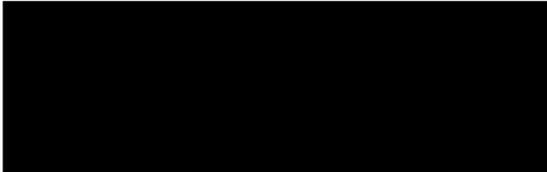


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B9

MAR 19 2007

FILE:

EAC 05 050 53053

Office: VERMONT SERVICE CENTER

Date:

IN RE:

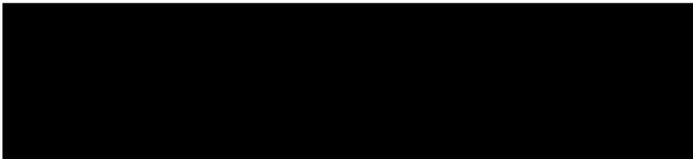
Petitioner:



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, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the preference visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Mexico. On September 29, 1999, the petitioner married E-V¹, a United States citizen, in Mexico. On the Form I-360, the petitioner indicates that she entered the United States in January 2000 without inspection. On May 27, 2004, the petitioner was placed in removal proceedings. The petitioner filed this Form I-360 on December 9, 2004.

With the initial filing, the petitioner failed to submit any evidence related to her good moral character. Accordingly, on December 17, 2004, the director requested the petitioner to submit *inter alia*, evidence of her good moral character, to include a personal statement and police clearances. The petitioner responded on February 10, 2004 and requested additional time to respond. On February 16, 2005, the petitioner submitted a second request for additional time to respond to the director’s request. On April 11, 2005, the petitioner provided additional evidence. On April 25, 2005 the director issued a second request for evidence (RFE) granting the petitioner’s prior request for additional time but failing to acknowledge the petitioner’s April 11, 2005 submission. On June 6, 2005, the petitioner submitted additional evidence but also requested additional time to respond to the director’s second RFE. On June 23, 2005 counsel reiterated his June 6, 2005 request for additional time. In a notice dated August 8, 2005, the director acknowledged and granted the petitioner’s request for additional time. The petitioner responded with additional evidence on October 7, 2005.

On December 30, 2005, after reviewing the evidence contained in the record, the director denied the petition

¹ Name withheld to protect individual’s identity.

without the issuance of a Notice of Intent to Deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii), finding that the petitioner failed to establish that she was a person of good moral character. In making the determination that the petitioner failed to establish her good moral character, the director found that the petitioner had provided false information to a police officer, that she did not rectify that information, and that she was arrested for inflicting corporal injury against her spouse.

The petitioner, through counsel, filed a timely appeal on January 31, 2006. On appeal, counsel contends that the director's reasons for denying the petition were based upon discretion rather than any "statutory bars." Counsel then argues that the director abused his discretion by going "beyond the court conviction, which was not for domestic violence, but for a noise disturbance" and by failing to recognize that the petitioner's failure to "incriminate" her spouse in the incident in which the petitioner was arrested for drug related activity was due to the fact that she was "under the influence and emotional dependence" of her spouse.

As will be discussed, upon review of the record we find merit in the arguments presented by counsel on appeal and find that the petitioner has sufficiently overcome the director's grounds for denial.

The record reflects that on December 21, 1998, the petitioner was arrested in Los Angeles, California and charged with violating § 11350(a) of California's Health and Safety Code (HSC). On March 5, 1999, the petitioner pled guilty and was given deferred entry of judgment for a period of 18 months. On September 3, 1999, the petitioner failed to appear in court and a bench warrant was issued. Additionally, the court terminated the petitioner's deferred entry of judgment and reinstated the prior criminal proceedings against the petitioner. On July 8, 2004, the court reinstated the deferred entry of judgment and on January 4, 2005 the case was dismissed pursuant to §§ 1000.3 and 1000.4 of the California Penal Code (CPC).² Section 1000.4(a) of the CPC states that upon "successful completion of a deferred entry of judgment program, *the arrest upon which the judgment was deferred shall be deemed to have never occurred.*" [Emphasis added.]³

