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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]
EAC 08 070 50079

Office: VERMONT SERVICE CENTER

Date: **APR 28 2009**

IN RE:

Petitioner: [REDACTED]

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:

[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.


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 The decision of the director will be withdrawn and the petition will be approved.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)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

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.

I. Applicable Law

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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 the spouse of a lawful permanent resident under section 203(a)(2)(A) of the Act, 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 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, 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 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, 8 U.S.C. § 1182(a)(2), includes, “any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements 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)(B)(ii) 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.

II. Pertinent Facts and Procedural History

The petitioner is a native and citizen of Mexico who stated on the Form I-360 that she entered the United States without inspection in 1993. On May 4, 2001, the petitioner married A-V-¹, a lawful permanent resident of the United States, in Wisconsin.

The petitioner filed this Form I-360 on January 4, 2008. On January 16, 2008, the director issued a Request for Evidence (RFE) of the petitioner's good moral character. The petitioner, through counsel, timely responded with additional evidence, which the director found insufficient to establish the petitioner's good moral character. On July 18, 2008, the director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief and additional evidence. The record, as supplemented on appeal, establishes that the petitioner has no criminal convictions and is a person of good moral character. The director's decision to the contrary will be withdrawn and the appeal will be sustained.

III. Good Moral Character

The director cited three actions of the petitioner, which indicated that she lacked good moral character: 1) her attempt to shoplift clothing from a Target store in 1997 or 1998; 2) her January 30, 2000 arrest for battery; and 3) her receipt of an overpayment of food stamp benefits from April 2006 through March 2007. The petitioner has explained the mitigating circumstances surrounding these events and submitted supporting evidence on appeal, which demonstrates her good moral character.

Attempted Shoplifting

In her January 3, 2008 sworn statement, the petitioner admitted that in 1997 or 1998 she was arrested for shoplifting when she attempted to leave a Target store in Milwaukee without paying for items valued at about \$50.00. The petitioner stated that she ended up paying about \$500 and felt very bad about her mistake. In her February 22, 2008 affidavit submitted in response to the RFE, the petitioner further explained that at the time, she had been telling her first husband that their daughters needed clothes, but he kept ignoring her. She stated that she had never stolen anything before and knew that it was wrong to shoplift, but she did not have enough money to buy the clothes and "[u]nfortunately, in the end [she] made the wrong decision." The petitioner recounted that the security guard stopped her at the door, the police were summoned and they took her to the police station. The petitioner stated that a police officer interpreted for her and she was told to pay \$500. According to the petitioner, the police allowed her to call her family and her sister came, paid the \$500 and the petitioner was released. The petitioner reiterated her regret at making this mistake and expressed her shame regarding her poor judgment.

¹ Name withheld to protect individual's identity.

The petitioner also stated that she went to the Greenfield, Wisconsin Municipal Court, but they did not have any record of the incident under her first married or maiden names. In response to the RFE, the petitioner submitted a certified copy of her record from the Milwaukee, Wisconsin Police Department, which cited no arrest other than that on January 30, 2000. The petitioner also submitted a February 11, 2008 letter from the Greenfield Municipal Court confirming that the court had no record of any citation against the petitioner. The director found this evidence insufficient because the petitioner's aliases were not cited in the Milwaukee Police Department record and the Greenfield Municipal Court letter. The director also noted that the petitioner stated that the Target store was in Milwaukee and did not explain why she would have been arrested by the Greenfield, rather than the Milwaukee, police.

On appeal, the petitioner submits an August 2, 2008 letter from the Milwaukee Municipal Court, which states that a search of the petitioner's name and aliases produced no record of any case filed against her; a July 30, 2008 facsimile from the Milwaukee County Circuit Court, Criminal Division confirming that a search under the petitioner's name and aliases found no criminal history record on file with the court; and an August 7, 2008 letter from the Greenfield Municipal Court, which confirms that a search of the court's records under the petitioner's name and all of her aliases also failed to disclose any record. The letter from the Greenfield Municipal Court further explains that any municipal violation occurring at the Target store where the petitioner was arrested would have been heard in the Greenfield Municipal Court. The evidence submitted on appeal shows that, in connection with the 1997 or 1998 incident, the petitioner was never formally charged with a criminal offense by any court, was never convicted of any criminal offense, never entered any plea in connection with such an offense and that no punishment, penalty or restraint on the petitioner's liberty was imposed by a judge. The petitioner's attempted shoplifting consequently does not constitute a conviction for immigration purposes under section 101(a)(48)(A) of the Act.

