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U.S. Citizenship  
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Services

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FILE:

EAC 04 010 53595

Office: VERMONT SERVICE CENTER

Date: JUL 12 2006

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered 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:

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.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, 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 classification as a special immigrant pursuant to 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, finding that the petitioner failed to establish her good moral character.

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 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

*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 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, 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.

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.”

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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. . . . 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 in this case is a native and citizen of Russia who entered the United States on November 20, 1999 as a nonimmigrant exchange visitor (J-1). On June 19, 2001, the petitioner married [REDACTED] a U.S. citizen, in Las Vegas, Nevada. On October 8, 2003, the petitioner filed this Form I-360. On August 11, 2004, the director issued a notice requesting the petitioner to submit additional evidence of, *inter alia*, the petitioner’s good moral character. Counsel requested and was granted additional time to respond and on December 11, 2004, submitted a clearance letter for the petitioner from the Atlanta Police Department. On May 2, 2005, the director issued a Notice of Intent to Deny (NOID) the petition because Citizenship and Immigration Services (CIS) records showed that the petitioner had been convicted of bank fraud in violation of 18 U.S.C. § 1344 on March 3, 2005, which indicated that the petitioner was not a person of good moral character. Having received no response from counsel or the

petitioner, the director denied the petition on November 22, 2005 because the record failed to establish the petitioner's good moral character. The petitioner, through counsel, timely appealed.

As we concur with the director's determination that the petitioner meets all the other statutory requirements, the only issue on appeal is whether the petitioner is a person of good moral character. On appeal, counsel asserts that the petitioner's crime was connected to Mr. ██████'s abuse and that she is eligible for a waiver under section 237(a)(7)(A) of the Act. Section 237(a)(7)(A) of the Act is inapplicable to this case as it only provides a waiver for aliens who are deportable due to convictions for crimes of domestic violence, stalking, child abuse and violations of protection orders. On appeal, counsel also submits the affidavit of Dr. ██████, a psychologist, and a copy of the guilty plea and plea agreement for her criminal case, which is not signed by the petitioner or her criminal attorney. We concur with the director's conclusion and find that counsel's claims on appeal do not overcome the ground for denial. The appeal will be dismissed for the reasons discussed below.

*The Petitioner was Convicted of a Crime Involving Moral Turpitude*

CIS records show that the petitioner was arrested on June 1, 2004 and convicted on March 3, 2005 of bank fraud in violation of 18 U.S.C. § 1344, which states:

Whoever knowingly executes, or attempts to execute, a scheme or artifice –

- (1) to defraud a financial institution; or
- (2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

The petitioner was convicted under both subsections one and two of this statute. Although the petitioner did not submit the indictment to which she plead guilty of Count 28, the guilty plea and plea agreement submitted on appeal states that the petitioner obtained \$9,925 in funds from a bank by false and fraudulent means including, but not limited to, negotiating a check for \$9,925, knowing that the check was not legitimate and that the payor had not authorized the transaction. The petitioner was sentenced to three years probation and ordered to pay \$195,075 in restitution.

The record shows that the petitioner's offense was a crime involving moral turpitude. 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).

Offenses involving fraud fall squarely within the jurisprudential definition of crimes involving moral turpitude. As the Supreme Court stated in *De George*,

Whatever else the phrase “crime involving moral turpitude” may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . The phrase “crime involving moral turpitude” has without exception been construed to embrace fraudulent conduct.

*De George*, 341 U.S. at 232. The federal courts of appeals and the BIA repeatedly cite *De George* as authority for the principle that crimes of which fraud is an element necessarily involve moral turpitude. *See e.g. Padilla v. Gonzales*, 397 F.3d 1016, 1020 (7<sup>th</sup> Cir. 2005) (“[I]t is settled that ‘crimes in which fraud [is] an ingredient’ involve moral turpitude,” quoting *De George*.), *Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992) (“Fraud, as a general rule, has been held to involve moral turpitude.”), *Flores*, 17 I&N Dec. at 228 (quoting the above cited passage of *De George* as the Supreme Court’s definition of moral turpitude). *See also Correa-Garces*, 20 I&N Dec. 451, 454 (BIA 1992) (“Crimes involving fraud are considered to be crimes involving moral turpitude.”). Indeed, even when fraud is not an explicit statutory element of an offense, a crime will still be found to involve moral turpitude if fraud is inherent to the proscribed offense. *Flores*, 17 I&N Dec. at 228, *Matter of Bart*, 20 I&N Dec. 436, 437-438.

In this case, fraud is an explicit statutory element of the crime of which the petitioner was convicted. Accordingly, the petitioner has been convicted of a crime involving moral turpitude and we are statutorily barred from finding her to be a person of good moral character pursuant to section 101(f)(3) of the Act.

