U.S. Department of Homeland Security
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PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

B9

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 19 2009

EAC 02 252 53628

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, initially approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

The director revoked approval of the petition because the petitioner was convicted of endangering the welfare of a child in the third degree in New Jersey, a crime involving moral turpitude, which barred the petitioner from establishing that she was a person of good moral character.

On appeal, counsel submits a brief and additional evidence.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title." A director may revoke the approval of a petition on notice "when the necessity for the revocation comes to the attention of this Service." 8 C.F.R. § 205.2(a). For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director's revocation of that approval.

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 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:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(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.

* * *

(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.

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 . . . .

* * *

> 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. . . .

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.
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> * * *
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> (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.
>
> (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 the Dominican Republic who states on the Form I-360 that she entered the United States (U.S.) in 1994. On May 20, 1997, the petitioner married J-V-[1], a U.S. citizen, in Puerto Rico. On September 4, 1997, J-V- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was subsequently denied.

The petitioner filed this Form I-360 on July 25, 2002. The director initially approved the petition on August 17, 2004. On February 3, 2006, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition because evidence had come to the director's attention that the petitioner was convicted of endangering the welfare of a child in the third degree in violation of section 2C:24-4A of the New Jersey Code of Criminal Justice. The NOIR informed the petitioner that her conviction was an offense involving moral turpitude and thereby barred a finding of her good moral character pursuant to section 101(f)(3) of the Act. The petitioner, through counsel, responded to the NOIR with additional evidence, which the director found insufficient to establish the petitioner's good moral character. Accordingly, the director revoked the approval of the petition on October 25, 2006. Counsel timely appealed.

On appeal, counsel asserts that the petitioner's offense is not a crime involving moral turpitude and that she has established her good moral character. Counsel's claims and the evidence submitted on appeal fail to overcome the ground for revocation. Beyond the director's decision, the record also fails to demonstrate that the petitioner's former husband subjected her to battery or extreme cruelty during their marriage.

The Petitioner's Criminal Offense was a Crime Involving Moral Turpitude

The record shows that on March 8, 2004, the petitioner was convicted of Endangering Welfare of Children in the third degree in violation of section 2C:24-4(a) of the New Jersey Statutes, which states, in pertinent part:

> Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and P.L.1974, c. 119, s.1 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 16 is guilty of a crime of the third degree.

N.J. Stat. Ann. § 2C:24-4(a) (West 2009).

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

Section 9:6-1 of the New Jersey Statutes defines abuse and neglect of a child, within the civil protective welfare laws, as follows:

> Abuse of a child shall consist in any of the following acts: (a) disposing of the custody of a child contrary to law; (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (h) in an institution as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), willfully isolating the child from ordinary social contact under circumstances which indicate emotional or social deprivation.
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> Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.
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> Cruelty to a child shall consist in any of the following acts: (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical; (c) habitually tormenting, vexing or afflicting a child; (d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child; (e) or exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child.
>
> Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c.

> 119 (C. 9:6-8.21), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

Id. at § 9:6-1.

Section 9:6-8.21 of the New Jersey Statutes, also within the state's civil protective welfare laws, states, in pertinent part:

> c. "Abused or neglected child" means a child less than 18 years of age whose parent or guardian, as herein defined, (1) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; (2) creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; (3) commits or allows to be committed an act of sexual abuse against the child; (4) or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; (5) or a child who has been willfully abandoned by his parent or guardian, as herein defined; (6) or a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; (7) or a child who is in an institution and (a) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being or (b) who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.
>
> A child shall not be considered abused or neglected pursuant to paragraph (7) of subsection c. of this section if the acts or omissions described therein occur in a day school as defined in this section.

Id. at § 9.6-8.21. These statutory provisions combined with the petitioner's record of conviction demonstrate that her offense involved moral turpitude.

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. Such a realistic probability exists when there is an actual case in which the criminal statute was applied to conduct that did not involve moral turpitude. *Id.* 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.

