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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
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Services



B9

FILE:

EAC 06 139 50287

Office: VERMONT SERVICE CENTER

Date: MAY 01 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 did not establish that she was a person of good moral character and that she was eligible for the bona fide marriage exemption from the bar at section 204(g) of the Act, 8 U.S.C. § 1154(g), to the approval of petitions based on marriages entered into while the alien spouse was in proceedings.

On appeal, counsel submits a brief , additional evidence and copies of documents previously filed.

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:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

* * *

(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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner entered the United States without inspection in 1984 when she was eight years old. After the petitioner's father's application for asylum was denied, the petitioner was placed in deportation proceedings. On August 15, 1989, an immigration judge granted the petitioner voluntary departure until February 15, 1990 with an alternate order of deportation to Iran if she failed to depart the United States by that date. On March 18, 1994, the Board of Immigration Appeals (BIA) dismissed the petitioner's appeal of the immigration judge's decision and on June 18, 1998, the BIA dismissed the petitioner's motion to reopen. The record does not indicate that the petitioner ever left the United States in compliance with the immigration judge's order.

On October 16, 2002, the petitioner married B-M-¹, a U.S. citizen, in Texas. B-M- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which he withdrew on May 31, 2005. On the same day, the Dallas District Office terminated action on the Form I-130 and denied the petitioner's concurrently filed Form I-485, Application to Adjust Status. The petitioner filed the instant Form I-360 on April 3, 2006. On August 29, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character and clear and convincing evidence that she entered

¹ Name withheld to protect individual's identity.

into her marriage in good faith in order to establish her eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), from the bar to approval of immigrant visa petitions based on a marriage contracted while the alien spouse was in proceedings pursuant to section 204(g) of the Act. The petitioner, through counsel, requested additional time to respond to the RFE and submitted further evidence, which the director found insufficient to establish the petitioner's eligibility. On December 5, 2006 and May 3, 2007, the director issued Notices of Intent to Deny (NOID) the petition pursuant to, *inter alia*, section 204(g) of the Act and for failure to establish the petitioner's good moral character. The petitioner, through counsel, responded to the NOIDs with additional evidence. The director denied the petition on March 25, 2008 on the grounds cited in the May 3, 2007 NOID and counsel timely appealed.

On appeal, counsel asserts that section 204(g) of the Act does not apply to the petitioner because her deportation proceedings were not pending at the time of her marriage. Counsel further claims that the petitioner has established her good moral character. Counsel's assertions and the evidence submitted on appeal fail to overcome the grounds for denial. Beyond the director's decision, the petitioner also failed to establish that she was eligible for immediate relative classification based on 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 Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990).

Good-Faith Entry into Marriage

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 December 21, 2005 affidavit²;
- Statements of the petitioner's friends and family;
- Copy of a bill dated April 22, 2004 addressed to the petitioner for an attorney's services in defending her husband in his criminal case;
- Unsigned copies of the joint federal 2002 and 2003 federal income tax returns of the petitioner and her husband;
- February 26, 2004 letter from Bank One confirming that the petitioner and her husband held a joint checking account, which was opened on May 28, 2002; copies of the former couple's

² The petitioner submitted versions of this affidavit with different dates, but all versions of the affidavit have the same content.

signature cards for the account and one account statement dated April 13 through May 12, 2004;

- Bank statements and insurance documents dated after the petitioner stated that she and her husband separated; and
- Photocopies of eight photographs of the petitioner, her husband and other individuals.

In her affidavit, the petitioner stated that she and her brother met her husband at a party given by a mutual acquaintance in December 2000. The petitioner stated that she was attracted to B-M- and that she and her brother became good friends with him. After her former relationship ended, the petitioner recounted that B-M- would often invite her out, that she initially declined, but eventually accepted and bonded with B-M- one evening after which they began dating. The petitioner stated that after a year, they began discussing a long-term relationship. After she and her parents were taken into immigration custody and released, the petitioner recounted that B-M- proposed to her and she accepted. The petitioner explained that soon after their marriage, her husband began to abuse her, but she forgave him and they reconciled. After her husband was arrested at their immigration interview for violating his probation, the petitioner stated that she hired an attorney to represent him and visited him in jail, but soon realized that their relationship was not healthy.

