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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

PUBLIC COPY

[REDACTED]

B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: SEP 08 2010

IN RE: Petitioner: [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:

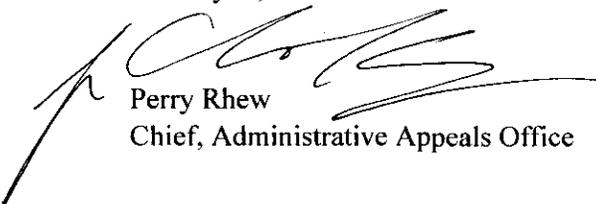
[REDACTED]

INSTRUCTIONS:

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, with a fee of \$585. 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 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 dismissed. The petition will be denied.

The petitioner seeks immigrant classification 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 battered or subjected to extreme cruelty by a United States citizen.

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).

On December 16, 2009, the director denied the petition, determining: that the petitioner had not established that she is a person of good moral character.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, and the petitioner's previously submitted personal statement.

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 further 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 China. She entered the United States on May 8, 2001 as a B-2 visitor. On

July 11, 2005, the petitioner married C-C-¹, the claimed abusive United States citizen spouse. On July 31, 2005, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, which was denied on or about July 27, 2006. The petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status also on July 31, 2005 which was denied on August 10, 2006. On April 21, 2008, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued a Notice of Intent to Deny (NOID) the petition on August 3, 2009. The petitioner, through her counsel, responded to the NOID. Upon review of the record, including the petitioner's response, the director denied the petition determining that the petitioner had not established that she is a person of good moral character.

Good Moral Character

On December 16, 2009, the director determined that the petitioner had not met the good moral character criterion for this petition type based upon her arrest and conviction for prostitution on October 23, 2001 under the law of the State of New York.

On appeal, counsel, citing *Matter of T*, 6 I&N Dec. 474, 477 (BIA 1955), asserts that one conviction for prostitution does not constitute a "regular pattern of behavior or conduct," and thus the petitioner's one conviction should not render her excludable for lack of good moral character. Counsel observes that the petitioner has submitted a statement explaining that she was looking for a job when she was arrested and did not understand what she was pleading guilty to when the judge stated the charge. Counsel also notes that even if the petitioner committed prostitution in 2001, she has shown rehabilitation by working as a sales clerk now.

The AAO first observes that to establish good moral character for this benefit, the statute does not state a time period during which the self-petitioner must demonstrate his or her good moral character. *See* Section 204(a)(1)(A)(iii)(II)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). 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. The regulation's designation of the three-year period preceding the filing of the petition does not limit the temporal scope of USCIS' inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996).

The record includes the petitioner's following criminal history:

The petitioner's [REDACTED] 2001 arrest for prostitution in violation of New York public law 230.00 and the disposition of the arrest on [REDACTED] 2002 with the petitioner's plea of guilty and the imposition of a fine of \$100 and a conditional discharge;

¹ Name withheld to protect the individual's identity.

The petitioner's [REDACTED] 2005 arrest for prostitution in violation of New York public law 230.00 and the disposition of the arrest on [REDACTED], 2005 with the petitioner's plea of guilty of violation of New York public law 240.20, disorderly conduct, and the imposition of a conditional discharge and five days of community service; and

The petitioner's [REDACTED] 2007 arrest for prostitution in violation of New York public law 230.00 and the disposition of the arrest on [REDACTED] 2007 upon the petitioner's plea of guilty of violation of New York public law 240.20, disorderly conduct, and the imposition of a conditional discharge and five days of community service.

The record also includes the petitioner's personal statement in support of her Form I-485. The petitioner acknowledges that she has three arrest records and explains: (1) her [REDACTED] 2001 arrest for prostitution happened when she was waiting to be interviewed for a job and that she pled guilty because her attorney told her she could go home if she pled guilty; (2) her [REDACTED] 2005 arrest happened because her subtenant practiced massage without a license and her attorney advised her to plead guilty to disorderly conduct; and (3) her [REDACTED] 2007 arrest occurred because she was working at a Chinese Therapy clinic with more than ten massage tables in an open room and all ten workers were arrested and her attorney told her that she needed a license to practice this type of job so advised her to plead guilty to disorderly conduct. The petitioner further states, "I had unhappy encounters with the law enforcement in the U.S. due to language problems and my lack of knowledge of the law. I have learned a lot the hard way. I will never again violate any ordinances and law in the United States."

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 paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) . . . 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)(D) of the Act Prostitution and commercialized vice states in pertinent part:

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 . . . is inadmissible.

The petitioner's conviction for prostitution does not render her inadmissible under section 212(a)(2)(D) of the Act. *Matter of T*, 6 I&N Dec. 474, 477 (BIA 1955). The director's finding to the contrary is withdrawn. However, the petitioner's conduct evidences a lack of good moral character under the last paragraph of 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 prescribes, in pertinent part: "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." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further provides, 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 . . . although the acts do not require an automatic finding of lack of good moral character.

The record shows that the petitioner pled guilty to engaging in prostitution on one occasion, and for disorderly conduct on two occasions, with her last two convictions occurring within the three-year period immediately preceding the filing of her petition. The AAO has reviewed the petitioner's statement regarding the circumstances of the arrests that led to her convictions, and finds that she committed unlawful acts that adversely reflect upon her moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). On appeal, the petitioner submits no probative evidence that her offenses were committed under extenuating circumstances. She simply attributes her three convictions to language problems and does not otherwise discuss her moral character. Neither counsel nor the petitioner provides any evidence on appeal to show that she has been rehabilitated and to support counsel's assertion that she is employed. The petitioner also fails to provide any support letters from responsible individuals knowledgeably attesting to her good moral character. The record does not establish that petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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. Here that burden has not been met.

ORDER: The appeal is dismissed.