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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B9

APR 28 2009

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 05 115 52735

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:

[redacted]

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 Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO upon a motion to reconsider. The motion will be dismissed.

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 the petitioner did not establish that she was a person of good moral character due to her conviction for a crime involving moral turpitude. The AAO affirmed the director's decision and dismissed the appeal.

With the motion to reconsider, 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. 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, 8 U.S.C. § 1101(f), 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 . . . .

As referenced in section 101(f)(3) of the Act, 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 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 pertinent facts were stated in our prior decision of August 3, 2006, incorporated here by reference. Hence, we will only repeat such facts as necessary here. The petitioner filed this petition based on her marriage to M-N-[1], a U.S. citizen and her second husband. The petitioner married M-N- on May 12, 1994 and the former couple was divorced on July 21, 2003. The petitioner filed this Form I-360 on March 11, 2005.

The Petitioner was Convicted of a Crime Involving Moral Turpitude

The record shows that the petitioner pled guilty to making false representations and making a false document knowing it to contain a false statement in violation of 18 U.S.C. § 1001. The petitioner was convicted of this crime on October 6, 1994.[2] The petitioner was sentenced to one-year of probation and submitted evidence that she successfully completed probation on October 5, 1995.

The petitioner was convicted of a crime involving moral turpitude, which bars a finding that she is a person of good moral character pursuant to section 101(f)(3) of the Act. 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). 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. *Id.* at 696; *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999); *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If there is no realistic probability that the statute of conviction would be applied to conduct that does not involve moral turpitude, then convictions under the statute may categorically be treated as crimes involving moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. at 697. Where the alien bears the burden of proof to establish eligibility for the benefit sought, the alien also bears the burden of showing that the criminal statute has been applied to conduct that did not involve moral turpitude. *Id.* at 703 n.4.

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[1] Name withheld to protect individual's identity.

[2] The August 3, 2006 decision of the AAO erroneously stated October 6, 2004 as the date of conviction. That misstatement is hereby withdrawn. The petitioner was convicted by the U.S. District Court, Eastern District of New York, Case Number [redacted].

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. *See also e.g. Matter of Adetiba*, 20 I&N Dec. 506, 508 (BIA 1992) ("Fraud, as a general rule, has been held to involve moral turpitude."), *Correa-Garces*, 20 I&N Dec. 451, 454 (BIA 1992) ("Crimes involving fraud are considered to be crimes involving moral turpitude.").

The petitioner was convicted under former 18 U.S.C. § 1001 (1994), which stated, in pertinent part:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined under this title or imprisoned not more than five years, or both.

The statute under which the petitioner was convicted categorically involves moral turpitude. Fraud in the form of knowing and willful false representations and false statements are essential elements of the offense. Accordingly, the petitioner was convicted of a crime of moral turpitude, which bars a finding of her good moral character pursuant to section 101(f)(3) of the Act.

Counsel's Assertions on Motion

On motion, counsel asserts that the petitioner is eligible for a waiver of inadmissibility under section 212(h)(1)(C) of the Act. Counsel fails to articulate the relevance of section 212(h)(1)(C) of the Act to these proceedings. The waiver of inadmissibility at section 212(h)(1)(C) of the Act applies when the alien seeks admission to or adjustment of status within the United States. For the purposes of a self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act, such as the instant case, the waiver is only relevant because it allows U.S. Citizenship and Immigration Services (USCIS) to consider whether or not a self-petitioner could be found to have good moral character despite a conviction for a crime involving moral turpitude pursuant to section 204(a)(1)(C) of the Act. However, that statutory provision only applies if the conviction was connected to the alien's having been battered or subjected to extreme cruelty by his or her spouse or intended spouse, the relationship to whom the alien's self-petition is based. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). As discussed in our prior decision, the petitioner's conviction has no connection to the battery or extreme cruelty of her second husband, her relationship with whom this petition is based. On motion, the petitioner

submits an additional affidavit in which she reiterates that she committed the offense in order to help her first husband and that the crime occurred before she married her second husband and he became abusive.

On motion, counsel further asserts that the petitioner was unknowingly used by her first husband to purchase firearms for him. In her September 1, 2006, the petitioner discusses the circumstances leading to her conviction and asserts that she mistakenly provided false information on the firearms application, which she completed for her first husband. Inasmuch as the petitioner avers her lack of culpability, we cannot look behind her conviction to reassess her guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031 (BIA 1999); *Matter of Fortis*, 14 I&N Dec. 576 (BIA 1974).

Counsel presents no other reasons why our prior decision should be set aside. A motion to reconsider must establish that the decision was based on an incorrect application of law or USCIS policy based on the evidence of record at the time the decision was rendered. 8 C.F.R. § 103.5(a)(3). Counsel has cited no misapplication of law or policy in our prior decision and her motion to reconsider that decision will consequently be dismissed. *Id.* at § 103.5(a)(4) (A motion that fails to meet the applicable requirements shall be dismissed.).

Conclusion

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. We affirm our prior decision that the petitioner in this case did not meet her burden. The petitioner was convicted of a crime involving moral turpitude, which bars a finding of her good moral character pursuant to section 101(f) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition was correctly denied. Counsel's motion to reconsider cites no error of law or misapplication of USCIS policy in our prior decision and her motion will be dismissed.

ORDER: The motion to reconsider the August 3, 2006 decision of the Administrative Appeals Office is dismissed.