The petitioner's family and friends generally attest to the petitioner's relationship with B-M- and her good faith in marrying him. For example, the petitioner's brother confirms how he and the petitioner met B-M- and describes their friendship as well as the former couple's courtship and marriage. The petitioner's friend, [REDACTED], also describes how the petitioner expressed her love for her husband and reconciled with him after incidents of abuse. The attorney bill, tax returns and bank documents also support the petitioner's claim that she entered the marriage in good faith.

The preponderance of the relevant evidence demonstrates that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director did not make a specific determination regarding the petitioner's eligibility under this criterion. To the extent that the director's decision may be read as making a negative finding under this requirement, that portion of his decision is hereby withdrawn.

Section 204(g) of the Act and the Bona Fide Marriage Exception

The petitioner has not, however, met the higher burden of proof for the bona fide marriage exception to the bar against the approval of petitions based on marriages entered into while the alien spouse is in removal proceedings.

The petitioner married B-M- while her deportation proceedings remained pending. On appeal, counsel asserts that the petitioner's proceedings concluded in 1998, but he is mistaken. Deportation proceedings are not terminated until the deportation order is effectuated by the alien's departure from the United States, the alien is found not to be deportable, the charging document is canceled, an immigration judge or the BIA terminates the proceedings or the alien's petition for review or habeas

corpus is granted by a federal court upon judicial review of the deportation order. 8 C.F.R. § 245.1(c)(8)(ii). None of these actions occurred in the petitioner's case and she is subject to section 204(g) of the Act, 8 U.S.C. § 1154(g), which prescribes:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after her marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation,

exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate good faith entry into the qualifying relationship for a self-petition under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) (2007); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

While the petitioner established her good-faith entry into her marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has not provided clear and convincing evidence that her marriage is bona fide under the heightened standard of proof required by section 245(e)(3) of the Act. The petitioner credibly described how she met her husband and their courtship, but she provided no substantive and detailed description of their wedding, shared residence and experiences, apart from the abuse. The petitioner’s family and friends only generally confirm her marriage and do not discuss, in probative detail, her relationship with her husband and her intentions in marrying him. The other, relevant evidence shows that the petitioner and her husband shared a checking account and that she paid for his criminal defense attorney. However, the petitioner submitted only one bank statement dated before the former couple’s separation and she did not submit evidence that the unsigned copies of the former couple’s 2002 and 2003 federal income tax returns were actually filed with the Internal Revenue Service. The photocopied photographs show that the petitioner and her husband were pictured together on a few, unspecified occasions, but they have little weight in establishing the bona fides of their marriage. While the petitioner submitted other bank and insurance documents, those materials are all dated after she reported separating from her husband and are consequently of no probative value.

The relevant materials fail to provide clear and convincing evidence that the petitioner’s marriage was bona fide and entered into in good faith pursuant to section 245(e)(3) of the Act. Approval of this petition is therefore barred by section 204(g) of the Act.

Eligibility for Immediate Relative Classification

Section 204(a)(1)(A)(iii)(II)(cc) of the Act requires a self-petitioner to demonstrate his or her eligibility

for immediate relative classification based on his or her relationship to the U.S. citizen abuser. The regulation at 8 C.F.R. § 204.2(c)(1)(iv) explicates that such eligibility requires the self-petitioner to comply with, *inter alia*, section 204(g) of the Act. As discussed above, the petitioner has failed to comply with section 204(g) of the Act. She is consequently ineligible for immediate relative classification based on her marriage to B-M- and is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act for this additional reason.

Good Moral Character

Primary evidence of a self-petitioner's good moral character is the self-petitioner's affidavit supported by local police clearances or state-issued criminal background checks for each place where the self-petitioner has resided for at least six months during the three years preceding the filing of the Form I-360. 8 C.F.R. § 204.2(c)(2)(v). Despite the regulation's designation of a three-year period to be covered by the relevant criminal background clearances, the statute does not state a time period during which the self-petitioner must demonstrate his or her good moral character and the regulation does not limit the temporal scope of the agency's inquiry into the petitioner's 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). 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).

