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Office: VERMONT SERVICE CENTER

Date: **JAN 08 2009**

IN RE:

Petitioner: [REDACTED]

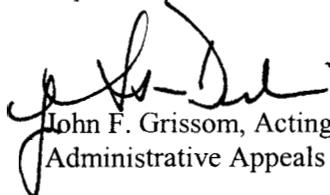
PETITION: **Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)**

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 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 he was a person of good moral character due to his criminal convictions and failure to disclose his arrests and convictions during an interview regarding his Form I-485, Application to Adjust Status.

On appeal, counsel submits a brief and additional evidence.

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.

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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of the Gambia who entered the United States (U.S.) on February 21, 2001 as a nonimmigrant visitor (B-1). On August 30, 2002, the petitioner married I-J-<sup>1</sup>, a U.S. citizen, in New York. On October 21, 2002, I-J- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On January 4, 2006, I-J- withdrew the Form I-130 petition. On January 5, 2006, the New York District Office terminated action on the Form I-130 petition and denied the petitioner's concurrently filed Form I-485 application. On March 26, 2006, I-J- filed a second Form I-130 petition on the petitioner's behalf and the petitioner concurrently filed a second Form I-485 application. Both the second Form I-130 petition and the second Form I-485 application remain pending with the National Benefits Center.

On July 16, 2007, the petitioner filed the instant Form I-360 petition. On March 24, 2008, the director issued a Request for Evidence (RFE) of the petitioner's good moral character. The petitioner, through counsel, timely responded with evidence of his criminal convictions and a letter from an individual attesting to the petitioner's good character. On June 25, 2008, the director denied the petition for lack of good moral character due to the petitioner's convictions and failure to disclose his arrests and convictions at his adjustment of status interview. The petitioner, through counsel, timely appealed. On appeal, counsel contends that the petitioner's convictions do not render him ineligible because they are not crimes involving moral turpitude and 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 offenses and false statements regarding his 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 his good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v).

#### *The Petitioner's Criminal Convictions*

The record documents the petitioner's criminal convictions as follows:

- 1) On November 16, 2001, the petitioner was arrested and charged with trademark counterfeiting in the second degree and failure to disclose origin of recording in the second degree. On November 17, 2001, the petitioner was arraigned on the same charges. On January 22, 2002, the petitioner was convicted upon his guilty plea of disorderly conduct in violation of section

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

240.20 of the New York Penal Law (New York, Bronx County Criminal Court, Case Number [REDACTED]). The petitioner was sentenced to conditional discharge and was released upon his own recognizance.

- 2) On December 21, 2001, the petitioner was arrested and charged with trademark counterfeiting in the second degree and failure to disclose origin of recording in the second degree. On December 22, 2001, the petitioner was arraigned on those two charges and trademark counterfeiting in the third degree. On January 22, 2002, the petitioner was convicted upon his guilty plea of disorderly conduct in violation of section 240.20 of the New York Penal Law (New York, Bronx County Criminal Court, Case Number [REDACTED]). The petitioner was sentenced to 15 days imprisonment or a \$150 fine. The petitioner paid the fine and was released upon his own recognizance.
- 3) On February 19, 2002, the petitioner was arrested and charged with failure to disclose origin of recording in the first degree, trademark counterfeiting in the second degree and general violation of a local law. On February 20, 2002, the petitioner was arraigned on failure to disclose origin of recording in the second degree and general violation of local law. On February 20, 2002, the petitioner was convicted upon his guilty plea of a general violation of local law, specifically, section 20-453 of the New York City Administrative Code, which requires a license for general vendors (New York, Bronx County Criminal Court, Case Number [REDACTED]). The petitioner was sentenced to ten days imprisonment or a \$100 fine. The petitioner paid the fine and was released upon his own recognizance.
- 4) On April 23, 2002, the petitioner was arrested and charged with trademark counterfeiting in the second degree, failure to disclose origin of recording in the first degree and general violation of a local law. On April 24, 2002, the petitioner was arraigned on trademark counterfeiting in the third degree, failure to disclose origin of recording in the second degree and general violation of a local law. On May 31, 2002, the petitioner was convicted upon his guilty plea of two counts of trademark counterfeiting in the third degree in violation of section 165.71 of the New York Penal Law, a Class A misdemeanor (New York, Bronx County Criminal Court, Case Number [REDACTED]). The petitioner was sentenced to conditional discharge upon three days of community service. The petitioner was released upon his own recognizance.

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

On appeal, counsel contends that the petitioner's convictions do not render him ineligible because they occurred five years prior to the filing of this petition and the petitioner is only required to establish his good moral character during the three years preceding filing. Contrary to counsel's assertion, 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).