Even if the petitioner had been convicted of shoplifting and despite her admission of attempting such theft, a finding of her good moral character is not barred by section 101(f)(3) of the Act. As counsel demonstrates on appeal, the penalty for shoplifting under the Greenfield Municipal Code is limited to forfeiture. Accordingly, the crime falls within the so-called petty offense exception to consideration as a crime involving moral turpitude at section 212(a)(2)(A)(ii)(II) of the Act and the incident poses no statutory bar to a determination of the petitioner's good moral character.

2000 Arrest for Battery

The record shows that on January 30, 2000, the petitioner was arrested for battery by the Milwaukee, Wisconsin Police Department. In response to the RFE, the petitioner submitted a certified copy of her record from the Milwaukee Police Department, which contained only the January 30, 2000 arrest. The director determined that the additional evidence did not demonstrate the petitioner's good moral character because the petitioner did not submit "a copy of the disposition of the charges, or court records regarding the case" and because the Milwaukee Police report did not cite any of her aliases.

On appeal, the petitioner submits an August 13, 2008 letter from the Office of the Milwaukee County District Attorney, which states that the office declined to issue any charges against the petitioner in connection with her January 30, 2000 arrest. As previously noted, the petitioner also submits, on appeal: an August 2, 2008 letter from the Milwaukee Municipal Court, which states that a search of the petitioner's name and aliases produced no record of any case filed against her and a July 30, 2008 facsimile from the Milwaukee County Circuit Court, Criminal Division confirming that a search under the petitioner's name and aliases found no criminal history record on file with the court. The evidence submitted on appeal clearly demonstrates that the petitioner was not charged with, nor convicted of any offense in connection with her January 30, 2000 arrest.

Even if the petitioner had been convicted of battery and despite her admission of slapping her first husband, such facts do not bar a finding of her good moral character under section 101(f)(3) of the Act. As counsel demonstrates on appeal, battery under the applicable section of the Wisconsin Statutes is not a crime involving moral turpitude because it does not require the intent to cause, or actual infliction of, serious bodily injury. *See Matter of Sejas*, 24 I&N Dec. 236 (BIA 2007). In addition, the maximum penalty for simple battery in Wisconsin is a fine of \$10,000, imprisonment for nine months or both. Accordingly, this crime also falls within the petty offense exception to consideration as a crime involving moral turpitude at section 212(a)(2)(A)(ii)(II) of the Act and poses no statutory bar to a determination of the petitioner's good moral character.

Overpayment of Food Stamp Benefits

In her first affidavit, the petitioner voluntarily disclosed that she made another mistake by receiving food stamps after her second husband returned home. She explained:

In December 2005 [A-V-] left after a No Contact Order was issued. I was surprised to see that he did not return home right away. We had been receiving food stamps and I notified the Milwaukee County that he was no longer living with me. When he returned, I did not know what to do, I was not sure if he was going to stay or not, I was afraid I would not be able to rely on him for money. I was so concerned about caring for my children and I knew I could not count on [A-V-] to provide for us, so I did not think to tell the social worker that [A-V-] had been home, I did not think that it would have an effect on the welfare we received. When I was told that I had made a mistake receiving food stamps, I arranged to repay the money. I regret this mistake.

The petitioner also submitted a letter from Legal Action of Wisconsin, which represented the petitioner in the administrative proceedings regarding her food stamp benefits. The letter confirms that the petitioner entered a repayment agreement and that the case was designated as "client error" rather than fraud or an "intentional program violation." The letter was accompanied by a copy of the petitioner's account, which showed that she had been making timely payments on the "reclamation of Foodshare" benefits.

On appeal, the petitioner reiterates her remorse for her mistake and further explains:

I had no intention of abusing the system. Worried about my children, being under so much stress, and afraid of [A-V-], my husband, I did not report that he was not complying with the restraining order, and was back home. He was home for a week and then he would leave again. I did not know if he would stay at home or not.

