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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

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B9.

FILE: [REDACTED]  
EAC 07 112 50753

Office: VERMONT SERVICE CENTER

Date:  
SEP 17 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:



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 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 because the petitioner did not establish that that he resided with his wife, and that he is a person of good moral character.

On appeal, counsel submits a statement 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:

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

\* \* \*

(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 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 –*

- (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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(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 Pakistan who was admitted to the United States on a B-2 nonimmigrant visitor on August 18, 2002. The petitioner married H-M-<sup>1</sup>, a U.S. citizen, on February 6, 2003, in Texas. On March 6, 2003, the petitioner was served with a Notice to Appear for removal proceedings. On July 2, 2003, H-M- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On April 4, 2008, the Immigration Judge determined that the petitioner was subject to removal as set forth on the Notice to Appear, and granted him voluntary departure in lieu of removal, without expense to the Government on or before June 3, 2008. On May 13, 2008, the Immigration Judge ordered that the petitioner's Motion to Reopen and Reconsider, Motion to Stay Order of Removal, and Motion to Stay Voluntary Departure be denied. A subsequent appeal was dismissed by the BIA. On December 14, 2009, a Form I-205, Warrant of Removal/Deportation, was issued on behalf of the petitioner by the Field Office Director in Houston, Texas. On March 9, 2010, the petitioner appeared before the Vice Consul of the U.S. Consulate in Karachi, Pakistan and provided evidence of his departure from the United States on January 13, 2010.

The petitioner filed the instant Form I-360 on March 13, 2007. On December 14, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residence and good moral character. The director also requested information regarding the petitioner's current marital status and provided instructions pertaining to a request for a bona fide marriage exemption. No response was received. On June 3, 2008, the director issued a second RFE, requesting the same information as in the first RFE. On August 25, 2008, the petitioner, through counsel, responded with additional evidence. On November 12, 2009, the director denied the instant I-360 petition because the petitioner did not establish that he resided with his wife and that he is a person of good moral character. On December 14, 2009, the petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

On appeal, counsel states, in part: "The self petitioner has established by preponderance of evidence living together with the abuser spouse as required under regulations on the subject and satisfied his burden." Counsel also states that the evidence shows that the petitioner is a person of good moral character. As supporting documentation, counsel submits: a loan statement dated November 19, 2009, from Wachovia, addressed to the petitioner at: [REDACTED] evidence related to the petitioner's deceased father who had been employed by the U.S. Department of the Army Corps of Engineers from August 2, 1982 through December 15, 2001; an Incident/Investigation report dated May 1, 2004, from the Webster Police Department in Webster, Texas; an affidavit from [REDACTED] dated December 3, 2009; two letters, both dated

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

December 6, 2009, from [REDACTED] acquaintances of the petitioner and his family; a Certificate of Completion from the State of Texas Drug Offender Education Program, certifying that the petitioner successfully completed the program on August 12, 2005; and a personal affidavit dated December 11, 2009, from the petitioner.

*Joint Residence*

On the Form I-360, the petitioner stated that he resided with his wife from the month and year of their marriage, February 2003, until July 2005, and listed the last address at which they resided together as: [REDACTED]. In addition to the documentation submitted on appeal, the record also contains the following evidence relevant to the petitioner's claim that he resided with his wife:

- The petitioner's statement dated March 9, 2007, in which he claims that from the date of their marriage on February 6, 2003, he and H-M- lived with his brother and family at: [REDACTED]
- A letter dated May 24, 2005, from the Internal Revenue Service (IRS), addressed to the petitioner and H-M- at the [REDACTED]
- A copy of IRS Form 9465, Installment Agreement Request, listing the petitioner and H-M- and their current address as the [REDACTED]
- The 2004 federal income tax return of the petitioner and H-M-, and related letter, from TABS ENT INC., a tax preparation service, reflecting the [REDACTED]
- An account transaction history for H-M's checking account, from May 12, 2005 through June 30, 2005;
- A Texas Liability Insurance Card, effective from February 28, 2005 through May 28, 2005, listing the petitioner and H-M- as the "covered persons" and the "garage address" as the [REDACTED]
- An undated statement from [REDACTED] who states, in part, that she attended a dinner at the petitioner's brother's house where the petitioner and H-M- lived;
- A statement dated March 9, 2007, from the petitioner's brother, [REDACTED], stating that the petitioner and H-M- resided with him and his wife at the [REDACTED] address from February 2003 through July 2005;
- Texas driver's licenses for the petitioner and H-M- listing the [REDACTED] address;
- Copies of magazine covers addressed to H-M- at the [REDACTED]
- Copies of credit offer mailings addressed to H-M- at the [REDACTED] and
- The petitioner's undated Form G-325A, Biographic Information, on which he stated that he began living at the [REDACTED]

The AAO acknowledges the petitioner's March 9, 2007 statement in which he claims that from the date of their marriage on February 6, 2003, he and H-M- lived with his brother and family at the [REDACTED]