Even if a three-year limitation applied, in this case, the record shows that the petitioner lacked good moral character within that period and during the pendency of his petition below. The petitioner submitted evidence of his convictions and the record contains a Form I-601, Application for Waiver of Grounds of Inadmissibility, submitted with I-J's first Form I-130 petition and the petitioner's Form I-485 application. On the Form I-601, the petitioner stated that he had been convicted for trademark counterfeiting in violation of section 165.71 of the New York Penal Code. In addition, as will be discussed below, the petitioner made false statements regarding his criminal record on his Forms I-485 and during his adjustment interview on January 17, 2008. The petitioner's own admission and documentation of his criminal convictions combined with his recent false statements provided the director with sufficient reason to further investigate the petitioner's moral character even though the convictions occurred more than three years prior to the filing of his petition.

#### *Analysis of the Petitioner's Crimes as Involving Moral Turpitude*

On appeal, counsel contends that the petitioner's convictions do not render him ineligible because they are not crimes involving moral turpitude. Counsel claims that the petitioner's offenses all lack the "specific intent to do harm." Although we agree that the record does not demonstrate that the petitioner's convictions for disorderly conduct and violating the New York City Administrative Code for vending without a license are crimes involving moral turpitude, the petitioner's trademark counterfeiting offense is a crime involving moral turpitude which, although it falls within the petty offense exception, still indicates that the petitioner lacks good moral character pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii) when considered in concert with his prior convictions and subsequent false statements regarding his criminal record.

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 (8<sup>th</sup> Cir. 1995). The BIA has also explained that "[t]he test to determine if a crime involves moral turpitude is whether the act is accompanied by a vicious motive or a corrupt mind. An evil or malicious intent is said to be the essence of moral turpitude." *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980) (internal citations omitted).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *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 the statute defines a crime “in which turpitude necessarily inheres,” then a conviction under that statute constitutes a crime involving moral turpitude. *Matter of Short*, 20 I&N Dec. at 137. Where the statute includes offenses that both do and do not involve moral turpitude, we must look to the record of conviction to determine whether the crime committed involved moral turpitude. *Id.* at 137-38. The record of conviction includes the indictment or charging documents, plea, verdict and sentence. *Id.*

The petitioner’s conviction for vending without a license lacks the malicious intent requisite to a crime involving moral turpitude. Section 20-453 of the New York City Administrative Code merely bars individuals from acting as general vendors without a license.<sup>2</sup> The law contains no *mens rea* and merely regulates commercial activity. The “violation of statutes which merely license or regulate and impose criminal liability without regard to evil intent do not involve moral turpitude.” *Matter of G-*, 7 I&N Dec. 114, 118 (BIA 1956). Accordingly, the petitioner’s conviction for vending without a license is not a crime involving moral turpitude.

The record is insufficient to determine whether or not the petitioner’s convictions for disorderly conduct are crimes involving moral turpitude. New York law defines disorderly conduct as follows:

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

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<sup>2</sup> This section states:

**License required.** It shall be unlawful for any individual to act as a general vendor without having first obtained a license in accordance with the provisions of this subchapter, except that it shall be lawful for a general vendor who hawks, peddles, sells or offers to sell, at retail, only newspapers, periodicals, books, pamphlets or other similar written matter, but no other items required to be licensed by any other provision of this code, to vend such without obtaining a license therefor.

Disorderly conduct is a violation.

N.Y. Penal Law § 240.20 (McKinney 2002).

This statute is divisible, as it encompasses acts which both do and do not involve moral turpitude. *See Singh v. U.S.D.H.S.*, 526 F.3d 72, 78 (2<sup>nd</sup> Cir. 2008) (statute is divisible if at least one of its subsections is not a crime involving moral turpitude). The record does not contain the charging documents, the petitioner's plea or any other evidence from the record of conviction from which we could determine under what subsection(s) the petitioner was convicted and whether or not his offenses involved moral turpitude. On appeal, counsel claims the petitioner's convictions were simply "related to selling merchandise on the street." However, counsel submits no evidence to support his claim. 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 Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record remains insufficient to determine whether the petitioner's disorderly conduct offenses involved moral turpitude.

The record is sufficient, however, to demonstrate that the petitioner's conviction for trademark counterfeiting in the third degree is a crime involving moral turpitude. New York law defines this crime as follows:

A person is guilty of trademark counterfeiting in the third degree when, with the intent to deceive or defraud some other person or with the intent to evade a lawful restriction on the sale, resale, offering for sale, or distribution of goods, he or she manufactures, distributes, sells, or offers for sale goods which bear a counterfeit trademark, or possesses a trademark knowing it to be counterfeit for the purpose of affixing it to any goods.