The relevant evidence supports the petitioner's testimony and indicates that the petitioner's mistaken receipt of food stamp benefits was connected to A-V-'s abuse. The record contains a police report, no contact order and a court record, which confirm that on October 26, 2005, the petitioner's husband left their home after the police were called during an incident of battery and that he was under a related no contact order in December 2005. The relevant evidence also shows a cycle of abuse in which the petitioner's husband repeatedly left their home under no contact orders issued after incidents of battery and then returned in violation of the orders or when the related charges were disposed.

The record does not show that the petitioner's food stamp case resulted in a conviction under section 101(a)(48)(A) of the Act, as the administrative hearings resulted in no formal judgment of guilt of the petitioner. Rather, the overpayment was found to have been the result of "client error" and a repayment agreement was entered. The petitioner's error thus does not preclude a finding of her good moral character under any of the enumerated grounds at section 101(f) of the Act.

The Petitioner has Established her Good Moral Character

The petitioner's errors also do not preclude a finding of her good moral character under the catchall provisions of section 101(f) of the Act and the regulation. Section 101(f) of the Act prescribes, in pertinent part: "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further provides, in pertinent part:

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 . . . although the acts do not require an automatic finding of lack of good moral character. . . .

The petitioner has established extenuating and mitigating circumstances regarding the three events cited by the director as detracting from her moral character. The relevant evidence also shows that the petitioner has, upon her own volition, fully disclosed her errors; that she has accepted responsibility and expressed remorse for her mistakes; and that she has rehabilitated.

The petitioner credibly attested that her first husband was abusive and had repeatedly refused to purchase clothing for their two young daughters. The petitioner voluntarily disclosed her attempted shoplifting in her initial affidavit and repeatedly expressed remorse for her mistake in that and her two

subsequent statements submitted in response to the RFE and on appeal. The petitioner submitted documentation that although she was arrested and fined, she was not formally charged with or convicted of any criminal offense.

While the petitioner admitted slapping her first husband on January 30, 2000, she credibly explained, in her initial, January 3, 2008 affidavit, that she did so in self-defense against her first husband's battery and that she was not the primary aggressor. The petitioner stated that on the day of the incident, her first husband came home drunk as she was preparing to leave. She recounted that he told her not to leave and that she slapped him after he pushed and hit her. The petitioner reported that her sister called the police, but that when they came, nothing happened to her husband and she was arrested.

In her affidavit submitted on appeal, the petitioner again recounts the incident and explains that she slapped her husband to try and stop him from pushing and hitting her. She states that she tried to explain what happened to the police and to tell them that she was afraid of her first husband, but that the police did not seem to understand and she was arrested. The police report shows that the petitioner was unable to communicate with the police officers in English and that her sister interpreted for her. While the police reports confirm that the petitioner slapped her first husband, it also notes that the petitioner had begun divorce proceedings against her first husband who had been frightening her with references to handguns. The petitioner's act of self-defense resulted in no conviction or criminal charge against her.

In regards to the overpayment of food stamps to the petitioner, she credibly explained that at the time of her error her husband had returned to their home in violation of a no contact order, she did not know if he would stay and she knew she could not rely on him to support her and her children. The record confirms that the petitioner's husband has subjected her to a cycle of abuse and was under a no contact order at the time he returned to their home in 2005. The relevant evidence also shows that the petitioner entered a repayment agreement for the extra benefits she received; that she has made timely payments and that she was never charged or convicted of a criminal offense in connection with her error.

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 affidavits, the petitioner repeatedly and consistently disclosed her mistakes, accepted responsibility for her errors and expressed remorse. The petitioner submitted the results of a Federal Bureau of Investigation (FBI) check of her fingerprints, which listed only her January 30, 2000 arrest and revealed no other arrests or conviction. In addition, the petitioner submitted police clearance letters from both Greenfield and Milwaukee, where she has resided for over eight years. On appeal, the petitioner also submits letters from three individuals who have known her for over 12 years and from a pastor of her church where she has been a member for over seven years. These individuals attest to the petitioner's law abiding nature, her good work ethic and upstanding character.

The preponderance of the relevant evidence demonstrates that the petitioner is a person of good moral character, as required by section 204(a)(1)(B)(ii)(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)(B)(ii) 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.