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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

PUBLIC COPY

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Bq

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 27 2009

EAC 05 086 52136

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 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 had a qualifying relationship with his former wife, that she battered or subjected him to extreme cruelty during their marriage and that he was a person of good moral character.

On appeal, counsel submits a brief and additional documents.

Applicable Law

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

> (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens

> **to result in physical or mental injury.** Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.
>
> (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 –
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> * * *
>
> (3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 212(a)(2) [8 U.S.C. § 1182(a)(2)] . . . 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.
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> * * *
>
> (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.
>
> (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 on June 14, 1999 as a nonimmigrant religious worker (R-1). The petitioner subsequently married M-R-[1], a U.S. citizen, in California.[2] The petitioner obtained conditional lawful permanent residency on September 25, 2002 and his Form I-751, Petition to Remove

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[1] Name withheld to protect individual's identity.

[2] The petitioner submitted certification that he married his wife on January 4, 2000 and again on April 27, 2001.

the Conditions on Residence, remains pending. The petitioner's marriage to M-R- was dissolved on January 27, 2003. The petitioner filed this Form I-360 on January 27, 2005. The director subsequently issued a Request for Evidence (RFE) of the petitioner's entry into the marriage in good faith, his residence with his former wife, her battery or extreme cruelty and his good moral character. The petitioner, through counsel, requested and was granted additional time to respond. The petitioner submitted further evidence in response to the RFE, which the director found insufficient to establish his eligibility. The director denied the petition for lack of a qualifying relationship, battery or extreme cruelty and good moral character. The petitioner, through counsel, timely appealed. On appeal, counsel reasserts the petitioner's eligibility and submits additional evidence. Counsel's claims and the evidence submitted on appeal do not overcome the grounds for denial. In addition, the petitioner has not demonstrated that he was eligible for immediate relative classification based on a qualifying relationship with his former wife.

Nonetheless, the petition 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)(2005), in effect at the time this petition was filed.

Battery or Extreme Cruelty

In his initial declaration, the petitioner recounted six incidents of physical abuse. In September 2001, the petitioner stated that when he asked his former wife about the money she was losing gambling, she smashed a ceramic cup on the back of his head, causing him to bleed, lose consciousness and lose control of his bowels. Three days later, the petitioner stated that his former wife's son, [redacted] jumped on and tried to strangle him. The petitioner went to his job, but was unable to work and told his foreman that he had injured himself at a worksite. The petitioner explained that his foreman told him to go to a doctor. The petitioner stated that he saw a doctor who said he could return to work, but he was laid off from his job two weeks later. The petitioner recounted that his former wife became enraged when he told her he had lost his job and she punched him in his ribs until he screamed and she let him go. In December 2001, the petitioner stated that his former wife's daughter punched him and he hit his head as he fell to the floor. In March 2002, the petitioner recounted that [redacted] kicked him in his ribs and threatened to kill him if he reported the incident to the police. Finally, the petitioner stated that another one of his former wife's sons punched him as he was starting his car. The petitioner indicated that his former wife was either complicit in or condoned the abuse by her children.

Apart from the battery, the petitioner asserted that his former wife and her children abused him in other ways. The petitioner explained that he put a lot of time, work and money into helping his former wife's restaurant become profitable and in improving and repairing their home, but she and her family conspired to get him in financial and legal trouble. The petitioner asserted that his wife convinced him to write checks to casinos so she could gamble and that rather than reimbursing him as she promised, she wrote him checks on an account with no money, which caused him to become indebted to the casinos. The petitioner also recounted that his former wife's sons forged his signature on checks, tore up his bank statements and used his credit cards without his knowledge. The petitioner reported that

his former wife's daughter falsely accused him of attacking her and he was arrested. He explained that he pled guilty on the advice of his public defender who told him he would get out of jail sooner. The petitioner also stated that his former wife insulted his masculinity and refused to have intimate relations with him.