Trademark counterfeiting in the third degree is a class A misdemeanor.

N.Y. Penal Law § 165.71 (McKinney 2002).

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. *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. *See Tall v. Mukasey*, 517 F.3d 1115 (9<sup>th</sup> Cir. 2008) (California offense of willfully manufacturing, intentionally selling, or knowingly possessing for sale a counterfeit trademark is a crime involving moral turpitude.). Indeed, the Second Circuit Court of Appeals, within whose jurisdiction this case arose, has found that “deceit and an intent to impair the efficiency and lawful functioning of the government” are sufficient to categorize a crime as involving moral turpitude even though the offense may not contain every element of common law fraud. *Rodriguez v. Gonzales*, 451 F.3d 60, 63-64 (2d Cir. 2006).

In this case, the statute of conviction requires “the intent to deceive or defraud some other person” or the “intent to evade a lawful restriction” by manufacturing, distributing or selling goods “which bear a counterfeit trademark, or possess[ing] a trademark knowing it to be counterfeit.” N.Y. Penal Law § 165.71 (McKinney 2002). Even if the petitioner did not possess the specific intent “to deceive or defraud some other person,” he could not have been convicted under the New York statute without knowledge of the counterfeit trademark and its illegality. Fraud is thus inherent to the offense of trademark counterfeiting in the third degree in New York, a crime involving moral turpitude.

Nonetheless, the petitioner’s conviction for trademark counterfeiting does not constitute a per se bar against a finding of his good moral character under section 101(f) of the Act because it falls within the so-called petty offense exception. Section 212(a)(2)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii), states, in pertinent part:

Clause (i)(I) [designation as an alien convicted of a crime involving moral turpitude] shall not apply to an alien who committed only one crime if –

\* \* \*

(II) the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

New York classifies trademark counterfeiting in the third degree as a class A misdemeanor. Class A misdemeanors are punishable by a term of imprisonment that “shall not exceed one year.” N.Y. Penal Law § 70.15(1) (McKinney’s 2008). The record shows that the petitioner was not sentenced to any term of imprisonment for this offense. Although the petitioner has been convicted of three other criminal offenses, as discussed above, the record does not show that any of his other offenses involved moral turpitude. Consequently, the petitioner falls within the petty offense exception at section

212(a)(2)(A)(ii) of the Act. *Matter of Garcia-Hernandez*, 23 I&N Dec. 590, 594-95 (BIA 2003) (petty offense exception applies even if an alien has been convicted of more than one crime if the other crime(s) do not involve moral turpitude).

While the petitioner's trademark counterfeiting offense may not be a per se bar to a finding of his good moral character under section 101(f)(3) of the Act, that conviction combined with his three other criminal offenses is a significant negative factor in the determination of his moral character as it shows a repeated disrespect for the law perpetuated by his false statements concerning his criminal record.

#### *The Petitioner's False Statements In Connection With His Adjustment Applications*

Apart from the petitioner's convictions, the director found that the petitioner's false statements regarding his arrests and convictions during his adjustment interview further evidenced his lack of good moral character. We agree. The record contains two Form I-485 applications: one signed by the petitioner on October 9, 2002 and submitted with I-J-'s first Form I-130 petition; and the second signed by the petitioner on March 17, 2006 and submitted with I-J-'s second Form I-130 petition. Despite the fact that he had been arrested and convicted of four criminal offenses prior to his submission of both applications, the petitioner marked "No" in response to Part 3, Question 1b on both Forms I-485: "Have you ever, in or outside of the United States . . . been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?" Both applications were signed by the petitioner under penalty of perjury.

The record further shows that on January 17, 2008, the petitioner was interviewed regarding his second adjustment application. Page three of the corresponding Form I-485 contains notations of the interviewing officer, which state, "claimed never arrested 3 separate times." The record also contains notes from the interview in which the officer states, "applicant lied about arrests at interview[,] claimed never arrested." The record does not, however, document that the petitioner was put under oath at the interview. Consequently, his false statements at the interview do not constitute false testimony under section 101(f)(6) of the Act. *Kungys v. United States*, 485 U.S. 759, 780 (1988) (false testimony under section 101(f)(6) of the Act is limited to oral statements made under oath with the subjective intent of obtaining immigration benefits). 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).