On appeal, counsel asserts that the petitioner was convicted under a divisible statute and that the petitioner's specific conduct shows that she was convicted of abandonment or neglect, which, under section 9:6-1 of the New Jersey Statutes requires no evil intent or willfulness and is consequently not a crime involving moral turpitude. Counsel's analysis is flawed. Although the statute of conviction does not define a *mens rea* for endangering welfare of children, the New Jersey Courts have held that the state must prove that a defendant acted knowingly in order to secure a conviction under section 2C: 24-4(a). *State v. Overton*, 815 A.2d 517 (N.J. Super. App. Div. 2003), cert. denied 827 A.2d 287; *State v. Demarest*, 599 A.2d 937 (N.J. Super. App. Div. 1991) (criminal statute's reference to civil provisions' definitions of "abused and neglected child" describes only the kind of harm to the child, not the mental state of the accused required to establish the offense). *See also Amaya v. Atty. Gen.*, 189 Fed. Appx. 130 (3d Cir. 2006) (unpublished) (gap filler provision N.J. Stat. Ann. § 2C:2-2c(3) (West 1995) requires proof of "knowledge" where, as in N.J. Stat. Ann. § 2C:24-4a the mental state is omitted).

The statute under which the petitioner was convicted requires both reprehensible conduct, harm to a child, and knowledge. *Id.* Endangering welfare of children under section 2C:24-4(a) of the New Jersey Statutes is thus, categorically, a crime involving moral turpitude. Counsel has not shown that section 2C:24-4(a) of the New Jersey Statutes has ever been applied to conduct that did not involve moral turpitude.

Even if the petitioner had met her burden and established that the New Jersey statue does not categorically involve moral turpitude, the ensuing modified categorical inquiry would show that the petitioner's offense involved moral turpitude. Where a categorical inquiry does not resolve the issue, adjudicators should proceed with a modified categorical inquiry and examine the alien's record of

conviction to see if it evidences a crime involving moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. at 690. The record of conviction includes the indictment, judgment, jury instructions, signed guilty plea or transcript of the plea and sentence. *Id.* at 699; *Matter of Ajami*, 22 I&N Dec. 949, 950 (BIA 1999). Where the record of conviction fails to show whether an alien was convicted of a crime involving moral turpitude, USCIS may consider other evidence as necessary and appropriate. *Matter of Silva-Trevino*, 24 I&N Dec. at 690. In this case, USCIS is considering the petitioner's record of conviction, namely, her sentence and documents incorporated by reference into her sentencing report. The police report cited in the petitioner's pre-sentence report states that the officers interviewed witnesses who stated that they had been standing by the petitioner's car for an hour and had seen her 15-month old child locked inside. The report further states, in pertinent part:

> All the vehicle's windows were closed and the child . . . was crying, sweaty, and appeared in distress. believing that the child's health may be in jeopardy called for the duty tow to unlock the vehicle. . . . The air in the vehicle was significantly hotter than the outside air which was approx. 79 degrees with high humidity. . . . The child's clothes were soaked with sweat and her skin was warm to the touch.

In her statement attached to her pre-sentence report, the petitioner explained that she thought her husband and cousin had taken her daughter with them, when in fact, the child had fallen asleep in her car. The petitioner states that she drove to a store, parked her car and went into the store in a hurry and did not realize that her daughter was in the back seat. The petitioner states that she did not realize that her daughter was in her car until her aunt called and told her so.

The petitioner submitted evidence that she completed a court-ordered parenting class and that the New Jersey Department of Human Services, Division of Youth and Family Services closed the case pertaining to the petitioner's daughter on October 14, 2003. The petitioner also submitted a letter from her friend and employer, who attested to the petitioner's good character, but indicated that she was unaware of the petitioner's conviction. The petitioner also submitted a form letter from who certified that the petitioner was a member in good standing of his parish, but did not discuss his acquaintance with the petitioner in any probative detail.

The record shows that the petitioner was convicted of endangering welfare of children in violation of section 2C:24-4(a) of the New Jersey Statutes, which requires both reprehensible conduct and guilty knowledge and is consequently a crime involving moral turpitude. The record further shows that the petitioner's specific conduct involved moral turpitude. The record shows that the petitioner left her daughter in her locked car with the windows shut in hot weather for an hour. While the petitioner states that she was not aware that her child was in her car, her statement that she drove and parked her car without realizing that her child was in the back seat lacks credibility. Accordingly, even under a modified categorical analysis, the petitioner's offense involved moral turpitude. The petitioner's conviction consequently bars a finding of her good moral character pursuant to section 101(f)(3) of the Act.