In this case, the petitioner did not discuss her moral character in her affidavit. She initially submitted one local police clearance from the Arlington, Texas Police Department based on a search of her maiden and married names. In the RFE, the director requested additional police clearances including a search of all of her aliases and noted that the record showed she had used various forms and spellings of her maiden and married surnames. The director also notified the petitioner that she should submit documentation regarding the dispositions of any arrests. In response, the petitioner submitted two additional clearances from the Arlington Police Department that did not note all of the variants of her surnames. The petitioner also submitted letters from the Alameda County Superior Court of California; the Tarrant County, Texas District Clerk; the Dallas County, Texas Criminal Court; and the Denton, Texas Police Department stating that a search of the petitioner's maiden name only revealed no criminal records.

The record further shows that the petitioner was convicted of two criminal offenses as follows:

- 1) On March 5, 1997, the petitioner entered a plea of nolo contendere to the charge of theft, a Class B Misdemeanor. The Tarrant County, Texas Criminal Court deferred adjudication, placed the petitioner on community supervision for one year and ordered her to pay various fines [REDACTED]. The complaint charged the petitioner with unlawfully appropriating women's clothing valued between \$50 and \$500 with the intent to deprive the owner of the property. The deferred adjudication order states that the judge found the evidence

substantiated the petitioner's guilt. The petitioner submitted the evidence of her theft offense for the first time on appeal, although the director requested the evidence below.

- 2) On October 12, 2004, the petitioner was convicted of driving while intoxicated (DWI) in violation of section 49.04 of the Texas Penal Code, a Class B Misdemeanor, by the Denton County, Texas Criminal Court ([REDACTED]). The petitioner's driver's license was revoked, she was sentenced to 160 days in jail, 15 months of probation, 35 hours of community service and related fines. The petitioner completed her court-ordered DWI education on March 6, 2005.

Neither of the petitioner's offenses fall within any of the enumerated bars to a finding of good moral character at section 101(f) of the Act. A simple DWI without aggravating factors, such as the petitioner's offense, does not involve moral turpitude. *See In Re Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999). Although the petitioner's theft offense is a crime involving moral turpitude, it falls within the so-called petty offense exception at section 212(a)(2)(ii)(II) because the maximum possible penalty for a Class B Misdemeanor in Texas does not exceed imprisonment for one year and the petitioner was sentenced to less than six months of imprisonment.

Nonetheless, the relevant evidence demonstrates 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). First, the petitioner failed to submit requisite primary evidence of her good moral character, her own affidavit. The petitioner submitted various forms of her initial affidavit, none of which address her moral character. The director requested additional evidence of the petitioner's moral character on three occasions (the RFE and two NOIDs). The petitioner was granted an additional opportunity to discuss her moral character on appeal, but she has failed to submit any statement addressing her criminal convictions and her moral character.

Second, although they pose no enumerated bar to a finding of her good moral character under section 101(f) of the Act, the petitioner's criminal convictions still adversely reflect upon her moral character. 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 petitioner has not discussed her convictions and the record does not establish that she committed the offenses under extenuating circumstances.

In addition, the petitioner failed to disclose her 1997 theft offense on her Form I-485 application, which was filed on April 10, 2003. Although the petitioner signed the application under penalty of perjury, she answered “No” in response to Part 3, Question 1(b), “Have you ever . . . been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?” The petitioner’s false statement on her Form I-485 application is an additional 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

The record contains no evidence that the petitioner’s false statement was made under extenuating circumstances. The petitioner has also submitted no evidence that her criminal convictions and false statement on her adjustment application were connected to her husband’s abuse and that she merits a discretionary determination of her good moral character despite her criminal record under section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C).

On appeal, counsel simply asserts that the petitioner’s theft conviction falls within the petty offense exception and that the petitioner did not submit clearances using one version of her married surname, because she never actually used that name. Counsel fails to address why the petitioner did not submit clearances based on checks of all the other variants of her surnames documented in the record as well as any testimony regarding her convictions and her moral character. The preponderance of the relevant evidence shows that the petitioner lacks good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

Section 204(g) of the Act bars approval of this petition because the petitioner was married while her deportation proceedings were pending, she did not leave the United States for two years after her marriage and she did not provide clear and convincing evidence that her marriage was entered into in good faith. The petitioner has also failed to demonstrate that she is eligible for immediate relative classification based on her marriage and that she is a person of good moral character. She is

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[.]

consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the reasons stated above, with each considered 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.