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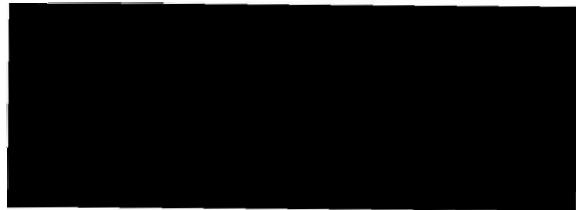
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

BC



MAY 05 2009

FILE: EAC 07 057 50288 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

On appeal, counsel submits a brief, an additional declaration from the petitioner 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:

(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 . . .

* * *

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.

Pertinent Facts and Procedural History

The petitioner entered the United States in 1991 without inspection. On September 23, 1997, the petitioner married J-V-¹, a U.S. citizen, in California. J-V- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on March 25, 2002.² On January 27, 2006, the California Service Center denied the petitioner's application for re-registration of her temporary protected status and served her with a Notice to Appear for removal proceedings. The petitioner remains in proceedings before the Los Angeles Immigration Court and her next hearing is scheduled for July 9, 2009.

The petitioner filed this Form I-360 on December 19, 2006. On December 28, 2006 and March 6, 2008, the director issued Requests for Evidence (RFE) of, *inter alia*, the petitioner's good moral character. The petitioner submitted additional evidence in response to the RFE, which the director found insufficient to establish her good moral character. The director denied the petition on this ground on August 14, 2008 and counsel timely appealed.

On appeal, counsel asserts that the petitioner is not subject to any statutory bar to a finding of her good moral character despite her two criminal convictions. Counsel claims that the petitioner's criminal record arose from her need to support her children while being abused by her husband and should not prevent a finding of her good moral character. Counsel's claim and the additional declaration submitted on appeal fail to overcome the ground for denial.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the former regulation at 8 C.F.R. § 204.2(c)(3)(ii)(2006).

The Petitioner's Criminal Record

The record shows that the petitioner was convicted of the following offenses:

- 1) On June 8, 2004, the petitioner entered a plea of nolo contendere to, and was convicted of, selling goods on the street in violation of section 42.00(b) of the Los Angeles, California Municipal Code (Los Angeles County Superior Court of California [REDACTED]), a misdemeanor offense. The court placed the petitioner on summary probation for one year, sentenced her to 50 hours of community service and ordered the petitioner to pay restitution and

¹ Name withheld to protect individual's identity.

² Receipt number WAC 01 257 53917.

other fines. The petitioner failed to appear for four court hearings. On January 20, 2005, she stipulated to a violation of probation. On February 6, 2007, the petitioner completed her community service. On March 8, 2007, the proceedings were terminated after the court found that the petitioner had failed to pay a \$300 assessment, which the court referred to a collection agency.

- 2) On January 20, 2005, the petitioner entered a plea of nolo contendere to, and was convicted of selling unstamped cigarettes in violation of section 30474 of the California Revenue and Taxation Code, a misdemeanor offense (Los Angeles County Superior Court of California Case [REDACTED]). The court placed the petitioner on summary probation for two years, sentenced her to perform 20 days of community service and ordered her to pay certain fines and restitution. The petitioner failed to appear for three court hearings and on February 6, 2007, she stipulated to a violation of probation. On June 9, 2008, the proceedings were terminated after the petitioner complied with all of the court's orders.

The petitioner was arrested on two other occasions in 2004, but the record shows that no charges were filed in connection with the first arrest and that the second case was dismissed upon motion of the prosecutor.

Good Moral Character

The statutes under which the petitioner was convicted do not involve moral turpitude and the petitioner's offenses do not fall within any of the enumerated provisions of section 101(f) of the Act. However, section 101(f) of the Act states, 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 prescribes that:

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.

The director determined that the petitioner lacked good moral character because she "repeatedly did not attend court hearings" and had her probation revoked. On appeal, the petitioner explains:

In the year 2004, I was a street vendor I worked selling goods in order to financially support myself and my three children. During this time, I was going through a lot of problems with my husband who was trying to forcefully return home. I was not receiving any financial assistance from him and was relying solely on the income I would make as a street vendor and the welfare assistance I was receiving for my children. I felt that if I stopped selling goods, I would not have enough money to pay my rent, utilities, and feed my children. I was arrested because I was selling packets of cigarettes that did not have the proper labeling. . . .

I attended most of my hearings, but not all. I did not attend some hearings because I was scared that I might be detained because [I] did not have the money to pay for the fines and I had not completed all of my [community] service. Because of my immigration status, I had a difficult time finding a job and did not have the money to pay all of my court appointed fines. In addition, I had a difficult time completing [community] service in a timely manner because I had to make arrangements for childcare on the days I would go to [community] service

I have since stopped being a street vendor. . . . While I resorted to selling cigarettes as a street vendor because I needed to make money to support my family, I have since learned that by doing this, I put my family in more jeopardy as I risk being jailed and separated from my children.