*The Relevant Statutory Exceptions and Discretionary Provision Do Not Apply to the Petitioner’s Case*

Section 212(a)(2)(A)(ii) of the Act provides two exceptions to determining that an alien has committed or been convicted of a crime involving moral turpitude, but neither of these exceptions apply to the petitioner. The first exception is for crimes committed by juveniles under the age of 18 and five years prior to their application for immigration benefits. Section 212(a)(2)(A)(ii)(I) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(ii)(I). The record shows that the petitioner committed her offense when she was over the age of 18 and after she had filed an application to adjust status.<sup>1</sup> Hence, the first exception does not apply. The second exception applies when the maximum possible penalty for the crime of which the alien was convicted does not exceed imprisonment for one year and the alien was not sentenced to a

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<sup>1</sup> Although the record does not indicate the date the petitioner committed her offense, CIS records show that the petitioner was arrested on June 1, 2004 when the petitioner was 27 years old and over two years after she filed a Form I-485 application to adjust status on September 26, 2001.

term of imprisonment in excess of six months. Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(ii)(II). Although the petitioner was not sentenced to imprisonment, the maximum possible penalty for federal bank fraud is 30 years of imprisonment. 18 U.S.C. § 1844. Accordingly, the second exception to section 212(a)(2)(A)(ii) does not apply to the petitioner.

We are also unable to find the petitioner to be a person of good moral character pursuant to the discretionary provision at section 204(a)(1)(C) of the Act. That provision grants CIS the discretion to find a petitioner to be a person of good moral character if: 1) the petitioner's conviction for a crime involving moral turpitude is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) the conviction was connected to the alien's battery or subjection to extreme cruelty by his or her U.S. citizen or lawful permanent resident spouse or parent. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). Although inadmissibility due to a conviction for a crime involving moral turpitude is waivable for self-petitioners under section 212(h)(1)(C) of the Act, the record does not establish that the petitioner's conviction was connected to Mr. Jones's battery or extreme cruelty.

The phrase "connected to the alien's having been battered or subjected to extreme cruelty," as stated in section 204(a)(1)(C) of the Act has not been explicated through regulation. However, CIS policy states:

[T]he evidence should establish that the self-petitioner would not have committed the act or crime in the absence of the battering or extreme cruelty. To meet this evidentiary standard, the evidence submitted must demonstrate:

- The circumstances surrounding the act or conviction, including the relationship of the abuser to, and his/her role in, the act or conviction committed by the self-petitioner; and
- The requisite causal relationship between the act or conviction and the battering or extreme cruelty.

\* \* \*

When determining whether a sufficient connection exists between the alien's disqualifying act or conviction and the battering or extreme cruelty suffered by the alien, the adjudicating officer should consider the full history of the domestic violence in the case, including the need to escape an abusive relationship. The adjudicating officer should consider all credible evidence that is in compliance with 8 U.S.C. § 1367 when making this determination. The credibility and probative value of the evidence submitted by the self-petitioner is a determination left to the discretion of the adjudicating officer.

Memo. of William R. Yates, Assoc. Dir. CIS Operations, *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, 3-4 (Jan. 19, 2005).

In her affidavit submitted on December 11, 2004, the petitioner does not mention or discuss her June 1, 2004 arrest or any of the events surrounding and related to her arrest. The petitioner submitted no documentary or testimonial evidence in response to the director's May 2, 2005 NOID even though she was convicted and sentenced two months earlier on March 3, 2005. On appeal, the petitioner submits an affidavit from Dr. [REDACTED] in which Dr. [REDACTED] describes the events that led to the petitioner's arrest, as related to her by the petitioner. The petitioner was put on notice of the deficiency of the evidence previously submitted and was given a reasonable opportunity to provide additional evidence of her good moral character for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Even if Dr. [REDACTED] affidavit had been timely submitted in response to the NOID, her secondary statements alone do not establish a connection between the petitioner's crime and Mr. [REDACTED] abuse. The record is devoid of any testimony by the petitioner herself regarding her crime and its alleged connection to Mr. [REDACTED] battery or extreme cruelty. The evidence shows that the petitioner was ordered to make restitution jointly and severally with the co-defendant in her case, [REDACTED] but the evidence provides no explanation of, for example, the petitioner's dealings with Mr. [REDACTED] and how they were connected to Mr. [REDACTED] abuse. Moreover, without documentation of the exact date the petitioner's offense was committed and an explanation of the events surrounding the petitioner's crime, we cannot determine if any of the evidence of Mr. [REDACTED] abuse corroborates the petitioner's claim. Consequently, the record fails to establish a connection between the petitioner's conviction and Mr. [REDACTED] battery or extreme cruelty and the evidence thereby does not warrant an exercise of discretion under section 204(a)(1)(C) of the Act.

The record demonstrates that the petitioner was convicted of a crime involving moral turpitude and the relevant statutory exceptions and discretionary provision do not apply to the petitioner's case. The petitioner has not established that she is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. She is consequently ineligible for special immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must therefore be 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 not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.