

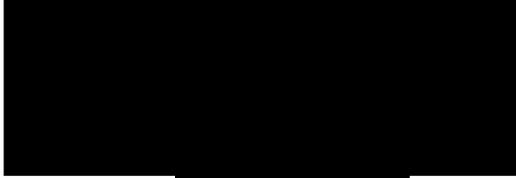
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 06 018 51132

Office: VERMONT SERVICE CENTER

Date:

MAR 16 2007

IN RE:

Petitioner:



PETITION: Petition for 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 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 he was a person of 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 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 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:

(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 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.” Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Jordan who entered the United States on November 17, 1989 as a nonimmigrant student (F-1). On September 24, 1997, the petitioner married E-A-¹, a U.S. citizen. E-A- filed a Form I-130, petition for alien relative, on the petitioner’s behalf and both the Form I-130 petition and the petitioner’s concurrently filed Form I-485, application to adjust status, were approved on June 8, 2001.²

On November 2, 1999 the U.S. District Court, Northern District of Ohio, Western Division, convicted the petitioner of theft of interstate shipment, interstate transportation of stolen property and conspiracy to commit theft of interstate shipment and interstate transportation of stolen property. On November 10, 2003 Immigration and Customs Enforcement (ICE) served the petitioner with a Notice to Appear for removal proceedings, charging the petitioner as deportable pursuant to sections 237(a)(1)(A), 237(a)(2)(A)(ii) and 237(a)(2)(A)(iii) of the Act. The petitioner remains in removal proceedings before the Executive Office for Immigration Review and his next hearing is scheduled for March 21, 2007.

The petitioner filed this Form I-360 on October 19, 2005. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite good moral character. The petitioner, through counsel, timely responded to the NOID with additional evidence. The director denied the petition on July 26, 2006 for lack of the requisite good moral character and counsel timely appealed.

¹ Name withheld to protect individual’s identity.

² On August 25, 2003, the Cleveland, Ohio District Office issued a Notice of Intent to Rescind the petitioner’s lawful permanent resident status, but on September 4, 2003, issued a Notice of Cancellation of the intent to rescind.

On appeal, counsel claims that the petitioner's convictions do not bar a finding of his good moral character. We concur with the director's determination. Counsel's claims on appeal fail to overcome the ground for denial.

The record contains a copy of the U.S. District Court, Northern District of Ohio, Western Division Judgment in a Criminal Case (Case No. 3:98cr806-01), dated November 2, 1999, which shows that the petitioner pled guilty to and was convicted of theft of interstate shipment in violation of 18 U.S.C. § 659, interstate transportation of stolen property in violation of 18 U.S.C. § 2314, and conspiracy to commit theft of interstate shipment and interstate transportation of stolen property in violation of 18 U.S.C. § 371. The maximum term of imprisonment for these offenses was ten years for the first two crimes and five years for the conspiracy offense. 18 U.S.C. §§ 371, 659, 2314 (1999). The court sentenced the petitioner to two years of probation for each offense, to be served concurrently, and ordered the petitioner to pay a total of \$5,825.55 in restitution. Upon the motion of the government, the court made a downward departure from the sentencing guideline range due to the petitioner's substantial assistance to the prosecution of other defendants.

The petitioner's convictions are for crimes involving moral turpitude, which bar a finding of his good moral character. 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 (8th Cir. 1995). The BIA has also determined 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).

Accordingly, 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.* In this case, the *mens rea* of the petitioner's first two offenses are explicitly stated in the statutes of conviction. Theft of an interstate shipment requires that the offender steal the property "by fraud or deception" with the "intent to convert to his own use" the stolen property, or obtains or possesses the property "knowing the same to have been embezzled or stolen." 18 U.S.C. § 659. Interstate transportation of stolen property requires that the offender transport property valued at \$5,000 or more "knowing the same to have been stolen, converted or taken by fraud." 18 U.S.C. § 2314. The malicious intent prescribed by these statutes conveys the moral turpitude inherent in these crimes. Because theft of an interstate shipment and interstate transportation of stolen property are the underlying offenses of the petitioner's conspiracy crime, the moral turpitude of those offenses is also inherent in the petitioner's conspiracy conviction. See *Matter of Flores*, 17 I&N Dec. at 228.

