



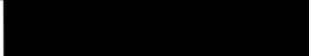
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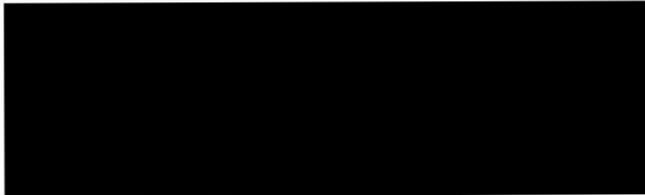


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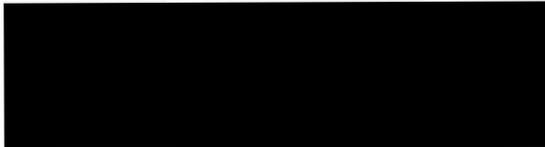
Office: VERMONT SERVICE CENTER

Date: **APR 02 2009**

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

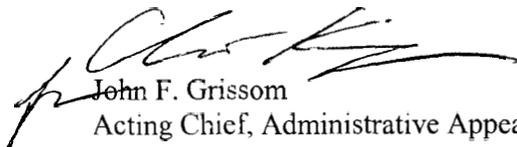
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting 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 sustained.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a U.S. lawful permanent resident. The petitioner, through counsel, submitted a Form I-360 Petition on July 18, 2006. The director denied the petition on July 17, 2007, finding that the petitioner failed to establish that she is a person of good moral character. The petitioner, through counsel, submits a timely appeal and brief. Because we concur with the director's determination that the petitioner meets all the other statutory eligibility criteria, the only issue on appeal is whether the petitioner has established that she is a person of good moral character. As discussed below, we find that the record establishes this criterion and sustain the appeal.

Section 204(a)(1)(B)(ii) of the Act provides that the spouse of a U.S. lawful permanent resident may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner must show that he or she is eligible to be classified as the spouse of a U.S. lawful permanent resident under section 203(a)(2)(A) of the Act, 8 U.S.C. § 1153(a)(2)(A), resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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 regulation at 8 C.F.R. § 204.2(c)(1) provides guidance regarding relevant eligibility requirements:

(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 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.

* * * *

(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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who states that she entered the United States without inspection on October 22, 1987. On December 10, 1997, the petitioner married P-C-¹, a lawful permanent resident of the United States, in Denver, Colorado. On December 15, 1997, P-C- filed a Form I-130, Immigrant Petition for Relative, on the petitioner's behalf. On August 30, 2005 the police were dispatched to the couple's residence because of a domestic dispute; the petitioner was arrested and charged as described below; and a Mandatory Protection Order was issued against the petitioner. The couple later divorced on April 26, 2006.

The petitioner filed the instant I-360 Petition on July 18, 2006. On February 28, 2007, the director issued a Request for Evidence (RFE) of good moral character, including copies of court documents showing the final dispositions of past criminal charges, noting that police clearances based solely on a name search must include searches of all aliases or other names used by the petitioner. The petitioner responded on April 30, 2007 by submitting the requested additional police clearance reports and police records and municipal court records relevant to the petitioner's arrest on August 30, 2005. The director found that the petitioner had failed to provide sufficient evidence of the final disposition regarding a charge of "assault and battery related to domestic violence," and concluded that the petitioner was guilty of domestic violence against her spouse. The director found that the record, therefore, failed to establish that the petitioner was a person of good moral character and denied the petition accordingly.

On appeal, in addition to his brief and copies of documents already in the record, counsel submitted a certified copy of a list of "Case Disposition Codes" from the Aurora Municipal Court. Counsel asserts that he had previously submitted evidence from the municipal court showing that the assault and battery charges had been dismissed, but that the director had misunderstood the court records.

The AAO notes that the record establishes that the charge for battery was dismissed; however, there is no clear evidence that the separate charge for assault was dismissed. Counsel does not specify exactly where in the multiple court documents submitted there is evidence of the claimed dismissal. Instead, counsel refers to the certified copy of a list of disposition codes used in the Aurora Municipal Court. The list includes the code "DISM" for "Dismissed," and after that

¹ Name withheld to protect individual's identity.

description someone has typed “(D/M dismissed).” However, there is no indication of how or when or by whom the typed addition was made, which diminishes the credibility of the document. Moreover, despite the submission of the requested court documents and attempts by both the AAO to decipher and counsel to explain the codes used by the Aurora Municipal Court, the AAO finds the court documents to be ambiguous. These ambiguities are not clarified by reference to the list of disposition codes submitted on appeal. Counsel’s claim that court records show that assault and battery charges against the petitioner had been dismissed is not supported by the record.

