

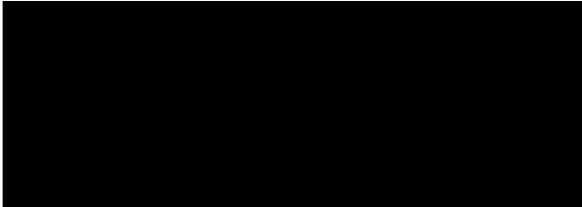
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20 Massachusetts Ave. NW, Rm. 3000
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U.S. Citizenship
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Services

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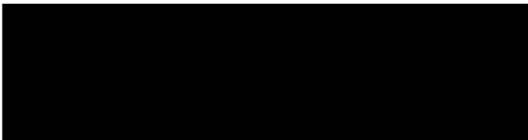
Date: **FEB 24 2009**

IN RE: Petitioner:



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)

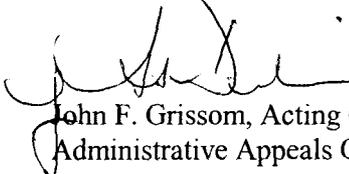
ON BEHALF OF PETITIONER:



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 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 denied the petition because the petitioner failed to establish that she was a person of good moral character due to her criminal conviction and failure to disclose her arrest and conviction on her Form I-485, Application to Adjust Status.

On appeal, counsel submits a brief.

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:

(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 . . .

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this 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. . . .

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.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native of Guyana and citizen of the United Kingdom who entered the United States (U.S.) on October 11, 1992 as a nonimmigrant visitor (B-2). On June 22, 2000, the petitioner married R-R-¹, a U.S. citizen, in Florida. On July 24, 2000, R-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On August 8, 2001, the Miami District Office issued a Notice of Intent to Deny (NOID) the Form I-130 petition because discrepancies between the responses of the petitioner and R-R- at their interview on July 17, 2001 indicated that their marriage was entered into for the purpose of circumventing the immigration laws. On October 18, 2001, the petitioner submitted a response to the NOID. The Miami District Director found the petitioner's response insufficient to establish that her marriage was not entered into for the primary purpose of circumventing the immigration laws and denied the Form I-130 petition on October 23, 2001. The petitioner's concurrently filed Form I-485, Application to Adjust Status, remains pending.

The petitioner filed this Form I-360 on November 6, 2001. On April 4, 2002, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character and that she married her spouse in good faith. The petitioner, through prior counsel, timely responded with additional evidence. On January 7, 2004, the director issued a second RFE for further evidence of the petitioner's good moral character, specifically, police clearances based on a check of all the petitioner's aliases and documentation relating to the petitioner's arrest and criminal charges in Florida. The petitioner,

¹ Name withheld to protect individual's identity.

through prior counsel, timely responded with further documentation. On May 28, 2004, the director denied the petition for lack of good moral character because he determined that the petitioner had been convicted of a crime involving moral turpitude and gave false testimony by failing to disclose her arrest and conviction on her Form I-485 application.² On appeal, counsel contends that the petitioner's conviction does not involve moral turpitude and does not render her ineligible because her conviction occurred over three years before the petition was filed.

We concur with the director's ultimate determination that the petitioner lacks good moral character. The petitioner's criminal offense and false statement regarding her criminal record demonstrate a lack of good moral character pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). In addition, the petitioner failed to submit the primary evidence of her good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). Beyond the director's decision, the petitioner has also failed to establish that she entered into marriage with her husband in good faith.

The Petitioner's Criminal Conviction

The record shows that on May 17, 2000, the petitioner was arrested and charged with uttering a forged instrument in violation of section 831.02 of the Florida Statutes and with making a false claim of academic degree in violation of section 817.567 of the Florida Statutes. On July 20, 2000, the petitioner pled guilty to both charges and was sentenced to 18 months of probation for her uttering a forged instrument offense and to one year of probation for her false claim of academic degree offense (Broward County Florida Court, 17th District, Case Number [REDACTED]). The petitioner completed her probation on July 2, 2001.

