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**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

*By*

FILE:

EAC 04 147 53771

Office: VERMONT SERVICE CENTER

Date:

**JUN 20 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.

*Mari Johnson*

§ 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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Jamaica who seeks classification as a special immigrant 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 subjected to battery or extreme cruelty by her United States citizen spouse. The record indicates that the petitioner last entered the United States on January 30, 1998 as a nonimmigrant visitor (B-2) at New York City. The petitioner married [REDACTED] a U.S. citizen, on July 2, 2002, in Bronx, New York. The petitioner filed her Form I-360 on April 16, 2004. Finding the evidence submitted with the Form I-360 insufficient to establish the petitioner's eligibility, the director issued a notice on April 18, 2005, requesting the petitioner to submit evidence of, among other issues, her good moral character. On June 25, 2005, the petitioner submitted additional evidence. On August 25, 2005, the director denied the petition because the record failed to establish the petitioner's good moral character due to her criminal conviction. On appeal, counsel for the petitioner submits a brief. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish her good moral character and find that her claims and the evidence submitted on appeal do not overcome this basis for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by 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 regulation's designation of a 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. Citizenship and Immigration Services (CIS) may investigate the self-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 (March 26, 1996).

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further explicates the good moral character requirement and 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.

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 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 stated 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.* Statutory 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 *Gambino v. I.N.S.*, 419 F.2d 1355, 1358 (2d Cir. 1970) (citing *De George* for finding that a conspiracy offense which includes an intent to defraud the United States is a crime involving moral turpitude under the immigration laws); *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 (BIA 1992).

In this case, the petitioner's CIS records contain the results of an Federal Bureau of Investigation fingerprint check, indicating that the petitioner was arrested by the Trumbull, Connecticut police department on June 23, 1998 and was charged with larceny in the second degree and theft of services

In response to the director's second request for additional evidence, the petitioner submitted a letter dated September 15, 2003, from the State of Connecticut Superior Court Office of the Clerk indicating that the petitioner was found guilty of violating Conn. Gen Stats. Sec. C/53a-123 on July 24, 1998, a Class C felony. The court suspended execution of the petitioner's two-year sentence, and placed the petitioner on probation for two years.

The petitioner did not submit the sections of the Connecticut Criminal Code under which she was convicted. Her conviction record indicates that at least section 53 of the Code, concerning larceny, has been amended since her conviction in 1998. We cite the current statutory sections under which the petitioner was convicted. If the earlier version of the statutory sections under which the petitioner was convicted change the analysis of her crimes, the burden is on the petitioner to present such evidence. The burden of proof in visa petition proceedings lies with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

On appeal, counsel for the petitioner asserts that "the [petitioner's] single brush with the criminal justice system in 1998 was as a direct result of abuse suffered at the hands of her future United States citizen husband; she has remained a law-abiding individual for the past 7 years; [she] meets all other eligibility requirements for classification as a battered spouse; and [she] is the mother of a United States citizen child for which she is the sole care-giver." None of these facts extinguish her criminal record and her resultant statutory ineligibility to be found to be a person of good moral character pursuant to sections 101(f)(3) and 212(a)(2)(A) of the Act as an alien convicted of a crime involving moral turpitude. First, the fact that the petitioner has a "single brush" with the criminal justice system, and is the sole care-giver of a U.S. citizen child, and her ensuing moral conduct also do not affect the determination that her crimes involved moral turpitude.

This evidence does not obviate the fact that the petitioner was convicted of a crime involving moral turpitude. Neither the seriousness of the petitioner's offense nor the severity of her sentence determines whether her crimes involve moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Rather, it is the "inherent nature of the crime as defined by statute and interpreted by the courts, and as limited and described by the record of conviction, which determines whether the offense is one involving moral turpitude." *Bart*, 20 I&N Dec. at 437, *Short*, 20 I&N Dec. at 137. Fraud, forgery and intentional deceit with forged documents are statutory elements of the crimes of which the petitioner was convicted. As discussed above, crimes in which fraud is an element necessarily involve moral turpitude. Consequently, the "minor" nature of the petitioner's offenses, her light sentence, and her subsequently moral conduct are all irrelevant to this determination. Because the petitioner was convicted of crimes involving moral turpitude, 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 petitioner was 19 years old at the time she committed her offenses and so this exception is inapplicable. 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 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). Section 53a-123 of the Connecticut Criminal Code, under which the petitioner was convicted, mandates a term of imprisonment of not less than one year nor more than ten years. *See* CCC § 53a-35a(6). Although the petitioner's sentence to imprisonment was suspended, the statutory provisions under which she was convicted prescribe maximum possible penalties for her crime of larceny in the second degree. Accordingly, the second exception to section 212(a)(2)(A)(ii) does not encompass the petitioner.

We are also unable to find the petitioner to be a person of good moral character pursuant to the discretionary provision enacted by Title V of the Victims of Trafficking and Violence Protection Act (VTVPA) of 2000, Pub. L. 06-386. Section 204(a)(1)(C) of the Act, as amended by the VTVPA, provides CIS with 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 in certain cases, the petitioner's conviction was not connected to her battery or subjection to extreme cruelty by her U.S. citizen husband.

The petitioner was convicted on July 24, 1998 for an offense committed on or about June 23, 1998. In her affidavit, the petitioner states that she met her U.S. citizen husband in or about 1996 and lived with him from 1996 to 1997. She said that her then prospective husband repeatedly asked her to go shopping with his mother and if she refused, he would become angry and would shout at or hit her. The petitioner said that she accompanied her mother-in-law and seven others for a "shopping trip" in 1998. She said that she herself did not steal anything but that her mother-in-law had shoplifted and as they attempted to leave the shopping mall in a van, they were stopped and everyone except the driver was arrested. Although the director requested that she provide the arrest report for the offense, she did not provide the arrest report or any other evidence to substantiate the circumstances of the arrest. There is no evidence showing that she was arrested with her prospective mother-in-law or any other individuals. Although the director found that the applicant was subjected to battery or extreme cruelty by her spouse, there is no information in the record showing that she was subjected to abuse around the time of her shoplifting offense. Hence, the record does not establish that the petitioner's

1998 conviction was related to and connected to any battery or extreme cruelty inflicted upon her by the alleged abuser. We are thus barred from finding the petitioner to be a person of good moral character as a matter of discretion pursuant to section 204(a)(1)(C) of the Act.

The record shows that the petitioner has been convicted of a crime involving moral turpitude and is not a person of good moral character pursuant to section 101(f) of the Act. Based on the present record, the petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to establish her good moral character.

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.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with this decision.