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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

B4.

[Redacted]

FILE: [Redacted]
EAC 08 092 50113

Office: VERMONT SERVICE CENTER

Date: **AUG 18 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office. If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(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, finding that the petitioner failed to establish that he is a person of good moral character.

The petitioner, through counsel, submits a timely appeal.

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 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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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.

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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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 native and citizen of Nigeria who was admitted to the United States on February 9, 1986, as a B-2 nonimmigrant visitor. The petitioner was served with an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, on November 19, 1991, by the Officer-in-Charge, Charlotte, North Carolina, of legacy Immigration and Naturalization Service (INS), now U.S. Citizenship and Immigration Services (USCIS). On June 12, 1992, the petitioner's deportation case was

administratively closed. On January 11, 2003, the petitioner married C-T-¹ a United States citizen, in Tallahassee, Florida.² On October 29, 2004, C-T- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. On May 25, 2005, the Form I-485 was administratively closed pursuant to 8 C.F.R. § 245.2(a)(1), because of the petitioner's pending Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, issued on November 19, 1991. On February 2, 2007, the Form I-130 was denied because the petitioner and C-T- failed to appear for the requested interview. On June 9, 2008, the petitioner and C-T- were divorced by order of the Senior Judge in the Superior Court, Gwinnett Judicial Circuit, in Gwinnett County, Georgia.³

The petitioner filed the instant Form I-360 on February 6, 2008. The director issued a Request for Evidence (RFE) on March 31, 2009 and again on August 5, 2009 of, *inter alia*, the requisite qualifying relationship, joint residency, good-faith entry into the marriage, battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The petitioner, through counsel, responded by submitting additional evidence. The director issued a Notice of Intent to Deny (NOID) the petition on October 30, 2009, that notified the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish, *inter alia*, that he is a person of good moral character. Specifically, the director requested the following: (1) criminal history fingerprint clearances from the States of Georgia and Florida; (2) a list of all the petitioner's residences from 2000 to the February 6, 2008 filing date of the petition, and police reports for all of the petitioner's arrests during this same time period; (3) original, official statements by any law enforcement officer for any arrests or detentions from which no charges were filed; (4) an original or court-certified copy of the complete arrest and/or disposition for all arrests, detentions, and/or charges by any law enforcement officer for any reason; (5) an original or court-certified copy of the sentencing record stemming from the conviction or placement in an alternative sentencing program or rehabilitative program; and (6) additional evidence of good moral character, including criminal history clearances or records from each place the petitioner resided for at least six months during the three-year period before the petition's February 6, 2008 filing, and/or affidavits. The petitioner, through counsel, responded to the NOID on December 2, 2009 with additional evidence, including a criminal record search dated November 30, 2009, from the State of North Carolina, an affidavit from the petitioner, and a letter from counsel, stating, in part, that: "[The] [p]etitioner's only crimes involving moral turpitude (CIMTs) were based on bad checks for which he received 5 years probation in 1995." Counsel also stated that the petitioner's requests for a nationwide police clearance report from the FBI and for court-certified dispositions in connection with criminal offenses listed in the Criminal Record Search for Mecklenburg County, North Carolina, were still pending. After considering the evidence in the record, including the

¹ Name withheld to protect individual's identity.

² It is noted that the petitioner previously married a U.S. citizen, a marriage which ended in divorce on April 8, 2002; the related Form I-130, Petition for Alien Relative, filed on the petitioner's behalf remains pending, and the related Form I-485, Application to Adjust Status, was denied on December 14, 1995, due to the petitioner's pending Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, issued on November 19, 1991.

³ File Number 07-A-07092-3.

evidence submitted in response to the NOID, the director denied the petition on December 31, 2009. On appeal, counsel states, in part, that the petitioner submits the national FBI fingerprint criminal history clearance to comprehensively address the director's request in his October 30, 2009 NOID. Counsel also states that the petitioner submits another personal affidavit and statement, and affidavits from seven individuals attesting to the petitioner's good moral character. Counsel also submits a copy of the previously submitted criminal history clearance report from the State of Georgia.

