two arrests, however, is unclear:

Date of Arrest	Disposition	Charge
July 13, 1975	Unknown	"Prostitution" (No further detail provided.)
September 6, 2006	Unknown	New York Penal Law § 230.03 – Patronizing a prostitute in the fourth degree.

A. The Statute Does Not Prescribe a Time Period During Which Good Moral Character Must be Shown

Section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C.§ 1154(a)(1)(A)(iii)(II)(cc), prescribes no specific period during which good moral character must be established.

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a self-petitioner's good moral character includes local police clearances or state-issued criminal background checks from each place where the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. However, the regulation's designation of the three-year period preceding the filing of the petition does not limit the temporal scope of U.S. Citizenship and Immigration Services' (USCIS) inquiry into the petitioner's good moral character.

USCIS may investigate the 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). In this case, the record contains evidence of the petitioner's convictions stemming from the 1995, 1997, 1998, and 2001 incidents, as well as evidence that the petitioner was arrested in 1975, thus providing ample reason to believe that the petitioner may lack good moral character.

B. The Petitioner was Convicted of Four Crimes Involving Moral Turpitude

Pursuant to the regulations, binding administrative decisions, and relevant federal case law, the petitioner's 1995 crime of attempting to promote prostitution in the fourth degree and her 1995, 1997, and 1998 crimes of promoting prostitution in the fourth degree constitute crimes involving moral turpitude, and therefore bar a finding of good moral character. As was noted previously, 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)(3) of the Act, and one of the "classes of persons" referenced at section 101(f)(3) of the Act includes those convicted of crimes involving moral turpitude. Sections 101(f)(3) and 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(A)(i)(I).

The term "crime involving moral turpitude" is not defined in the Act or the regulations, but has been part of the immigration laws of the United States 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 held 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). A crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *See Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 186 (2007)(citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)); *Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009); *Matter of Silva-Trevino*, 24 I&N Dec. at 696. A categorical analysis of the elements of the statute of conviction also includes an examination of the law of the convicting jurisdiction to determine if there is a "realistic probability" that the statute would be applied to conduct that does not involve moral turpitude. *Matter of Louissaint*, 24 I&N Dec. at 757 (citing *Matter of Silva-Trevino*, 24 I&N Dec. at 698). Such a realistic probability exists when there is an actual case in which the criminal statute was applied to conduct that did not involve moral turpitude. *Id.* If no realistic probability exists that the statute of conviction would be applied to conduct that does not

involve moral turpitude, then convictions under the statute may categorically be treated as crimes involving moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. at 697.

As noted, the petitioner was convicted of having violated New York Penal Law § 230.20 on four separate occasions (McKinney 2008). New York Penal Law § 230.20 states the following,:

> **Promoting prostitution in the fourth degree**
>
> A person is guilty of promoting prostitution in the fourth degree when he knowingly advances or profits from prostitution.
>
> Promoting prostitution in the fourth degree is a class A misdemeanor.

New York Penal Law § 230.15 (McKinney 2008) states the following:

> **Promoting prostitution; definitions of terms**
>
> The following definitions are applicable to this article:
>
> 1. "Advance prostitution." A person "advances prostitution" when, acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.
>
> 2. "Profit from prostitution." A person "profits from prostitution" when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

As noted at New York Penal Law § 230.15 (McKinney 2008), a person is guilty of promoting prostitution in the fourth degree when he or she profits from, or advances, prostitution. In *Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965), the BIA held that a conviction for letting or renting rooms with knowledge that the rooms were to be used for the purpose of lewdness, assignation, or prostitution is conviction of a crime involving moral turpitude. The petitioner's four separate convictions related to her advancing and profiting from prostitution are similar to the facts in *Lambert*. Therefore, it can be determined that these four convictions constitute four separate crimes involving moral turpitude as discussed at section 212(a)(2)(A)(i)(I) of the Act,

8 U.S.C. § 1182(a)(2)(A)(i)(I), and prevent a finding of her good moral character pursuant to section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3).