The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has held that when an alien's conduct does not fall within any of the enumerated categories within section 101(f) of the Act, that conduct alone cannot support a finding that the alien lacks good moral character. *Torres-Guzman v. I.N.S.*, 804 F.2d 531, 534 (9th Cir. 1986). Rather, a determination of good moral character "requires the fact finder to weigh and balance the favorable and unfavorable facts or factors, reasonably bearing on character, that are presented in evidence." *Id.* Relevant factors may include, but are not limited to, the alien's family background, length of residence in the United States, employment history, financial status, criminal record (if any) and the alien's rehabilitation and expression of remorse for his or her misconduct. *Id.* at 533; *Matter of Sanchez-Linn*, 20 I&N Dec. 362, 367 (BIA 1991). The Board of Immigration Appeals has long held that "good moral character does not mean moral excellence and that it is not destroyed by 'a single lapse.'" *Matter of Sanchez-Linn*, 20 I&N Dec. at 365 (quoting *Matter of B-*, 1 I&N Dec. 611 (BIA 1943)). However, "the greater the gravity of an individual's past misconduct, the longer the period of intervening good conduct must be before an [alien] may be able to satisfactorily meet his burden of establishing that he is now a person of good moral character." *Id.* at 365.

On appeal, counsel cites *Torres-Guzman* in support of her claim that this case presents "several countervailing factors warranting a finding of good moral character." Counsel cites the petitioner's additional declaration submitted on appeal, but does not reference any other evidence of specific, positive factors.

The record supports the petitioner's statements regarding her husband's abuse and her need to support her family during the time of her arrests. The relevant evidence shows that the petitioner's husband was convicted of corporal injury of a spouse and willful cruelty to a child on July 8, 2003 and repeatedly violated his probation in 2004. On November 22, 2004, the petitioner's husband's probation was revoked and he was sentenced to an additional 30 days in jail. In connection with his offenses, the criminal court issued a three-year order of protection on behalf of the petitioner against her husband, which was effective from July 8, 2003 to July 8, 2006. We further note that in 2004, the petitioner's three children were 13, nine and seven years old. The petitioner's two youngest children are U.S. citizens.

However, USCIS records show that the petitioner was granted employment authorization from April 10, 2004 to March 9, 2005. While the petitioner asserts on appeal that she had difficulty finding a job due to her immigration status, she does not explain why she chose to engage in unlawful commerce when she was authorized to work lawfully in the United States at that time. In her declaration, the petitioner does not explain why she continued to sell goods on the street after her first arrest and conviction and she does not express remorse for her crimes. Rather, the petitioner simply states that she sold cigarettes on the street to support her family and that after each arrest, she “was only held for a few hours and then released with a citation to appear in court.”

Apart from her declaration, the petitioner submits no further evidence of her good moral character on appeal. While the petitioner states on appeal that she is now employed at a clinic and supports her family through her work and receipt of “cash aid” and food stamps, she does not submit documentation of her employment and public benefits. In addition, the record shows that the petitioner failed to pay a \$300 court-ordered assessment for her first conviction and that the court referred her debt to a collection agency on March 8, 2007. The petitioner submitted no evidence that she has since paid the assessment.

The petitioner’s two misdemeanor offenses did not involve moral turpitude and do not fall within any of the enumerated bars to good moral character at section 101(f) of the Act. The record supports the petitioner’s explanation that she had to work to support herself and her three young children due to her husband’s abuse, but the petitioner does not explain why she worked illegally when she had employment authorization at the time of her arrests and convictions. While the petitioner has resided in the United States for over 17 years and has two U.S. citizen children, she has not expressed remorse for her crimes, she had not completed probation and complied with all the criminal court’s orders at the time this petition was filed and the record shows that she failed to pay one court-ordered assessment. The petitioner also failed to submit other evidence of her good moral character such as affidavits from responsible persons who can knowledgeably attest to her good character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). Based on the current record, the preponderance of the relevant evidence does not demonstrate that the petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation in effect at the time this petition was filed at 8 C.F.R. § 204.2(c)(3)(ii) (2006)³ required USCIS to provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision was made. Accordingly, the case will be

³ The regulation was amended to remove the specific requirement for a NOID on June 18, 2007. 72 Fed. Reg. 19100, 19107 (Apr. 17, 2007). The amended regulation applies to petitions filed on or after that date. *Id.* at 19104.

remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.