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FILE:

[REDACTED]  
EAC 06 175 51566

Office: VERMONT SERVICE CENTER

Date:

**FEB 27 2009**

IN RE:

Petitioner: [REDACTED]

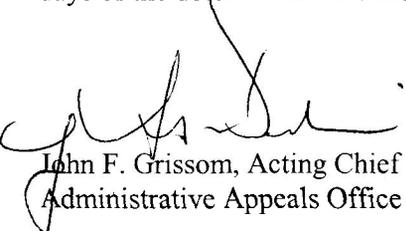
PETITION: Petition for Immigrant Abused Child Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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 under section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that she is a person of good moral character.

On appeal, counsel submits additional evidence.

Section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv), states, in pertinent part:

An alien who is the child of a citizen of the United States . . . and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(e)(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. ...

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iv) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(e)(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. A child who is less than 14 years of age is presumed to be a person of good moral character and is not required to submit affidavits of good moral character, police clearances, criminal background checks, or other evidence of 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 entered the United States (U.S.) on July 28, 2004 as a nonimmigrant visitor (B-2). On March 25, 2005, the petitioner's mother married K-F-<sup>1</sup>, a U.S. citizen, in Pennsylvania. K-F- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which remains pending, as does the petitioner's concurrently filed Form I-485, Application to Adjust Status.

The petitioner was born on December 15, 1991. The petitioner filed this Form I-360 on May 19, 2006 when she was 14 years old. On January 12, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character. In response, the petitioner submitted evidence of her mother's good moral character, but not of her own good moral character. On April 18, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for, *inter alia*, failure to establish good moral character. The petitioner did not submit any relevant evidence in response to the NOID.

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<sup>1</sup> Name withheld to protect individual's identity.

Consequently, the director denied the petition on August 22, 2007. The petitioner, through counsel, timely appealed.

On appeal, counsel claims that the director erred in denying the petition for lack of good moral character because the petitions of the petitioner's younger brother and sister were approved. We concur with the director's determination. Counsel's claim and the evidence submitted on appeal fail to overcome the ground for denial.

*Good Moral Character*

With her Form I-360, the petitioner did not submit any evidence of her good moral character. In the RFE, the director notified the petitioner that to establish her good moral character, she needed to submit her own affidavit supported by police clearances or records, but the director explained that if such documents were not available, the petitioner could submit an explanation to that effect and other, relevant evidence of her good moral character. In response to the RFE, the petitioner submitted criminal background checks for her mother, but no evidence of her own good moral character. In the NOID, the director again apprised the petitioner of the evidence needed to establish her good moral character. The petitioner submitted no relevant evidence in response to the NOID. In her affidavit submitted on appeal, the petitioner does not discuss her moral character. She also does not submit police clearances, state criminal background checks or other evidence of her good moral character as specified in the regulation at 8 C.F.R. § 204.2(e)(2)(v).

On appeal, counsel claims that it was erroneous of the director to deny this petition while approving the petitions of the petitioner's younger brother and sister. Counsel does not acknowledge, however, that the petitioner's younger siblings were under 14 years old when their petitions were filed and were not required to submit evidence of their good moral character pursuant to the regulation at 8 C.F.R. § 204.2(e)(2)(v). The petitioner was 14 years old when this petition was filed and is required to submit evidence of her good moral character pursuant to the regulation at 8 C.F.R. § 204.2(e)(2)(v).

In her affidavit, the petitioner does not attest to her good moral character. She has submitted no police clearances, criminal background checks or an explanation of the unavailability of such records accompanied by other evidence of her good moral character. The petitioner has thus failed to demonstrate that she is a person of good moral character, as required by section 204(a)(1)(A)(iv) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iv) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.