The remaining, relevant evidence does not support or is inconsistent with the petitioner's claims. The petitioner submitted two photographs of what he stated was the scar from his former wife breaking a cup on his head. The pictures show a part in the petitioner's hair on the back of his head where his scalp is visible. The petitioner also submitted copies of his California Division of Worker's Compensation Primary Treating Physician's Progress Reports. The first report, dated September 14, 2001, diagnoses the petitioner with "contused chest wall, cervical spasm." The report does not mention any injury to the petitioner's head. The second report, dated September 21, 2001, diagnoses the petitioner with "cerv. strain, contused ribs" and also does not cite any wound on the petitioner's head. The first medical examination was performed just a few days after the petitioner claimed his former wife caused an injury to his head that bled profusely and knocked him unconscious. The fact that the medical reports cite no injury to the petitioner's head greatly detracts from the credibility of the petitioner's testimony regarding this incident.

In response to the RFE, the petitioner also submitted a letter dated August 29, 2005 from a psychologist who confirmed that he evaluated the petitioner on August 15, 2005. stated that the petitioner reported increasing anxiety-related and depressive symptoms over the past few months, which he attributed to his former wife's abuse. diagnosed the petitioner with post-traumatic stress disorder and major depression and stated that the petitioner saw a psychiatrist who prescribed an anti-depressant. While we do not question his expertise, letter is of little probative value as it shows that the petitioner did not seek mental health treatment until after the RFE was issued, just a few days after counsel requested additional time to respond to the RFE and nearly three years after the petitioner reported separating from his former wife. In addition, in the petitioner's second declaration, submitted in response to the RFE, he explained that he sought mental health treatment "because of problems [he] was encountering in a new relationship," not primarily due to his former wife's abuse.

The petitioner also submitted copies of criminal records of the son and daughter of his former wife. The records confirm their illegal conduct, but they do not name the petitioner as a victim of any of the offenses or otherwise indicate that the petitioner was adversely affected by their criminal conduct, or that his former wife condoned or was complicit in their unlawful acts. The petitioner further submitted evidence that four unauthorized charges were made to his credit card, which were deleted from his Experian credit report on March 22, 2003. The documents do not, however, show that the unauthorized charges were made by the petitioner's former wife or her children. The petitioner submitted photocopies of numerous checks written by his former wife to casinos, which support his assertion that she gambled with considerable sums of money. However, the checks were all cashed and do not correspond to the checks cited in the four notices of checks paid against non-sufficient funds addressed to the petitioner and his former wife.

Finally, the testimony of the petitioner's uncle, , is also of little probative value. Mr. affirmed that the petitioner's former wife and her children physically and mentally abused the petitioner, but he does not describe any particular incident of abuse in probative detail. In addition, Mr. stated that the petitioner "was sent to prison because of some checks that were return[ed] by the Casinos, games that they both as husband and wife shared together in several occasions, according to their comments." indicates that both the petitioner and his wife were involved in the gambling that led to the petitioner's arrest for passing bad checks, contrary to the petitioner's claim that it was his wife's gambling that led to his conviction.

On appeal, counsel asserts that the director improperly relied on a minor inconsistency to impeach the petitioner's credibility and that the articles submitted on appeal show that men "tend to keep silent much more so than women when they are abused [and] . . . corroborate the fact that Self-Petitioner's reactions are common among battered men." We agree that the minor inconsistency regarding the date the petitioner began residing with his former wife is immaterial to the petitioner's claim of battery and extreme cruelty. We also acknowledge that survivors of domestic violence, both men and women, may lie to medical personnel and other individuals about the source of their injuries out of shame, in order to prevent retaliation from their abuser, or for other reasons related to the abuse and its effects. In this case, however, the petitioner claimed that his former wife inflicted a serious wound on his head, which is not mentioned in the report of his medical examination conducted just a few days after the purported injury. This discrepancy is material to the petitioner's claim of battery and detracts from his credibility on this issue.

As discussed above, the remaining, relevant evidence does not support or is inconsistent with the petitioner's claims of abuse. The present record does not demonstrate that the petitioner's former wife battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship

The director determined that the petitioner did not establish a qualifying relationship with his former wife because the Form I-360 was filed on the second anniversary of, and not "within two years" of, the dissolution of their marriage. The director interpreted the statute to limit eligibility up to two years from the end date of a self-petitioner's marriage and not inclusive of the date exactly two years later. We read the statutory period to include the latter date.

Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act permits a divorced alien to self-petition based on the former marriage if the alien demonstrates "a connection between the legal termination of the marriage *within the past 2 years* and battering or extreme cruelty by the United States citizen spouse" (emphasis added). The exact scope of this temporal limitation is not defined in the statute or the regulation. However, the plain meaning of the statutory language governs. *See I.N.S. v. Phinpathya*, 464 U.S. 183, 189 (1984) (noting that "the legislative purpose is expressed by the ordinary meaning of

the words used"). The word "within" is commonly defined as: "not beyond in distance, time, degree, range, scope;"[3] "not beyond the quantity, degree, or limitations;"[4] "in the compass or limits of; not beyond; at or to some amount or degree not exceeding."[5] When used in regards to time, "within . . .has been defined variously as meaning any time before; at or before; at the end of; before the expiration of; not beyond; not exceeding; not later than."[6] As evident from these definitions, the word "within" encompasses the outer limit of a temporal period.

Accordingly, section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act prescribes that a divorced alien's self-petition must be filed no longer than two years after the legal termination of the marriage, a period of time which includes the second anniversary of the marriage's termination. The director's determination to the contrary is hereby withdrawn. In this case, the petitioner filed the Form I-360 exactly two years after his marriage to M-R- was dissolved. The petitioner has not, however, established that he had a qualifying relationship with M-R- because he has not demonstrated that their divorce was connected to M-R-'s battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that he had a qualifying relationship with his former wife. He consequently has also failed to establish that he was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Good Moral Character

The director correctly determined that the petitioner lacked good moral character due to his two criminal convictions. On appeal, counsel asserts that the petitioner's convictions were connected to the abuse by his former wife and her children and that prior to his marriage, the petitioner had no problems with the law. Contrary to counsel's claims, the record shows that the petitioner was convicted of two crimes involving moral turpitude, which the petitioner has not shown to be connected to any qualifying abuse and which bar a finding of his good moral character pursuant to section 101(f) of the Act.

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[3] Webster's New World College Dictionary, 2009, retrieved May 15, 2009 from http://www.yourdictionary.com/within.

[4] Merriam-Webster Dictionary (2009), retrieved May 15, 2009 from http://www.meriam-webster.com/dictionary/within.

[5] Random House Dictionary (2009), retrieved May 15, 2009 from http://dictonary.reference.com/browse/within.

[6] Black's Law Dictionary, Seventh Edition (West 2001).

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

1) On August 1, 2002, the petitioner was convicted of assault with force likely to produce great bodily injury, in violation of section 245(a)(1) of the California Penal Code[7]:

> Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

Cal. Penal Code Ann. § 245(a)(1) (West 2002).

The petitioner was convicted of a misdemeanor offense[8] and sentenced to three years of probation, 45 days in a sheriff work project and ordered to pay fines and have no contact with the victim. The record does not indicate whether or not the petitioner successfully completed his probation and paid the court-ordered fines.

2) On September 10, 2002, the petitioner was convicted of drawing and passing a check without sufficient funds with intent to defraud in violation of section 205.130 of the Nevada Revised Statutes:[9]

> Except as otherwise provided in this subsection and subsections 2 and 3, a person who willfully, with an intent to defraud, draws or passes a check or draft to obtain:
>
> (a) Money;
>
> . . .
>
> Drawn upon any real or fictitious person, bank, firm, partnership, corporation or depositary, when the person has insufficient money, property or credit with the drawee of the instrument to pay it in full upon its presentation, is guilty of a misdemeanor. . . . In addition to any other penalty, the court shall order the person to pay restitution.

Nev. Rev. Stat. Ann. § 205.130 (West 2002).

The petitioner was sentenced to 180 days of detention, which was suspended upon the petitioner's payment of restitution and fees. The petitioner paid the restitution and fees in full on March 24, 2003.