Section 212(h)(1)(c)(2) of the Act, 8 U.S.C. § 1182(h)(1)(C)(2), 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.

Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), 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. Although a conviction for a crime of moral turpitude is waivable under sections 212(h)(1)(C) of the Act, 8 U.S.C. §§ 1182(h)(1)(C), the petitioner in this case has failed to establish that a connection exists between the petitioner's convictions stemming from the four prostitution-related incidents and B-R-'s battery or extreme cruelty. In her April 9, 2009 self-affidavit, the petitioner stated that although she remembered being arrested once in 1995, she did not remember being arrested on any other occasions (the record indicates that she has been arrested at least nine times). According to the petitioner, she forgot about her other arrests because she "was in such an awful psychological state" during this period as a result of B-R-'s abuse. She stated that she now "understand[s] that this line of work was illegal." The AAO finds this explanation insufficiently detailed to establish the necessary connection between the petitioner's convictions and B-R-'s battery or extreme cruelty.

C. The Petitioner was Convicted of Crimes Involving Prostitution-Related Offenses

The petitioner's 1998 crime of promoting prostitution in the fourth degree further bars a finding of her good moral character, pursuant to section 212(a)(2)(D)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(ii). As was noted previously, 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)(3) of the Act, and one of the "classes of persons" referenced at section 101(f)(3) of the Act includes those convicted of prostitution and commercialized vice. Sections 101(f)(3) and 212(a)(2)(D) of the Act, 8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(D).

As was noted previously, pursuant to New York Penal Law § 230.15 (McKinney 2008), a person is guilty of promoting prostitution in the fourth degree when he or she profits from, or advances, prostitution. A person is inadmissible to the United States under section 212(a)(2)(D)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(ii), if that person has, within 10 years of the date of application for a visa, admission, or adjustment of status, has received, in whole or in part, the proceeds of prostitution.

The petitioner's 1995, 1997 and 1998 convictions for promoting prostitution occurred within 10 years of her adjustment of status to that of a permanent resident and, therefore, precludes a finding of her good moral character under section 101(f)(3) of the Act.

Similar to cases which involve crimes involving moral turpitude, section 212(h)(1)(c)(2) of the Act, 8 U.S.C. § 1182(h)(1)(C)(2), states that the inadmissibility bar due to a conviction for a prostitution-related crime 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.

Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), 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 prostitution-related crime 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. Although a conviction for a prostitution-related crime is waivable under section 212(h)(1)(C) of the Act, 8 U.S.C. § 1182(h)(1)(C), the petitioner in this case has failed to establish that a connection exists between the petitioner's convictions stemming from the four prostitution-related incidents and B-R-'s battery or extreme cruelty. Again, in her April 9, 2009 self-affidavit, the petitioner stated that although she remembered being arrested once in 1995, she did not remember being arrested on any other occasions (the record indicates that she has been arrested at least nine times). According to the petitioner, she forgot about her other arrests because she "was in such an awful psychological state" during this period as a result of B-R-'s abuse. She stated that she now "understand[s] that this line of work was illegal." The AAO finds this explanation insufficiently detailed to establish the necessary connection between the petitioner's convictions and B-R-'s battery or extreme cruelty.

E. Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that she is a person of good moral character. The AAO bases its determination on the basis that: (1) the petitioner was convicted of four crimes involving moral turpitude; and (2) the petitioner was convicted of prostitution-related offenses within ten years of the date of her adjustment of status. Pursuant to section 101(f) of the Act, 8 U.S.C. § 1101(f), these factors preclude the petitioner from establishing that she is a person of good moral character. *See also* 8 C.F.R. § 204.2(c)(1)(vii). Accordingly, the AAO concurs with the director's determination that the petitioner has failed to establish that she is a person of good moral character. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

ORDER: The appeal is dismissed.