

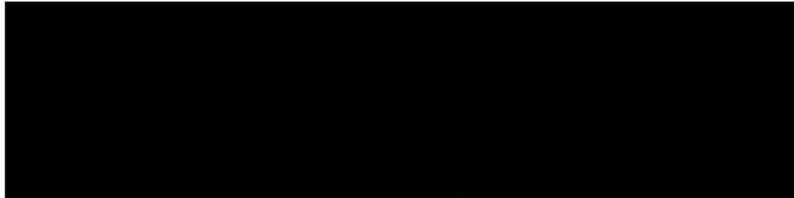
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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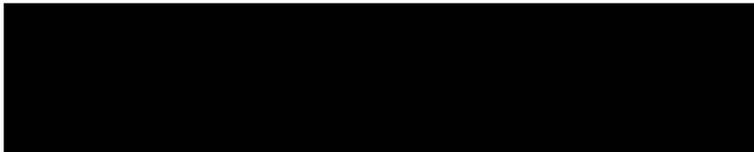
Office: VERMONT SERVICE CENTER

Date: FEB 13 2009

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)

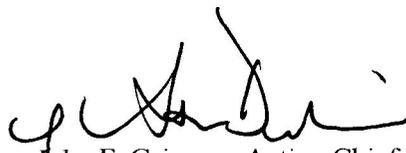
ON BEHALF OF PETITIONER:



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.

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 dismissed.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a U.S. citizen or Lawful Permanent Resident. The petitioner, through counsel, submitted a Form I-360 Petition on June 29, 2007; the director denied the petition on August 7, 2008.

The director denied the petition finding that the petitioner failed to establish (1) that she is a person of good moral character and (2) that she entered into her marriage in good faith.

The petitioner submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen 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 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 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.

* * * *

(ix) *Good Faith Marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

* * * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

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 Thailand who was admitted to the United States on September 13, 1994 and again on October 1, 1997 as a B-1 nonimmigrant visitor. On January 23, 1996, the petitioner married T-N-¹ a U.S. citizen, in New York. On August 4, 1997, T-N- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The couple failed to appear for an interview regarding the I-130 Petition, and both the I-130 Petition and the I-485 Application were subsequently denied on June 18, 2004. On May 7, 2007, U.S. Citizenship and Immigration Services (USCIS) issued a Notice to Appear (NTA) to the petitioner charging her as removable under section 237(a)(1)(B) of the Act for remaining in the United States beyond her period of lawful admission. The petitioner is currently in removal proceedings and has an asylum application pending in immigration court.

The petitioner filed the instant I-360 Petition on June 29, 2007. On February 14, 2008, the director issued a Request for Evidence (RFE) of, *inter alia*, good moral character, including copies of court documents showing the final dispositions of past criminal charges, and good faith marriage. The petitioner responded on May 1, 2008 by submitting additional evidence in support of the I-360 Petition. The director found that the petitioner had failed to provide sufficient evidence of

¹ Name withheld to protect individual's identity.

eligibility and denied the petition.

The petitioner, through counsel, submits a timely appeal with a brief. No additional evidence is submitted on appeal, although counsel attaches a copy of a January 19, 2005 Memorandum from the Associate Director of Operations for USCIS, "Determinations of Good Moral Character in VAWA-Based Self-Petitions," which informs USCIS adjudicators of changes in the law since the passage of the Violence Against Women Act of 1994. As will be discussed, the AAO concurs with the findings of the director that the petitioner failed to establish that she is a person of good moral character and failed to establish that she entered into her marriage in good faith.

Good Moral Character

In response to the RFE, on April 18, 2004 the petitioner, through counsel, requested a name search of index files of the Clerk of Criminal District Court for the Parish of Orleans, Louisiana. The search revealed the following convictions:

- On July 8, 2005, the petitioner pled guilty to and was convicted of Prostitution (Misdemeanor) in violation of Section 14:89 of Louisiana State Law (Docket Number 4 [REDACTED])
- On March 15, 2001, the court found the petitioner guilty of two counts of Prostitution by Massage in violation of Section 14:89 and 14:83.3, respectively, of Louisiana State Law, and fined her \$500 for each count (Docket Numbers [REDACTED] and [REDACTED])

The record also contains the following record of conviction in the County Criminal Court of Harris County, Texas:

- On March 25, 2004, the petitioner plead guilty and was convicted of Prostitution (class B Misdemeanor) and sentenced to ten days confinement in the Harris County Jail (Docket Number [REDACTED]) The record does not indicate the section of Texas law violated.

We concur with the director's determination that the petitioner's convictions on four counts of prostitution described above prevent a determination that she is a person of good moral character.