The petitioner's offense of uttering a forged instrument is a crime involving moral turpitude and bars a finding of her good moral character pursuant to section 101(f)(3) of the Act. Florida defines the crime of uttering forged instruments as follows:

Whoever utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in s. 831.01 knowing the same to be false, altered, forged or counterfeited, with intent to injure or defraud any person, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

² The director denied the petition without first issuing a Notice of Intent to Deny (NOID) as required by the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii) (2004). However, the director issued two RFEs, which gave the petitioner two opportunities to submit additional evidence to establish her eligibility. The RFEs informed the petitioner of the deficiency of the evidence she submitted for all the grounds on which we deny the petition. On appeal, the petitioner was afforded a third opportunity to submit additional evidence. In the interest of administrative economy, we find that no purpose would be served by now remanding the case to the director for issuance of a NOID, over six years after this petition was filed.

§ 831.02 Fla. Stat. (2000). Uttering forged instruments is punishable by imprisonment up to five years. § 775.082(9)(a)(3)(d) Fla. Stat. (2000).

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 a 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.

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.”).

Contrary to counsel’s assertion, crimes that do not require the specific intent to defraud may still involve moral turpitude if fraud is inherent to the proscribed offense. *Matter of Silva-Trevino*, 24 I&N Dec. at 706 n.5; *Flores*, 17 I&N Dec. at 228, *Matter of Bart*, 20 I&N Dec. 436, 437-438 (BIA 1992). Where a criminal statute requires knowingly making false representations, the crime is inherently fraudulent and involves moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. at 706 n.5 (crimes of fraud will involve moral turpitude when committed intentionally, willfully, or with some other form of scienter such as recklessness). See also *Matter of Kochlani*, 24 I&N Dec. 128, 130-31 (BIA 2007)

(intentionally trafficking in known counterfeit goods involves moral turpitude); *Flores*, 17 I&N Dec. at 229 (moral turpitude inheres in the deliberate selling or use of counterfeit documents that the perpetrator knew were counterfeit).

In this case, the statute of conviction requires the perpetrator's knowledge that the instrument uttered is false, altered, forged or counterfeited. § 831.02 Fla. Stat. (2000). That knowledge, combined with the "intent to injure or defraud any person" imparts moral turpitude to the offense. Even if the petitioner did not possess the specific intent to defraud another person, she could not have been convicted under the Florida statute without knowledge of the falsity of the uttered instrument. The petitioner has presented no instance where a court has applied the Florida statute to conduct that did not involve moral turpitude. Accordingly, the petitioner has not met her burden of proof and the record shows that she was convicted of a crime involving moral turpitude.

Even if the petitioner had met her burden and established that the Florida statute 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. *Id.* at 699. In this case, the petitioner's record of conviction clearly evidences moral turpitude. The information for the petitioner's criminal case charges that the petitioner:

did utter and publish as true, a false, forged or altered record, to wit a public record or writing more specifically described as a Nursing Assistant Certificate, administered by Florida's Agency for Health Care Administration, with the intent to injure or defraud a person to wit, Elsa Bonilla, contrary to F.S. 831.02

As part of her Deferred Prosecution Agreement, the petitioner also signed a sworn statement in which she attested that she applied for employment as a Certified Nursing Assistant and submitted a Certified Nursing Certificate to the employer although she did not actually possess a properly authorized certificate. The petitioner's record of conviction thus shows that she committed the offense of uttering a forged instrument with the intent to injure or defraud a person and with the knowledge that the instrument was false. Accordingly, even under a modified categorical analysis, the petitioner's offense involved moral turpitude.

Inquiry Into Petitioner's Moral Character is Not Limited to the Prior Three Years

On appeal, counsel contends that the petitioner's offense does not render her ineligible because the petitioner is only required to establish her good moral character during the three years preceding filing and she committed the crime more than 13 years ago and was convicted over seven years ago. In fact, the petitioner was convicted on July 20, 2000, fifteen months before she filed her Form I-360 on

November 6, 2001. The petitioner's conviction thus occurred within the three-years preceding the filing of her petition.

Yet even if the conviction occurred outside of the three-year period, USCIS would not be barred from considering the conviction in assessing her moral character. 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). While the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires evidence of the petitioner's good moral character during the three years preceding the filing of the petition, the regulation does not limit the temporal scope of USCIS' 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).

The Petitioner's False Statement On Her Adjustment Application

In addition to her conviction, the petitioner failed to acknowledge her criminal record on her Form I-485, filed just four days after her conviction. On her Form I-485, the petitioner answered "No" in response to Part 3, question 1(b), "Have you ever, in or outside of the U.S. been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?" The petitioner signed her Form I-485 under penalty of perjury.