As will be discussed, the AAO concurs with the finding of the director that the petitioner failed to establish that he is a person of good moral character.

Good Moral Character

The record contains an FBI Identification Record, dated February 9, 2010, for the petitioner, reflecting his name as: [REDACTED] and his date of birth as: [REDACTED]. This FBI record also contains 35 alias names for the petitioner, four different birth dates, and three different social security numbers. The record also contains a criminal record search dated November 30, 2009, from the State of North Carolina, Mecklenburg County, and a criminal history "name search only" record check dated June 18, 2009, from the Chamblee Police Department in Chamblee, Georgia. The record, however, does not contain the requested court-certified copies of the complete arrest records and/or dispositions for each arrest and/or detention of the petitioner. The record contains the following evidence of criminal offenses committed by the petitioner:

1. On January 6, 1989, in the Guilford County District Court in Greensboro, NC, the petitioner, using the name of [REDACTED], pled guilty to the charge of Soliciting to Obtain Property By False Pretense, and received a suspended sentence of four years, confinement of six months, court costs of \$40.00, and restitution of \$500.00;
2. On September 24, 1991, the petitioner, using the name of [REDACTED], was charged with Social Security Fraud, and the court sentenced the petitioner to five months confinement, three years supervised release, restitution of \$4,858.00, and SA fees of \$200.00. On November 7, 2004, US Probation Charlotte (NC060017G) placed the petitioner under supervised release status;
3. On April 3, 1995, in the Forsyth County Superior Court in Winston-Salem, North Carolina, the petitioner, using the name of [REDACTED], was found guilty of eight counts of Obtaining Property By False Pretense, was convicted of eight felonies and sentenced to ten years confinement, five years probation, a fine of \$500.00, court costs of \$132.00, and restitution of \$2,521.60;
4. On September 28, 1994, the petitioner, using the name of [REDACTED] was "charged with False Representation of Social Security Number, and the court sentenced the petitioner to five months plus a three-year supervised release term;
5. On August 30, 1999, in the Mecklenburg County District Court in Charlotte, North Carolina, the petitioner, using the name of [REDACTED] pled guilty to the charge of DWI – Level 2, in violation of North Carolina Statute 20-138.1(A), and sentenced to jail confinement of 12 months with special reporting conditions, probation of 24 months, a fine of

- \$250.00, and court costs of \$86.00;
6. On December 9, 1999, in the Mecklenburg County, North Carolina, District Court in Charlotte, the petitioner, using the name of [REDACTED], pled guilty to the charge of DWI – Level 2, in violation of North Carolina Statute 20-138.1(A), and sentenced to jail confinement of 6 months with special reporting and community service conditions, probation of 18 months, a fine of \$200.00, court costs of \$86.00; and 90 days to complete community service;
 7. The petitioner, using the name of [REDACTED] was found guilty of Driving While License Revoked (DWLR), offense date – February 9, 2000, and fined \$130.00 and sentenced to 12 months of unsupervised probation (*see November 30, 2009 criminal record search from the State of North Carolina, Mecklenburg County*);
 8. The petitioner, using the name of [REDACTED] was charged with DWLR, offense date – March 6, 2000, and fined \$90.00, with the disposition: Prayer for Judgment (*see November 30, 2009 criminal record search from the State of North Carolina, Mecklenburg County*); and
 9. On November 15, 2002, the petitioner, using the name of [REDACTED], pled guilty to the DWLR charge. The disposition and verdict are reflected as: Trial by Judge, and Prayer for Judgment, respectively.