██████████ address in Pearland, Texas. However, as discussed by the director in his November 12, 2009 decision, the petitioner's scant evidence of joint residence, including the IRS documents for 2004, one checking account statement for H-M-, a car insurance card that was valid for only three months, driver's licenses, a magazine subscription, and commercial mailings, is not sufficient to demonstrate that the petitioner and H-M- resided together. In addition, the undated statement from Megan Rushing listed above does not state the address and dates of the joint residence or provide any further details. The statements dated March 9, 2007 and December 3, 2009, respectively, from the petitioner's brother are also general and provide few probative details regarding the petitioner's claimed joint residence with his spouse. The record also contains inconsistencies related to the claimed joint residence. For example, in the May 1, 2004 Incident/Investigation report from the Webster Police Department in Webster, Texas, which counsel submitted on appeal, the petitioner's "home address" is listed as: ██████████. This information conflicts with the petitioner's March 9, 2007 statement, in which he asserts that from the date of his marriage to H-M- on February 6, 2003, he and H-M- lived with his brother and family at: ██████████ in Pearland, Texas. This information also conflicts with the March 9, 2007 and December 3, 2009 statements from the petitioner's brother. The record contains no explanation for these inconsistencies. It is also noted that on his undated Form G-325A, Biographic Information, the petitioner stated that he began living at the ██████████ address in August 2003. Again, this information conflicts with the petitioner's assertion that from the date of his marriage to H-M- on February 6, 2003, he and H-M- lived with his brother and family at: ██████████. Given the unexplained inconsistencies and discrepancies discussed above, the petitioner has failed to establish that that he resided with his wife.

In sum, the relevant evidence contains unresolved inconsistencies regarding the petitioner's alleged residence with his wife. Consequently, the petitioner has not established by a preponderance of the evidence that he resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Moral Character*

In his November 12, 2009 decision, the director determined that the petitioner had not provided specific information related to his drug offense, and thus he had not established that he is a person of good moral character, as described under section 101(f) of the Act. Specifically, the court disposition submitted by the petitioner, which describes the offense as "poss – marij 0-2 oz," does not indicate the actual amount of marijuana possessed by the petitioner.

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, "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 –

\* \* \*

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraph[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;

\* \* \*

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

\* \* \*

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 . . .

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime. . . .

The record contains the following evidence of three criminal offenses committed by the petitioner:

- 1) On July 29, 2004, the petitioner pled guilty to and was convicted of a Misdemeanor B Drug Offense Possession of Marijuana 0-2 oz, by the District Court of Harris County, Texas, for the offense that occurred on May 1, 2004. The petitioner was sentenced to eight days in the Harris County, Texas jail. The "Reporting Officer Narrative" from the Webster Police Department Archive Database, which was submitted on appeal, indicates that the marijuana weighed 1.5 grams. The Judgment document also states that the petitioner's driver's license was suspended for one year.
- 2) On April 15, 2005, the petitioner pled not guilty to the charge of Theft >=\$20<\$500 By Check, MB, which occurred on January 3, 2004, and which was reduced to Issuance of Worthless Check - Class C. The petitioner insisted on entering his plea of Nolo Contendere to the charge of Issuance of Worthless Check - Class C. The County Court at Law #3 and Probate Court in Brazoria County, Texas found the petitioner guilty as charged and assessed his punishment, a fine of \$100.00 and no jail time.
- 3) On April 15, 2005, the petitioner pled guilty to the charge of Driving While License Suspended, M, which occurred on March 4, 2003. The County Court at Law #3 and Probate Court in Brazoria County, Texas found the petitioner guilty as charged and assessed his punishment, a fine of \$500.00 and three days imprisonment in the County Jail. The petitioner's driver's license was also suspended for 180 days.

The term "crime involving moral turpitude" is not defined in the Act or the regulations, but has been part of the immigration laws 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 (8<sup>th</sup> 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).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If the statute defines a crime “in which turpitude necessarily inheres,” then a conviction under that statute constitutes a crime involving moral turpitude. *Id.* Where the statute includes offenses that both do and do not involve moral turpitude, we must look to the record of conviction to determine whether the crime committed involved moral turpitude. *Id.* The record of conviction includes the indictment or charging documents, plea, verdict and sentence. *Id.* at 137-38.

In this case, the record does not indicate that the petitioner’s criminal offenses were crimes involving moral turpitude. As discussed above, the Webster, Texas Police Department Archive Database indicates that the petitioner’s July 29, 2004 conviction in Harris County, Texas of a Misdemeanor B drug offense Possession of Marijuana 0-2 oz, was for possession of 1.5 grams of marijuana. Thus, the petitioner’s drug offense does not prevent a finding of his good moral character pursuant to section 101(f)(3) of the Act. In addition, the petitioner’s conviction of Issuance of Worthless Check – Class C is not a crime involving moral turpitude under the Texas Penal Code § 32.41, Issuance of Bad Check. Nor is the petitioner’s conviction of a driving offense a crime involving moral turpitude. Thus, the petitioner has overcome this portion of the director’s objections. The petition may not be approved, however, as the petitioner has not established that that he resided with his wife.

Beyond the decision of the director, we find the petitioner failed to establish that his wife subjected him to battery or extreme cruelty during their marriage. The petitioner does not explicitly state or otherwise indicate that his wife subjected him to battery. Accordingly, we will only discuss the petitioner’s claim of extreme cruelty. The petitioner’s testimony does not indicate that his wife’s behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not describe in probative detail any particular incidents where his wife threatened him with physical or mental injury. The petitioner’s statements regarding his wife making sarcastic remarks, calling him degrading names, having an affair, getting pregnant by another man, and leaving him, do not establish that his wife subjected him to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence. The petitioner does not claim and the record does not indicate that the petitioner’s wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner’s wife subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. For this additional reason, the petition may

not be approved.<sup>2</sup>

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.

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<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).