Both of the petitioner's offenses involved moral turpitude. The term "crime involving moral turpitude" is not defined in the Act or the regulations, but has been part of the immigration laws

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[7] Superior Court of California, Sacramento County, [redacted].

[8] The director mistakenly concluded that the petitioner was convicted of a felony. Although the petitioner was charged with a felony, he was convicted of a misdemeanor.

[9] Justice Court of Reno Township, Washoe County, Nevada, Case number RCR 2001-005780.

since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude "refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Matter of Franklin*, 20 I&N Dec 867,868 (BIA 1994), *aff'd*, 72 F.3d 571 (8th Cir. 1995). A crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Id.* at 696; *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999); *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If there is no realistic probability that the statute of conviction would be applied to conduct that does not involve moral turpitude, then convictions under the statute may categorically be treated as crimes involving moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. at 697. Such a realistic probability exists when there is an actual case in which the criminal statute was applied to conduct that did not involve moral turpitude. *Id.* Where the alien bears the burden of proof to establish eligibility for the benefit sought, the alien also bears the burden of showing that the criminal statute has been applied to conduct that did not involve moral turpitude. *Id.* at 703 n.4.

Offenses involving fraud have long been held to involve moral turpitude. *Jordan v. De George*, 341 U.S. 223, 232 (1951). *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."). The petitioner was convicted of passing a bad check under a statute which requires that the reprehensible conduct be done both willfully and with the intent to defraud. Consequently, passing a bad check under section 205.130 of the Nevada Revised Statutes is categorically a crime involving moral turpitude. *See Matter of Silva-Trevino*, 24 I&N Dec. at 689 n.1, 706; *Matter of Louissaint*, 24 I&N Dec. 754, 758-59 (BIA 2009) (applying the analytical framework of *Matter of Silva-Trevino* to find that a state offense categorically involves moral turpitude).

Nonetheless, the petitioner's bad check offense falls within the so-called petty offense exception from classification as a crime involving moral turpitude at section 212(a)(2)(A)(ii)(II) of the Act because the maximum term of imprisonment for a misdemeanor in Nevada cannot exceed six months. Nev. Rev. Stat. Ann. § 193.150(1) (West 2002). While the petitioner's assault conviction was secured under a "wobbler" statute which might otherwise fall within the petty offense exception, the exception does not apply when an alien, such as the petitioner, has been convicted of two or more crimes involving moral turpitude. *Matter of Jurado*, 24 I&N Dec. 29, 34-35 (BIA 2007).

Assault with force likely to produce great bodily injury under section 245(a)(1) of the California Penal Code also categorically involves moral turpitude. The elements of the offense include both the "reprehensible conduct" of assault with force likely to produce great bodily injury and knowledge that great bodily injury may result from the force used. Accordingly, there is no "realistic probability" that

section 245(a)(1) of the California Penal Code would be applied to conduct that did not involve moral turpitude. *See Matter of Silva-Trevino*, 24 I&N Dec. at 689 n.1, 706; *Matter of Louissaint*, 24 I&N Dec. at 758-59. *See also Gonzales v. Barber*, 207 F.2d 398, 400 (9th Cir. 1953) (assault with a deadly weapon under section 245(a)(1) of the California Penal Code is a crime involving moral turpitude); *Matter of G-R-*, 2 I&N Dec. 733 (A.G. 1947) (same).

On appeal, counsel contends that the petitioner's assault conviction is connected to his former wife's abuse and does not bar a finding of his good moral character. The record does not support counsel's claim. A self-petitioner may be found to have good moral character despite an act or conviction that would otherwise bar such a finding under section 101(f) of the Act if: 1) the alien's act or conviction is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) U.S. Citizenship and Immigration Services (USCIS) determines that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). Although inadmissibility due to a conviction for a crime involving moral turpitude is waivable for self-petitioners under section 212(h)(1)(C) of the Act, the petitioner has not demonstrated a connection between his conviction and his former wife's battery or extreme cruelty.