The record further reflects that on May 22, 2004, the petitioner was arrested in Anaheim, California for violating § 273.5(a) of the CPC, "Inflicting Corporal Injury on a Spouse," and § 415(2) of the CPC, "Disturbing the Peace by Loud or Unreasonable Noise." On July 29, 2004, the charges against the petitioner under § 273.5(a) were dismissed and the petitioner was convicted of § 415(2) of the CPC. The petitioner was sentenced to 8 days in jail and three years of probation.⁴

In his decision, the director found, in part, that the petitioner's *arrest* under § 273.5(a) warranted a finding that the petitioner lacked good moral character. The director stated:

. . . [Y]ou were arrested for inflicting spousal corporal injury upon [your spouse], and were subject to the provisions of a protective order as well as required to attend anger

² See No. VA052210, Municipal Court of Bellflower Courthouse, Los Angeles, California.

³ While we note that in this instance the petitioner's deferred judgment is *not* a conviction for immigration purposes, this determination is only applicable to cases arising within the jurisdiction of the 9th Circuit. In accordance with the Board of Immigration's decision in *In re Salazar-Regino*, 23 I&N Dec. 223 (BIA 2002), in any case arising *outside* of the jurisdiction of the 9th Circuit, "a first-time simple drug possession offense expunged under a state rehabilitative statute *is* a conviction under Section 101(a)(48)(A) of the [INA]." *Id.*

⁴ See California Department of Justice criminal history transcript.

management classes, although the criminal charges were lowered by plea agreement to noise disturbance.

The director's decision fails to take into consideration the petitioner's allegation that her spouse's accusations of assault were false and does even address the petitioner's version of events surrounding this arrest. We find it significant to note that the director did not question the petitioner's claim of abuse and in fact, affirmatively determined that the petitioner had established that she had been battered by or subjected to extreme cruelty by her spouse. Upon review, we find, as did the director, that the petitioner has sufficiently established a claim of abuse. We can find no cause to refute her assertion that her spouse made false allegations to have arrested. Regardless, the petitioner was not convicted of spousal abuse. Accordingly, we concur with counsel that the director's reliance on the petitioner's arrest rather than her actual conviction was in error. We, therefore, withdraw the director's finding in this regard.

The fact that the director did not refute the petitioner's claim of abuse has even more significance when we consider the director's finding related to the petitioner's failure to incriminate her spouse. While it is true that the petitioner did not indicate in her personal statement that she lied to the police out of fear or because of threats made against her by her spouse, we find counsel's argument that "just because the petitioner was not expressly threatened at that very moment, it does not mean that this incident is not reflective of a **pattern of abuse,**" to be persuasive [Emphasis in original]. Accordingly, we also withdraw the director's finding in this regard.

The director's final reason for determining that the petitioner lacked good moral character was based upon the petitioner's "persistent provision of misinformation regarding [her] true identity." A review of the evidence contained in the record, however, does not support this finding. The record reflects that on one occasion the petitioner provided an alias to the police. On appeal, counsel states that the petitioner "readily admitted to this," and explained that the use of the alias was "at a time when the petitioner followed the instructions of her controlling and manipulative husband."⁵ While the document from the California Department of Justice also contains an incorrect date of birth for the petitioner, the petitioner's birth date is only incorrect by one year. The record contains no evidence that this error is the result of false information provided by the petitioner rather than a simple clerical mistake. As it relates to the petitioner's 2004 arrest and the director's finding that the petitioner "once again did not initially provide authorities with your correct and legal name," we find the petitioner's omission of her first name to be inconsequential. Counsel explains that the petitioner commonly "goes by" her middle name with her friends and family. Accordingly we do not find that the petitioner's use of an alias on one occasion and the omission of her first name on a second occasion is sufficient grounds to find that the petitioner lacks good moral character. It is noted that the petitioner has never been charged with providing false statements or information to a police officer. We, therefore, withdraw the director's findings in this regard.

As discussed above, we find that on appeal the petitioner has overcome the findings of the director and has established that she is a person of good moral character. We can find no other grounds precluding approval of the petition.

⁵ We note that according to the petitioner's marriage certificate the petitioner's marriage did not actually occur until September 1999, nearly a year after the petitioner's December 1998 arrest. In this instance, however, the fact that the marriage had yet to take place does not obviate the petitioner's claim that her spouse had already begun to exert psychological and physical control over her.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has overcome the findings of the director and sustained that burden.

ORDER: The denial of the petition is withdrawn. The appeal is sustained and the petition is approved.