Although the petitioner's false statement evidences a lack of good moral character, her statement did not constitute false testimony under section 101(f)(6) of the Act, as determined by the director. False testimony is limited to oral statements made under oath with the subjective intent of obtaining immigration benefits. *Kungys v. United States*, 485 U.S. 759, 780 (1988). *See Matter of R-S-J*, 22 I&N Dec. 863, 873 (BIA 1999) (remanding case because record did not show that alien's false statements to asylum officer were made under oath). In this case, there is no evidence that the petitioner repeated her false statement orally under oath at her adjustment interview.

While the petitioner's false statement on her Form I-485 application does not fall within any of the enumerated bars to good moral character within section 101(f) of the Act, it 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 made a false statement on her Form I-485 by failing to acknowledge her arrest and criminal charges. The petitioner signed the application in Part 4 “under penalty of perjury” and certified that her application was “all true and correct.” At the time she signed the application, the petitioner had been arrested and convicted of a crime involving moral turpitude.

On appeal, counsel states that the petitioner’s Form I-485 was prepared by her prior attorney and she “did not notice that her attorney had failed to answer ‘yes’” to Part 3, question 1(b). Counsel asserts that the petitioner “did not intentionally fail to disclose that she had been arrested.” The petitioner herself, however, provides no such explanation and the Form I-485 is not, in fact, signed by the petitioner’s prior counsel.

The petitioner’s false statement is an unlawful act that adversely reflects upon her moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner knowingly subscribed as true, a false statement that was material to her adjustment application, thereby violating 18 U.S.C. § 1546(a).³ On appeal, the petitioner submits no evidence that her false statement was made under extenuating circumstances. The record does not indicate that the petitioner’s false statement was made under duress or otherwise affected by her husband’s abuse.

The petitioner’s false statement on her adjustment application also 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.” Although the petitioner’s false statement does not constitute false testimony under section 101(f)(6) of the Act, her action indicates that she lied in order to obtain the immigration benefit of adjustment of status.

Relevant Exception Does Not Apply

The petitioner is also ineligible for a determination of her good moral character despite her conviction and false statement pursuant to section 204(a)(1)(C) of the Act, which permits such a finding if: 1) the

³ Section 1546(a) of the United States Code, in pertinent part, subjects to a fine, imprisonment up to 25 years, or both:

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact[.]

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 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 and fraud or willful misrepresentation of a material fact is waivable for self-petitioners under sections 212(h)(1)(C) and 212(i) of the Act respectively, the petitioner has not established any connection between her husband's battery or extreme cruelty and her conviction and false statement. The petitioner committed her offense in September 1994, four years before she met her husband in 1998 (as she states in her April 5, 2002 letter). The petitioner submits no testimony or other evidence that her false statement on her Form I-485 was in any way connected to her husband's 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 Failed to Submit Required Evidence of Her Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that "[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." The petitioner submitted no such affidavit below or on appeal. In her April 5, 2002 letter, the petitioner attests to her marriage and her husband's abuse. She does not discuss her moral character. The petitioner's February 17, 2004 affidavit merely attests to her residence for the past seven years and also makes no mention of her moral character. On appeal, the petitioner submits no further statements. The record thus lacks the primary evidence of good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v).

The petitioner submitted eight letters from her pastor and friends attesting to her good moral character. While these letters indicate that the petitioner is active in her church and has been a good friend and neighbor to several individuals, the letters do not outweigh the lack of good moral character shown by the petitioner's criminal conviction and false statement.

The petitioner also submitted letters from the Margate, Florida Police Department stating that a name-based check of the Department's records revealed the petitioner's offenses of uttering a forged instrument and making a false claim of academic degree. As noted by the director, the record shows that the petitioner has used at least two other surnames that were not included in the checks completed by the Margate Police Department. In both of the RFEs, the director specifically noted that any police clearances submitted that were researched by name should include a search of all of the petitioner's aliases.

