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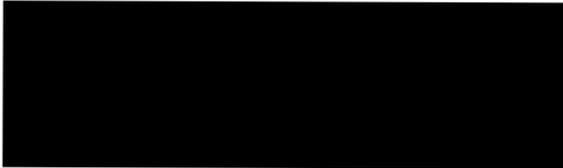
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

B9



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **APR 24 2009**
EAC 07 102 50042

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused 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.

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 The decision of the director will be withdrawn and the petition will be approved.

The petitioner seeks immigrant classification under 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 battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because he determined that the petitioner had not demonstrated that she 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, 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 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.

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. . . . 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Taiwan who entered the United States on April 11, 1997 as a nonimmigrant visitor (B-2). On November 18, 2002, the petitioner married D-M¹, a U.S. citizen, in California. The petitioner was subsequently placed in removal proceedings for having failed to maintain her nonimmigrant status. The petitioner remains in proceedings before the San Francisco Immigration Court and her next hearing is scheduled for May 20, 2009.

The petitioner filed this Form I-360 on February 27, 2007. On March 9 and again on December 3, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character. The petitioner, through counsel, timely responded to both RFEs with additional evidence. On June 30, 2008, the director denied the petition for lack of good moral character because he determined that the criminal charge filed against the petitioner was dismissed upon fulfillment of certain conditions and the petitioner had not established her innocence.

On appeal, counsel submits a brief and additional evidence. The record, as supplemented on appeal, establishes that the criminal charge against the petitioner was dismissed upon the motion of the

¹ Name withheld to protect individual's identity.

prosecutor and that the court imposed no conditions upon the dismissal. The petitioner has established that she is a person of good moral character and the director's decision to the contrary will be withdrawn.

Good Moral Character

The record shows that on July 30, 2003, the petitioner was charged with corporal injury to a spouse in violation of section 273.5(a) of the California Penal Code. On August 8, 2003, the petitioner pled not guilty to the charge before the Fresno County, Superior Court of California (Case Number MO3914696-0). On August 26, 2003, the case was continued to February 24, 2004 for a disposition. On February 24, 2004, the court granted the prosecutor's motion to dismiss the charge against the petitioner. Yet, because the judge checked "OAL" and wrote "no new PC arrests" under the section entitled "Terms of Release" on the August 26, 2003 minute order, the director determined, "The record therefore has not established you were not guilty of the crime as charged." The director's conclusion was erroneous.

The disposition of the criminal charge against the petitioner does not constitute a conviction for immigration purposes. Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines a conviction as follows:

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The record shows that the court entered no formal judgment of guilt of the petitioner; that she pled not guilty and did not admit sufficient facts to warrant a finding of guilt; and that the judge imposed no punishment, penalty or restraint on the petitioner's liberty. On appeal, the petitioner submits certified copies of her criminal court records, which show that on August 8, 2003, she pled not guilty to the charge. On August 26, 2003, the petitioner waived the time for a trial and the case was continued to February 24, 2004 for disposition. On appeal, the petitioner submits a list of abbreviations for the court, which show that "OAL" means "obey all laws" and "PC" refers to the penal code. Accordingly, the only terms of release stated on the August 26, 2003 minute order were that the petitioner obey all laws and have "no new" penal code arrests. These terms do not constitute a punishment or penalty and are no more a restraint on the petitioner's liberty than that faced by all other individuals in California who must also obey all laws and not violate the penal code. The director was mistaken in finding that the August 26, 2003 order imposed conditions on the dismissal of the petitioner's criminal case. The record documents that on February 24, 2004, the charge against the petitioner was dismissed upon the motion of the prosecutor. Accordingly, the petitioner was not convicted of the criminal offense.

Primary evidence of a self-petitioner's good moral character is his or her affidavit supported by local police clearances or state criminal background checks for every residence over six months during the three years preceding the filing of the petition. 8 C.F.R. § 204.2(c)(2)(v). In her February 20, 2008 affidavit, the petitioner explained the circumstances of her arrest and the dismissal of the criminal charge against her. She also attested to her "law-abiding" behavior and positive work ethic. The petitioner submitted a February 13, 2008 report from the Fresno, California Police Department showing that the petitioner was arrested only once in connection with the charge that was dismissed; as well as July 6, 2007 and August 18, 2008 California Department of Justice reports of no criminal history record based on a search of the petitioner's fingerprints. In addition, the petitioner submitted copies of newspaper articles, tax documents and letters from numerous individuals, which show that she runs a successful business that has contributed to the revitalization of a developing area of Fresno, California. Accordingly, the petitioner has established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The petitioner has demonstrated that she is a person of good moral character and we concur with the director's determination that she has met all the remaining requirements. The petitioner is eligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition will be approved.

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. The petitioner has met that burden. Accordingly, the appeal will be sustained.

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