While the petitioner's criminal convictions and his false statements on his Form I-485 application and at his January 17, 2008 interview do not fall within any of the enumerated bars to good moral character within section 101(f)(6) of the Act, they still evidence 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 provided false statements on both of his Forms I-485 by failing to acknowledge his arrests and convictions. The petitioner signed both applications in Part 4 “under penalty of perjury” and certified that his applications were “all true and correct.” At the time he signed both applications, the petitioner had been arrested and convicted of four criminal offenses. At his interview regarding his second adjustment application, the petitioner was specifically asked, three times, if he had ever been arrested. The petitioner answered “No” and claimed he had never been arrested. On appeal, the petitioner submits no explanation of his actions or further evidence of his good moral character.

The petitioner’s false statements are unlawful acts that adversely reflect upon his moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner knowingly subscribed as true, false statements that were material to his adjustment applications, thereby violating 18 U.S.C. § 1546(a).<sup>3</sup> On appeal, the petitioner submits no evidence that his false statements were made under extenuating circumstances. The petitioner’s false statements at his adjustment interview in 2008 were made a year and a half after he separated from his spouse. The petitioner submitted no evidence that his false statements on his Forms I-485 were made under duress or otherwise affected by his wife’s abuse. Although the petitioner has established battery or extreme cruelty, he has done so predominately through his wife’s abuse of their children and the record does not indicate any connection between the battery or extreme cruelty of the petitioner’s wife and the petitioner’s false statements on his adjustment applications. To the contrary, the petitioner submitted a Form I-601 waiver application with I-J’s first Form I-130 petition and his first Form I-485 application, on which he acknowledged his conviction for trademark counterfeiting.

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<sup>3</sup> 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[.]

The petitioner's false statements on his adjustment applications and those made to the USCIS officer at his 2008 adjustment interview also evidence 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 statements do not constitute false testimony under section 101(f)(6) of the Act, his actions indicate that he lied in order to obtain the immigration benefit of adjustment of status.

The petitioner is also ineligible for a discretionary determination of his good moral character despite his false statements pursuant to section 204(a)(1)(C) of the Act, which permits such a finding if: 1) the alien's act 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) (2008). Although section 212(i) of the Act provides a waiver of inadmissibility due to fraud or willful misrepresentation of a material fact for self-petitioners (under section 204(a)(1)(A)(iii) of the Act), the petitioner has not established any connection between his false statements and his wife's battery or extreme cruelty. As discussed above, the petitioner has submitted no testimony or documentation of any connection between his actions and his wife's abuse.

*Petitioner Failed to Submit Required Primary Evidence of His Good Moral Character*

On appeal, counsel asserts that since his last conviction, the petitioner "completely rehabilitated" and "has not been involved in any criminal activity during the requisite period of three years." However, the petitioner failed to submit requisite evidence to establish his good moral character and the relevant evidence he did submit fails to demonstrate his complete rehabilitation.

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. Instead, the petitioner submitted certificates of disposition and his New York State Division of Criminal Justice Services record review report. These documents evidence the petitioner's criminal record, which as previously discussed, indicates a lack of good moral character.

The petitioner also submitted a May 23, 2007 letter from the Chief of Police of Fallsburg, New York stating that the petitioner had no criminal arrests in Fallsburg. The petitioner also submitted an April 17, 2008 letter from ██████████, Town Supervisor of Fallsburg who attests that over the past seven years, he has found the petitioner to be "an honest, hard-working individual and . . . an asset to our community." ██████████ also notes that the petitioner has been employed by Wal-Mart for the past five years. While ██████████ attests to the petitioner's residence in Fallsburg since April 2001, the petitioner's Form G-325A, Biographic Information, signed by the petitioner on March 17, 2006, states that the petitioner did not move to Fallsburg until July 2002, two months after his most recent conviction in New York City. On appeal, counsel submits a copy of ██████████'s letter, but no

further evidence of the petitioner's rehabilitation and good moral character. While these letters indicate that the petitioner has peacefully resided in Fallsburg, they do not explain the circumstances of the petitioner's criminal convictions in New York City during the time of his purported residence in Fallsburg. The letters also do not outweigh the evidence regarding the petitioner's four criminal convictions, his false statements on his adjustment applications and his repeated failure to disclose his criminal record at his adjustment interview in 2008.

The record shows that the petitioner has been convicted of four criminal offenses, one of which involves moral turpitude. Although the convictions occurred five years prior to the filing of the instant petition, the petitioner repeatedly lied about his criminal record in 2002, 2006 and most recently in 2008. His false statements evidence a continuing lack of good moral character both prior to, during and after the three years preceding the filing of this petition. The petitioner's criminal offenses and false statements demonstrate his 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 his good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). The petitioner has thus failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act and he is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. His petition must therefore be denied.

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.