Relevant Exception Does Not Apply

The petitioner is also ineligible for a determination of her good moral character despite her conviction pursuant to section 204(a)(1)(C) of the Act, which permits such a finding if: 1) the alien'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) USCIS determines that the act or conviction was connected to the alien'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) (2009). Although inadmissibility due to a conviction for a crime involving moral turpitude is waivable for self-petitioners under sections 212(h)(1)(C) of the Act, the petitioner has not established any connection between her conviction and her former husband's battery or extreme cruelty. The petitioner committed her offense in July 2003, two years after she separated from her former husband in 2001 (as she states on her Form I-360) and after she had married her daughter's father (as indicated by the police report and the petitioner's statement within her pre-sentence report). The petitioner submits no testimony or other evidence that her conviction was in any way connected to her former husband's battery or extreme cruelty. In addition, as will be discussed below, the petitioner has not established the requisite battery or extreme cruelty. The petitioner is consequently ineligible for an exceptional finding of her good moral character pursuant to section 204(a)(1)(C) of the Act.

Petitioner Also Lacks Good Moral Character under Section 101(f) and the Regulation

Even if the petitioner's crime did not involve moral turpitude and did not fall within any of the enumerated bars to good moral character within subsections 101(f)(1) through (9) of the Act, her conduct still evidences a lack of good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). 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 record shows that the petitioner left her 15-month old daughter locked in her car on a hot day for over one hour. On appeal, counsel asserts that the petitioner's conduct was not willful as she simply forgot that her child was in her car. As previously discussed, however, the petitioner did not state that she forgot her daughter was in her car. She stated that she did not realize her daughter was in the car until her aunt called her an hour after she had left the child in her parked car. The petitioner's statements lack credibility. We acknowledge that the petitioner expressed remorse for her offense and the record shows that she completed her court-ordered parenting class. Contrary to counsel's assertion, however, the record does not show that the petitioner successfully completed her sentence of probation.

The petitioner submitted a copy of her probation sentence sheet, but no evidence that she successfully completed her sentence.

The petitioner's offense was an unlawful act that adversely reflects upon her moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). On appeal, the petitioner submits no evidence that her offense was committed under extenuating circumstances. Even if the petitioner's crime did not fall within section 101(f)(3) of the Act as a crime involving moral turpitude, her offense still evidences a lack of good moral character pursuant to the first sentence of the last paragraph of section 101(f) of the Act: "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 petitioner has failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Battery or Extreme Cruelty

Beyond the decision of the director, the petitioner has also not demonstrated that her former husband subjected her to battery or extreme cruelty during their marriage. The record contains the following evidence relevant to this issue:

- The petitioner's February 4, 2004 statement;
- Undated letter of Coordinator of the Hogar Crea Rio Plantation in Bayamon, Puerto Rico; and
- November 3, 2003 declaration of the petitioner's friend,

In her 2004 statement, the petitioner reported that her former husband had temper tantrums, threw objects against the walls, screamed at her in front of her coworkers, could not keep a job and brought other women to their apartment. The petitioner also states that her former husband once had to attend a seminar for driving under the influence of alcohol. The petitioner states that her marital situation affected her emotional health and she had to take medication for stress and anxiety. While the petitioner lists examples of her former husband's behavior, she does not describe any specific incident of abuse in detail and her brief statements are insufficient to establish the requisite battery or extreme cruelty.

s letter and ' declaration also fail to demonstrate the requisite battery or extreme cruelty. confirms that the petitioner's former husband was treated for "substance addiction" at the Hogar Crea Rio Plantation from 1996 to 1998, but he does not discuss the situation of the petitioner's former husband in any detail and does not indicate that her former husband battered or subjected the petitioner to extreme cruelty. states that the petitioner confided in her that the petitioner's former husband used drugs, verbally mistreated her using bad words, disappeared for days, did not contribute economically to their household, and that he escaped from a detoxification program. does not describe any incidents of abuse in detail. also does not

indicate that she ever observed any abuse or otherwise had personal knowledge of the alleged extreme cruelty.

The preponderance of the evidence does not demonstrate that the petitioner's former husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner has not demonstrated that she is a person of good moral character and that her former husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must therefore be denied.

The revocation of the approval of the petition is affirmed for the above stated reasons, with each considered as an independent and alternative basis for revocation of the approval and denial of the petition. 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.