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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  
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **OCT 21 2010**

IN RE:



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:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a citizen of the United States.

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 and the petitioner, through counsel, filed a timely appeal. On appeal, counsel submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if 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, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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 standard and 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 petitioner is a citizen of both Canada and the United Kingdom. She married G-B-,<sup>1</sup> a citizen of the United States, on May 29, 1998. The petitioner submitted the instant Form I-360 on March 2, 2009. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the RFE, the director denied the petition on May 14, 2010.

The sole issue before the AAO on appeal is whether the petitioner has established that she is a person of good moral character. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

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 Act --

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 --

\* \* \*

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)). . . .

\* \* \*

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

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<sup>1</sup> Name withheld to protect individual's identity.

The record shows that the petitioner was convicted of the following nine offenses under the Penal Code:

Date of Conviction	Statute under which Convicted
[REDACTED]	[REDACTED]

The record also shows that the petitioner was convicted of the following federal offense:

Date of Conviction	Statute under which Convicted
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

In his decision, the director found that the petitioner lacks the requisite good moral character necessary for approval of the petitioner because she is an aggravated felon pursuant to section 101(a)(43) of the Act, 8 U.S.C. § 1101(a)(43) which states, in pertinent part, the following:

The term “aggravated felony” means—

\* \* \*

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000. . . .

<sup>2</sup> [REDACTED] defines an “access card” as any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access card, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by a paper instrument.

The director found that as an aggravated felon, the petitioner is statutorily ineligible for a finding of good moral character. On appeal, although counsel does not dispute that the petitioner is an aggravated felon, he contends that the director's determination that the petitioner is statutorily ineligible for a finding of good moral character was erroneous. Counsel argues that this determination is inconsistent with section 204(a)(1)(C) of the Act, and states that the petitioner is eligible for a finding that she is a person of good moral character "because her convictions are waivable for inadmissibility purposes and her involvement in criminal activity was directly related to her husband's abuse and manipulation."

*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 three-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 the inquiry into the petitioner's good moral character. U.S. Citizenship and Immigration Services (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). Because the record in this case contains evidence of the petitioner's convictions stemming from eleven separate convictions, there was ample reason for the director to believe that the petitioner may lack the requisite good moral character.

*The petitioner was convicted of an aggravated felony*

As noted previously, section 101(f)(8) of the Act states that no person shall be regarded as, or found to be, a person of good moral character if he or she has been convicted of an aggravated felony during the period for which good moral character is required to be established. In his May 14, 2010 decision, the director found that the petitioner had been convicted of an aggravated felony under section 101(a)(43)(M)(i) of the Act for an offense involving fraud or deceit in which the loss to the victim, or victims, exceeded \$10,000. As noted previously, counsel does not dispute that particular finding on appeal.

The record establishes conclusively that the losses sustained by the victims of the crimes involving fraud or deceit of which the petitioner was convicted exceeded \$10,000: as noted by the December 15, 1997 judgment and probation order, and corrected by the November 1, 2000 stipulation, the losses to the victims of the petitioner's crimes involving 18 U.S.C. §§ 2 and 1341 alone totaled \$15,390. The petitioner, therefore, was convicted of an aggravated felony pursuant to section 101(a)(43)(M)(i) of the Act.

*Section 101(f)(8) of the Act precludes a finding of the petitioner's good moral character*

We concur with the director's determination that the petitioner's status as an aggravated felon precludes a finding that she is a person of good moral character. Counsel asserts on appeal that the petitioner is still entitled to a discretionary finding of her good moral character pursuant to section 204(a)(1)(C) of the Act because her conviction was connected to the abuse to which she was subjected by G-B-. However, regardless of whether the convictions leading to the petitioner's classification as an aggravated felon were connected to G-B-'s abuse, they are not encompassed by this provision. Section 204(a)(1)(C) of the Act states, in pertinent part, the following:

Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding the petitioner to be of good moral character under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if the [Secretary of Homeland Security] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

For the purpose of determining admissibility under section 212(a) of the Act, or deportability under section 237(a) of the Act, a conviction for an aggravated felony is not waivable in this case. Counsel argues that the petitioner's convictions are waivable "for inadmissibility purposes" under section 212(h) of the Act because they also constituted crimes involving moral turpitude, which are waivable. According to counsel, because she is inadmissible to the United States under section 212(a)(2)(A)(i) of the Act as result of having committed crimes involving moral turpitude, she is eligible for a waiver of inadmissibility under section 212(h) of the Act. As such, according to counsel, section 204(a)(1)(C) of the Act applies, and the AAO must determine whether the petitioner's actions which led to her conviction were connected to the abuse to which she was subjected. Counsel cites *Matter of Michel*, 21 I&N Dec. 1101 (BIA 1998) and *Matter of Kanga*, 22 I&N Dec. 1206 (BIA 2000) in support of his assertion. We disagree.

Counsel's citations to *Matter of Michel* and *Matter of Kanga* are not persuasive; the Board of Immigration Appeals (BIA) did not address section 204(a)(1)(C) of the Act in either of those cases. In those two cases, the BIA found the aliens eligible to file for waivers of inadmissibility as a result of having been convicted of crimes involving moral turpitude even though those crimes were also aggravated felonies because the aggravated felonies did not bar their eligibility for adjustment of status.

As opposed to a crime involving moral turpitude, a conviction for an aggravated felony is not a ground of inadmissibility and, as such, no waiver of inadmissibility exists for such a conviction. Section 204(a)(1)(C) of the Act only applies if the conviction is waivable for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a). Although an aggravated felony may be waived under section 237(a)(2)(A)(vi) of the Act, 8 U.S.C. § 1227(a)(2)(A)(vi), that waiver exists only in cases where the alien has been granted a full

and unconditional pardon by either the U.S. President or a state governor. As the record contains no evidence that the petitioner has received such a pardon, her conviction is not waivable under that provision. Accordingly, section 204(a)(1)(C) of the Act does not apply to the petitioner's conviction for an aggravated felony, and it affords her no relief. As section 101(f)(8) of the Act, therefore, prevents a finding of the petitioner's good moral character, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

The petitioner has failed to overcome the director's ground for denial of the petition, and has not established that she is a person of good moral character as a result of her classification as an aggravated felon. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.