On appeal, counsel claims that the petitioner's convictions should be overlooked because they occurred outside of the three-year period for which the petitioner is required to establish her good moral character. Counsel is mistaken. The statute does not state a time period during which the self-petitioner must demonstrate his or her good moral character. See Section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). Although the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires police clearances or criminal background checks for the three-year period preceding the filing of a petition under section 204(a)(1)(A)(iii) of the Act, the regulation's designation of the three-year period does not limit the temporal scope of USCIS's

inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). Moreover, in this case the July 8, 2005 conviction occurred within the three years preceding the filing of the I-360 Petition, thus falling within the three-year period for which the petitioner is required to establish her good moral character.

The petitioner's convictions also prevent a finding of her good moral character pursuant to two other portions of section 101(f) of the Act, 8 U.S.C. § 1101(f), which 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 admissible or not, described in paragraphs (2)(D) . . . of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) . . . 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)(D) of the Act, 8 U.S.C. § 1182(a)(2)(D), states, in pertinent part:

Prostitution and commercialized vice. – Any alien who –

(i) . . . has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status

is inadmissible.

The petitioner was convicted of prostitution four times between March 15, 2001 and July 8, 2005; she filed this visa petition on June 29, 2007. Accordingly, all of her convictions fall within ten years of the date of her visa petition and prevent a finding of her good moral character pursuant to section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3).

Section 101(f)(3) of the Act also 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.” The petitioner's convictions for prostitution are for crimes involving moral turpitude. *See Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965). Accordingly, the petitioner's convictions for these four crimes of moral turpitude further prevent a finding of her good moral character pursuant to section 101(f)(3) of the Act.

The petitioner is also ineligible for a discretionary finding of good moral character pursuant to section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). That provision grants USCIS the

discretion to determine that a self-petitioner is a person of good moral character if (1) the petitioner's convictions are waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and (2) the conviction was connected to the petitioner's battery or subjection to extreme cruelty by his or her U.S. citizen or lawful permanent resident spouse or parent. **Section 204(a)(1)(C) of the Act.** Although inadmissibility due to prostitution and crimes involving moral turpitude is waivable for self-petitioners under section 212(h)(1)(C) of the Act, 8 U.S.C. § 1182(h)(1)(C), the petitioner has not established that her convictions were connected to her battery or subjection to extreme cruelty by her U.S. citizen husband.

The record reflects that the petitioner entered the United States from Thailand on September 13, 1994 at New York; she married T-N- on January 23, 1996; T-N- filed a visa petition for her on June 29, 1997, which was denied for abandonment on June 18, 2004; the couple divorced on September 6, 2006. The record also shows that the petitioner last entered the United States on October 1, 1997. On appeal, the petitioner submits a statement explaining that some time after her 1994 entry at New York, she traveled to Florida and was a waitress in South Beach, where, after working about six months, she met T-N-, who was visiting from New York; they "became close quickly;" she went to New York and stayed with him; and they got married on January 23, 1996. She describes an abusive relationship, including that her husband forced her to have sex with his friends almost every weekend; that she was only allowed to leave home when he drove her to work and back; that she did not have a key and could not go out by herself; they would fight, and when they fought, "he would take away [her] key;" he threatened to stop her immigration papers and destroy her documents; and he would hit her and call her names. She further states:

[S]ometime after I got my work card, I ran away to New Orleans . . . sometime in the Summer of 1998. . . . When I got to New Orleans, I called my husband in New York. I wanted him to return to me my passport, birth certificate and whatever immigration papers I had. He refused. He told me that I had to go back to New York to be with him and that I had to pay him or he would destroy the documents. He would ask for \$1000 or \$2000 every time I contacted him. I then started working at a massage parlor in East New Orleans to make more money to send him . . . I also went back to New York several times to be with him. I was afraid that if I did not go back to him, he would carry out his threat and destroy my papers. . . . When I was with him in New York, things would be bad again. He would force me to be with him and with other men. He still hit me and mistreated me. But I kept going back because I did not know what else to do. I thought it was my only chance to get my permanent residence here. This went on for about two years.

The petitioner adds that in 2000, in New Orleans, she started a relationship with another man, with whom she had a child, but he later left her; and that in 2004, she got a job giving massages at a spa in Houston, Texas and that she traveled between Houston and New Orleans while her daughter

stayed with a friend of hers (T-H-²) in New Orleans. She states that she was arrested once in New Orleans in 2000 and twice in Houston, in 2004 and 2007, but that she was not involved in prostitution. She states that she filed for a divorce from T-N- in 2006.

The petitioner's friend, T-H-, also submitted an affidavit, dated April 22, 2008, in which she states that she met the petitioner in New Orleans ten years ago and offered her food and shelter in exchange for her help as a waitress in her restaurant. T-H- states that the petitioner told her about how T-N- had abused the petitioner and that she saw many bruises and scars on the petitioner; she also confirmed that while the petitioner was living with her in New Orleans, the petitioner had contacted T-N- to try to get her papers and that the petitioner was being blackmailed by her husband and was afraid of him and went back and forth to New York for a while. She notes that, "[e]ven after she stopped working at the restaurant and started working at a massage parlor to make money to pay her husband, she continued to live with me."