Based on a review of the entire record, however, the AAO does not concur with the finding of the director that the petitioner failed to establish that she is a person of good moral character.

The Petitioner’s Criminal Record

A police report in the record shows that the petitioner was arrested on August 30, 2005 for “assault and battery related to domestic violence” and that she was subsequently detained overnight. She was charged the following day in the Municipal Court of the City of Aurora, Colorado, with violations of Aurora’s city code, section 94-36 relating to assault, and section 94-37 relating to battery. A court-approved “Stipulation for Deferred Judgment Unsupervised” dated November 21, 2005 states that the defendant (the petitioner in this case) “pleads guilty to trespass [pursuant to section] 94-71(2) and D/M Assault and Battery” and agrees to the terms and conditions as stated on the stipulation and order, including that she continue to participate in treatment at [REDACTED]; it also states that if the defendant complies with these terms and conditions her guilty plea will be withdrawn at the end of 12 months, and the case will be dismissed. The “City of Aurora Municipal Court Disposition Screen Report As Of: 4/13/2007” reveals the following dispositions relevant to her arrest on August 30, 2005: An original charge of “Battery Upon [sic]” was dismissed pretrial on November 21, 2005; an amended charge of “Trespas/Priv prop/R” was dismissed on November 21, 2006; and an original charge of “Assault/Attempted B” lacks any information of a disposition code or date.

The evidence shows that the petitioner was originally charged with two violations in municipal court; she pled guilty to one charge, as amended, resulting in a dismissal of the original charge of battery and conviction for trespass. The evidence is ambiguous, however regarding the final disposition for the second charge, assault. While counsel asserts that the code “D/M” indicates “dismissed,” the list of codes submitted to support this assertion has been amended to include “D/M” without explanation. Moreover, the Stipulation noted above includes “D/M Assault and Battery” in the section that describes offenses for which the petitioner entered a guilty plea, rendering the use of “D/M,” with the meaning of “dismissed,” incongruous. Also contributing to the ambiguity of the Municipal Court records is the fact that the “Disposition Screen Report” clearly provides a disposition regarding the battery charge while remaining silent on the second charge. In light of these contradictory court records, there is insufficient evidence of the final disposition of the petitioner’s assault charge, and the AAO cannot conclude that the charge was

dismissed as claimed. The AAO finds, however, that regardless of whether the petitioner was convicted of assault, as well as trespass, commission of these offenses does not prevent a finding that the petitioner is a person of good moral character.

Good Moral Character

Section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3), bars a determination of good moral character if the petitioner is described in section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as having been convicted of “a crime involving moral turpitude.”

Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), provides, in pertinent part, that a person who has committed or been convicted of a crime involving moral turpitude is inadmissible. The statute, however, also provides for an exception to that provision if the person has committed only one crime² for which the maximum penalty possible did not exceed imprisonment for one year and for which the actual sentence imposed was not more than six months. Section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

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 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). A crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008).

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.*

Trespass

The Aurora City Code provides, in pertinent part:

² The exception remains effective where, as in this case, more than one crime may have been committed if one of the two offenses was not for a crime involving moral turpitude. See *Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 594-95 (BIA 2003).

Sec. 94-71. Trespass.

(a) It shall be unlawful to commit trespass in the city. . . . A person commits trespass if that person:

(1) . . .

(2) Enters upon or refuses to leave any private property of another, when immediately prior to such entry or refusal to leave oral or written notice is given by the owner, a police officer or firefighter acting in the course of his or her employment or person responsible for the care of the property that such entry or continued presence is prohibited.

The petitioner in this case was convicted of trespass under Sec. 94-71. However, the statute does not require an evil or malicious intent, the “essence of moral turpitude” noted in *Matter of Flores*, 17 I&N Dec. at 227. The petitioner’s conviction of trespass is not for a crime involving moral turpitude, and her conviction, therefore, does not prevent a finding that she is a person of good moral character as she is not barred under section 101(f) of the Act from such a determination.