In addition, the petitioner's offenses fall within classes of crimes that have repeatedly been determined to involve moral turpitude. Federal circuit courts of appeals and the BIA have long held that theft offenses and receipt or possession of stolen property, with the requisite *mens rea*, are crimes of moral turpitude. *Aquino-Encarnacion v. INS*, 296 F.3d 56 (1st Cir. 2002) (receipt of stolen property); *De Leon-Reynoso v. Ashcroft*, 293 F.3d 633, 635-37 (3d Cir. 2002) (possession of stolen goods believed to be stolen); *Okoro v. INS*, 125 F.3d 920, 926 (5th Cir. 1997) (theft); *Samusi v. Gonzales*, 474 F.3d 341, 343 (6th Cir. 2007) (theft); *Hashish v. Gonzales*, 442 F.3d 572, 576 (7th Cir. 2006); *Matter of Salvail*, 17 I&N Dec. 19 (BIA 1979) (possession of goods known to be stolen); *Matter of Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974) ("It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude.").

Moral turpitude is inherent in the statutes of conviction for the petitioner's first two offenses, which also render the petitioner's conspiracy to commit these offenses a crime of moral turpitude. In addition, federal judicial and administrative precedents deem the class of the petitioner's crimes to involve moral turpitude. Accordingly, the petitioner has been convicted of three crimes involving moral turpitude.

Under section 101(f) of the Act, an alien who has been convicted of a crime involving moral turpitude, or of a conspiracy to commit such a crime, cannot be found to have good moral character. The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes 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." Consequently, the petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

On appeal, counsel claims that the petitioner's offenses arose out of a single scheme of criminal misconduct and that the director erroneously concluded that the petitioner's convictions were for three separate and distinct crimes. Whether or not the petitioner's offenses arose out of a single scheme of criminal misconduct is relevant to the petitioner's deportability under section 237(a)(2)(A)(ii) of the Act, but is irrelevant to this case, which only concerns his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Even if the petitioner had been convicted of only one crime of moral turpitude, the single offense would still bar a finding of his good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

On appeal, counsel also claims that the petitioner is only required to establish his good moral character during the three years preceding the filing of his Form I-360 and that because his convictions fall outside of this period, they do not preclude a finding of his good moral character. Counsel is misguided. The statute does not prescribe 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)(bb).

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states, in pertinent part:

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 regulation's designation of the three-year period preceding the filing of the petition does not limit the temporal scope of CIS's 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 self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996).

In support of her position, counsel cites *Daddona v. United States*, 170 F.2d 964, 965 (2d Cir. 1948) and *Petition of Sperduti*, 81 F.Supp. 833, 834 (M.D. Pa. 1949). These cases involved aliens who had been convicted of crimes outside of the statutory period required to establish good moral character for naturalization. The courts determined that the aliens' convictions did not preclude a finding of their good moral character. *Daddona* and *Sperduti* are neither binding nor persuasive authority for this case. The naturalization statute explicitly defines a five-year period preceding the filing of an application for naturalization during which the applicant must establish his or her good moral character. Section 316(a) of the Act, 8 U.S.C. § 1427(a) (2007). In contrast, section 204(a)(1)(A)(iii)(II)(bb) of the Act requires that an alien demonstrate that he or she "is a person of good moral character," but denotes no period of time during which such character must be established. Although the petitioner's convictions occurred nearly six years before he filed his Form I-360 and the record contains no evidence that he has been convicted of any further crimes, his convictions were for crimes of moral turpitude and prohibit a finding of his good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

The petitioner has failed to demonstrate that he is a person of good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.