As discussed in the preceding section, the petitioner has not established the requisite battery or extreme cruelty. Even if the petitioner had met that requirement, the present record still does not show a connection between the alleged abuse and the petitioner's assault conviction. In his first declaration, the petitioner stated that his former wife and her daughter [redacted] **falsely told the police that he had attacked** [redacted] **The petitioner recounted that he fled from** [redacted] during an argument at their home when she threatened to get him deported. When he told his former wife of the incident, the petitioner reported that she said she already knew and it was not her fault. When the petitioner was later arrested, he stated that his former wife told the police officer that he was violent and [redacted] told the officer that the petitioner had attacked her. The petitioner reported that he could see his former wife and her daughter gesturing "as if congratulating each other."

The criminal complaint to which the petitioner pled nolo contendere states that the petitioner willfully assaulted [redacted] by means of force likely to produce great bodily injury. The petitioner explained that he followed his public defender's advice to enter a plea bargain so that he could get out of jail sooner, but he does not submit the underlying police report or other evidence to support his assertion that his conviction was based on the false statements of his former wife and her daughter. The petitioner submitted [redacted] criminal records, which show that she has been convicted of two stolen car offenses and one drug crime. Her convictions were three years prior to, and two and three years after, the petitioner's assault conviction and her criminal records do not indicate that the petitioner was a victim or otherwise adversely affected by any of her offenses. In sum, the relevant evidence fails to demonstrate a connection between the petitioner's assault conviction and his former wife's battery or extreme cruelty. Accordingly, the petitioner is not eligible to be found to have good moral character despite his assault conviction pursuant to section 204(a)(1)(C) of the Act.

The petitioner was convicted of two crimes involving moral turpitude. Although one of the petitioner's convictions falls within the petty offense exception, his assault conviction does not and consequently bars a finding of his good moral character pursuant to section 101(f)(3) of the Act.

Unlawful Acts that Adversely Reflect Upon the Petitioner's Moral Character

Even if the petitioner's convictions did not fall within any of the enumerated provisions of section 101(f) of the Act, the record still shows that he lacks good moral character. 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.

In his declaration, the petitioner asserted that both of his convictions were caused by his former wife's abuse. As discussed in the preceding section, the petitioner has not demonstrated a connection between his assault conviction and his former wife's abuse. In addition, the petitioner did not submit evidence that he successfully completed probation and complied with all the other court orders for his assault offense.

The record also does not support the petitioner's assertion that his conviction for passing a bad check was caused by his former wife's abuse. As previously discussed, the photocopied checks written by the petitioner's former wife to casinos show that she gambled with considerable sums of money. However, the checks were all cashed and do not correspond to the checks cited in the four notices of checks paid against non-sufficient funds addressed to the petitioner and his former wife. In addition, the petitioner's uncle, [redacted] indicated that both the petitioner and his former wife were involved in the gambling that led to the petitioner's conviction, contrary to the petitioner's claim that it was solely his former wife's gambling that caused his conviction.

The petitioner submitted recommendation letters from his employer and apartment manager who discuss his kind, trustworthy and hard working nature, but do not acknowledge the petitioner's criminal convictions or discuss his subsequent rehabilitation in any probative detail.

The record shows that the petitioner was convicted of passing a check with insufficient funds and the intent to defraud and of assault upon his former wife's daughter with force likely to produce great bodily injury. The petitioner has not demonstrated that either of his offenses were caused by or connected to his former wife's abuse and he did not submit evidence that he successfully completed probation and complied with all of the other court orders for his assault conviction. While the petitioner fully complied with the court orders for his bad check offense and submitted letters from

two individuals who briefly attested to his good character, the record lacks any other evidence of the petitioner's rehabilitation. Accordingly, the petitioner was convicted of unlawful acts which adversely reflect upon his moral character, which further prevents a finding that the petitioner is a person 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).

Conclusion

The present record fails to demonstrate that the petitioner had a qualifying relationship with his former wife, that he was eligible for immediate relative classification based on such a relationship, that he was battered or subjected to extreme cruelty by his former wife during their marriage and that he is a person of good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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 of the director's decision 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.[10] Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his 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.

[10] The former regulation at 8 C.F.R. § 204.2(c)(3)(ii) 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.