The only other evidence of abuse in the record is a "psychological report" for the petitioner by [REDACTED], a licensed psychologist, based on a "clinical interview with Mental Status Examination" conducted on May 27, 2008. [REDACTED] reported that the petitioner claimed that she had crying spells when she was married and fought with her husband and that he beat her and locked her in their apartment and that she was afraid. She denied sexual abuse. She also stated that her boy friend, with whom she lived for three years, hit her sometimes and she called the police on him. [REDACTED] added, "[a]s best I could get from her, she had intrusive thoughts of the husband beating her for about two years after she left him." In his summary, [REDACTED] concludes that the petitioner "would have met criteria for PTSD for several years after she left her husband. She no longer has nightmares and intrusive thoughts of the beatings. She retains a generalized fear of men, and she would not remarry. The patient is no longer anxious or angry."

Counsel for the petitioner claims that after the petitioner left her husband and tried to obtain her original documents from him, her husband in turn extorted money from her, adding that because her income as a waitress was insufficient to meet her husband's demands, she was forced to work at a massage parlor and that it is clear that the petitioner was introduced to and forced into prostitution by her abuser. The record does not support counsel's assertion that the petitioner's convictions were connected to T-N-'s battery or extreme cruelty. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner claims that she left T-N- and moved to New Orleans in the summer of 1998. She lived with a friend, entered into a relationship with another man in 2000, with whom she had a child, and worked in both New Orleans and Houston. The record shows her first conviction for prostitution was in March 2001; her last in 2005. There is no evidence in the record that these

² Name withheld to protect individual's identity.

convictions, approximately three to seven years after she left her husband and moved from New York to New Orleans, were connected to battery or extreme cruelty by her U.S. citizen husband. At the times she was convicted, she no longer lived with her husband and, though she claims she still feared him and had to pay him money for an unspecified period after she left him, she also claims to have been residing with a friend far from her husband and to have entered into a relationship with another man during the same period. Moreover, the record shows that the petitioner was able to depart the country and reentered the United States on October 1, 1997, during the time she claims to have been restricted to her apartment and only allowed to go to work and back home with her husband. The record indicates that the petitioner was living apart from her husband and had established new relationships and was able to work and maintain her independence during the years when she was convicted multiple times of prostitution. The record is devoid of any evidence that the petitioner's convictions were connected to T-N-'s battery or extreme cruelty. The petitioner is consequently ineligible for a discretionary finding of good moral character pursuant to section 204(a)(1)(C) of the Act.

Good Faith Entry into Marriage

In response to the RFE, the petitioner submitted the statement described above, in which she describes briefly how she met T-N-. She states that some time after her 1994 entry at New York, she traveled to Florida and was a waitress in South Beach, where, after working about six months, she met T-N- through a mutual friend. She adds that he was visiting from New York, they "became close quickly" and she went to New York and stayed with him. They were married on January 23, 1996. The statement, however, does not contain any discussion regarding any courtship, the petitioner's feelings for her former spouse or reasons for marrying him and offers no details of their life together before or after their marriage except as it relates to the claimed abuse. The record contains no affidavits from individuals who would have had personal knowledge of their relationship or any information regarding the petitioner's alleged good faith in entering into her marriage. The record contains no information, detailed or otherwise, regarding the petitioner's relationship with her former spouse and interactions with each other, other than one affidavit from the petitioner's friend, T-H-, who met the petitioner after she had left her husband and could report only on telephone calls and an alleged abusive relationship at that time.

Documentary evidence in the record consists of (1) a copy of the couple's 1997 Form 1040X, a joint Amended Income Tax Return, filed on June 8, 1998; (2) two GreenPoint Bank cards, one in the petitioner's name and the other in her husband's name, but lacking an address or date; and (3) what appears to be a wedding photo, undated. Despite a claimed relationship of more than two years, the petitioner provides no other photographs of shared events or special occasions either prior to or after their marriage or other documentary evidence of joint assets and liabilities such as shared financial accounts, utilities, or life or health insurance. The petitioner claims that any documents she might have kept were destroyed in Hurricane Katrina. Although the lack of documentary evidence of a good faith marriage is not automatically disqualifying, as discussed

above, the testimonial evidence submitted by the petitioner does not establish that she entered into the marriage in good faith.

On appeal, no additional evidence was submitted. She does not provide any further testimonial or documentary evidence to support her claim.

The sole, relevant documentary evidence is the joint amended tax return for 1997. The testimonial evidence submitted by the petitioner and on her behalf by one friend lacks any information about the petitioner's relationship and interactions with her former spouse, such as shared events, joint finances or utilities. Accordingly, the petitioner failed to demonstrate that she entered into marriage with her former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The present record fails to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act; the record also fails to establish that the petitioner entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and the petition will be denied for these two reasons, with each considered as an independent and alternative basis for denial.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is dismissed.