The record shows that the petitioner has been convicted of a crime involving moral turpitude and made a false statement on her Form I-485 application, both within a year and a half of the date she filed her Form I-360 petition. The petitioner's conviction bars a finding of her good moral character pursuant to section 101(f)(3) of the Act. The petitioner's false statement also evidences a lack of good moral character under section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). In addition, the petitioner failed to submit the primary evidence of her good moral character required by the

regulation at 8 C.F.R. § 204.2(c)(2)(v). The petitioner has thus failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim that she entered into marriage with her husband in good faith:

- The petitioner's April 5, 2002 letter;
- Copy of an unsigned Form 1040 U.S. Income Tax Return listing the petitioner and her husband as married filing jointly;
- Copies of automobile insurance bills dated April 6 and July 27, 2001 and jointly addressed to the petitioner and her husband;
- Copies of automobile insurance cards effective from February 10 to August 10, 2000 and August 10, 2001 to February 10, 2002, which list the petitioner and her husband as the insured parties;
- Printout of a credit union account withdrawal statement dated May 9, 2001 and jointly addressed to the petitioner and her husband;
- Copy of an Account Verification Letter dated July 2, 2001 from the Eastern Financial Federal Credit Union stating that the petitioner and her husband had a joint account that was opened on January 26, 2001;
- Copies of credit cards valid from September 2001 to August 2003 and from August 1999 and September 2000 to August 2001 for the petitioner and her husband which list the same account number;
- August 8, 2001 Notice of Intent to Deny (NOID) the Form I-130 petition filed by the petitioner's husband on her behalf and the petitioner's response to the NOID;
- Letters from the petitioner's friends, [REDACTED] and [REDACTED];
- Copies of greeting cards addressed to the petitioner from her husband and a Valentine's Day card with an inscription from the petitioner to her husband; and
- Copies of photographs of the petitioner and her husband on two occasions.

In her April 5, 2002 letter, the petitioner states that she met her husband at a friend's party in March 1998, that they later spoke to each other on the telephone and began dating. The petitioner explains that after a few months of dating, the former couple lived together for 18 months before their marriage. The petitioner reports that she and her husband went to parties and church, shopped and visited relatives together, but she does not describe any of these occasions in detail. The petitioner also does not further describe the former couple's courtship, wedding, shared residence and marital experiences, apart from the abuse.

The petitioner's friends also do not provide probative information regarding the petitioner's intent in marrying her husband. Ms. [REDACTED] primarily discusses the abuse and notes that the petitioner would not

heed her friends' advice to leave her abusive husband because she loved him. Ms. [REDACTED] provides no further details. Ms. [REDACTED] states that the former couple "demonstrated passionate affection for each other always" whenever she visited them, but she does not describe any such occasions in detail. Ms. [REDACTED] describes the petitioner and her husband as "a happily married couple" with whom she has socialized, but she provides no further information. Ms. [REDACTED] states that the former couple demonstrated "a strong sense of love and respect for each other," but she describes no occasion where she observed such sentiments.

The remaining, relevant evidence also fails to establish that the petitioner entered into marriage with her husband in good faith. The automobile insurance documents show that the former couple had one joint policy, but one of the insurance cards expired six months after the petitioner states that she and her husband separated. While the credit union account verification letter shows that the petitioner opened a joint account with her husband, the petitioner submitted no evidence apart from the single withdrawal statement that indicates that the account was actually used by both her and her husband. The copies of the credit cards are similarly unsupported by account statements or other evidence that the cards were used by the former couple. The Form 1040 is unsigned and the petitioner submitted no evidence that it was filed with the Internal Revenue Service. The greeting cards written by the petitioner's husband may indicate his feelings for the petitioner, but they do not demonstrate the petitioner's own intentions in entering their marriage. The single Valentine's Day card signed by the petitioner is undated and insufficient to demonstrate the requisite good faith. Finally, the photographs merely show that the petitioner and her husband were pictured together on their wedding day and on one other occasion. The photographs do not demonstrate that the petitioner entered into the marriage in good faith.

In addition, the NOID issued for the Form I-130 petition listed nine notable discrepancies between the answers of the petitioner and her husband at their interview, including when the former couple first met and when they first had intimate relations. While the NOID was properly addressed to the petitioner's husband, the petitioner responded to the NOID. In her response, the petitioner reiterated her original answers. For example, in response to the noted discrepancy between her answer to the question of when she and her husband first had intimate relations, the petitioner merely restated, "I believe it was about two months into the relationship," without acknowledging or explaining her husband's response that they became intimate two days after they met. While the petitioner's good faith in entering the marriage is an independent inquiry under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner's responses during the Form I-130 interview and her response to the NOID, as documented in the record, are relevant to that inquiry and further indicate a lack of good faith in entering the marriage.

The director did not address the evidence relevant to the petitioner's alleged good faith in entering her marriage. 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). As discussed above, the relevant evidence fails to demonstrate that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not demonstrated that she is a person of good moral character and that she entered into marriage with her husband in good faith. 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.