Assault

Regarding the petitioner’s second charge for “Assault,” the Aurora City Code provides, in pertinent part:

Sec. 94-36. Assault.

An assault is an attempt coupled with a present ability to commit a battery, as defined in section 94-37 [the knowing or reckless use of force or violence upon the person of another], upon the person of another, and it shall be unlawful for any person to commit an assault in the city.

The record in this case is ambiguous as to whether the petitioner has been convicted of assault, as the disposition of this charge is not clear. However, regardless of whether the petitioner was convicted of assault under the Aurora City Code, commission of the offense does not preclude a finding that the petitioner is a person of good moral character.

Section 4 of the Aurora City Code provides that, unless another penalty is expressly provided, every person convicted of a violation of any provision of the Code shall be punished by a fine not exceeding \$1,000.00, imprisonment for a term not exceeding one year, or both such fine and imprisonment. As no other penalty is expressly provided for assault, the maximum term of imprisonment for commission of that offense could not exceed imprisonment for one year. The record also shows that for her August 30, 2005 offense, the petitioner was not sentenced to any

term of imprisonment. Therefore, in this case, even if she were convicted of assault under the Aurora City Code, the petitioner's conviction would fall under the exception to inadmissibility set forth in section 212(a)(2)(A)(ii)(II) of the Act, and would not bar a determination of her good moral character under section 101(f)(3) of the Act.

In addition, if the petitioner were convicted of a crime involving moral turpitude, she would remain eligible for a determination of her good moral character. Section 204(a)(1)(C) of the Act permits such a finding if: 1) the petitioner's act or conviction is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) U.S. Citizenship and Immigration Services (USCIS) determines that the act was connected to the petitioner's battery or subjection to extreme cruelty by his or her U.S. citizen spouse. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). Inadmissibility due to a conviction for a crime involving moral turpitude is waivable for Violence Against Women Act (VAWA) self-petitioners under section 212(h)(1)(C) of the Act, 8 U.S.C. § 1182(h)(1)(C), and the petitioner has established that her offense and the charges against her were connected to her husband's battery or extreme cruelty.

On August 30, 2005 the police were dispatched to the couple's residence because of a domestic dispute, and the petitioner was arrested and charged as described above. According to a police report of the incident, because the petitioner did not speak English, information was taken from her husband and seven-year-old son, who claimed that the petitioner hit her husband; when a Spanish speaking officer arrived, the petitioner denied hitting her husband, but she was arrested and a Mandatory Protection Order was issued against her. In her affidavit of March 11, 2006, the petitioner explained that she had argued with her husband the night before and left to avoid his anger; when she returned home early the morning of August 30, 2005 she found the door locked and tried to enter through a window. She stated that her husband attacked her at that time causing multiple bruising, and when the police came she did not understand why they arrested her. She stated that after she spent a day in jail and returned home, her husband forced open the door to her room and raped her, and that she has lived with her sister since that time.

The record reveals that the order of protection issued against the petitioner is outweighed by other evidence and, as indicated above, is related to her husband's abuse as were the underlying charges against her. The petitioner would consequently be eligible for an exceptional finding of her good moral character pursuant to section 204(a)(1)(C) of the Act.

Conclusion

Section 101(f)(3) of the Act bars a determination of good moral character if the petitioner is described in section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as having been convicted of "a crime involving moral turpitude." For the reasons noted above, the petitioner is not subject to this bar. Moreover, if the petitioner had been convicted of such a crime, the petitioner would be eligible for an exceptional finding of her good moral character pursuant to

section 204(a)(1)(C) of the Act.

Taking into consideration other evidence submitted, including the requisite police clearances and affidavits from individuals who have knowledgeably attested to the petitioner's good moral character, we find that the petitioner has established by a preponderance of the evidence that she is a person of good moral character as required by section 204 (a)(1)(B)(ii)(bb) of the Act.

We concur with the director's determination that the petitioner meets all the other statutory requirements. The petitioner has, therefore, established that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, and her petition will be approved.

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 met that burden. Accordingly, the appeal is sustained.

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