The AAO acknowledges counsel's November 30, 2009 response to the director's NOID, in which he states: "[The] [p]etitioner's only crimes involving moral turpitude (CIMTs) were based on bad checks for which he received 5 years probation in 1995. . . . [The] [p]etitioner, although he has some traffic related convictions, he has absolutely no further CIMTs and clearly has been a person of good moral character since that time and clearly for the last three years as required by the regulations for this particular case."

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). The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a self-petitioner's good moral character includes local police clearances or state-issued criminal background checks from each place where the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Yet the regulation's designation of the three-year period preceding the filing of the petition does not limit the temporal scope of USCIS's 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).

The regulation at 8 C.F.R. § 204.2(c)(1)(vii) directs that 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. Section 101(f) of the Act 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. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

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 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 (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).

Article 19 on *False Pretenses and Cheats* of the North Carolina General Statutes § 14-100. *Obtaining property by false pretenses*, states, in pertinent part:

(a) If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony . . .

In this matter, counsel acknowledges that the petitioner’s eight felony convictions for Obtaining

Property By False Pretense in the State of North Carolina in 1995, were for crimes of moral turpitude. Counsel contends, however, that the petitioner has been a person of good moral character since his convictions and thus his petition should be approved.

As discussed above, the petitioner has eight felony convictions for Obtaining Property by False Pretense in the State of North Carolina in 1995, for which he was sentenced to ten years confinement. The record sufficiently establishes that the petitioner's eight felony convictions in 1995 were for crimes of moral turpitude.

Section 204(a)(1)(C) of the Act grants USCIS the discretion to find a petitioner to be a person of good moral character if: 1) the petitioner's conviction for a crime involving moral turpitude is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) the conviction was connected to the alien's battery or subjection to extreme cruelty by his or her U.S. citizen or lawful permanent resident spouse. The record does not establish that the petitioner's convictions were connected to the claimed battery or extreme cruelty. The petitioner's convictions occurred prior to the claimed abuse, which the petitioner claims began "[s]ix months into the [2003] marriage." Accordingly, section 204(a)(1)(C) of the Act is inapplicable to the petitioner's convictions for crimes involving moral turpitude.

In this matter, the record reflects that the petitioner has been convicted of at least eight crimes involving moral turpitude which prohibit a finding of the petitioner's good moral character under section 101(f)(3) of the Act.

Finally, even if the petitioner's convictions did not require an automatic finding of a lack of good moral character and the AAO were able to waive his crimes involving moral turpitude pursuant to section 204(a)(1)(C) of the Act, the petitioner's claim to good moral character pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), would still be deficient. Section 101(f) of the Act indicates that even if the petitioner is not in any of the classes listed, the AAO is not precluded from finding the petitioner lacks good moral character. Similarly, section 204.2(c)(1)(vii) states, 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.

In this case, the petitioner has an extensive criminal history, which involves possessing several alias names, four different birth dates, three different social security numbers, in addition to numerous arrests related to false pretense, social security fraud, and traffic violations. In addition to his eight felony convictions, the petitioner has been convicted twice for driving while intoxicated and three times for driving without a license. The petitioner was also convicted of Soliciting to Obtain Property by False Pretense on January 6, 1989, in North Carolina, for which he received a suspended sentence of four years and confinement of six months, and he was additionally sentenced to five months confinement in connection with his September 24, 1991 and September 28, 1994 convictions

for Social Security Fraud in North Carolina. The AAO acknowledges the petitioner's submission of affidavits from the petitioner and his acquaintances attesting to his good moral character. The AAO also acknowledges the petitioner's claim that he has changed the way he lives, gives his time and resources to the service of humanity, is active in his church, and is the owner of a business that employs several U.S. citizens. The petitioner, however, has not sufficiently demonstrated his rehabilitation or reform of character. For example, in the psychological evaluation dated April 21, 2007, [REDACTED] reported that the petitioner "reported no history of legal problems with the exception of two DUI's in his 20's." which demonstrates deception on the part of the petitioner. In addition, although the petitioner asserts on appeal that he has "cleaned [up his] act," including speaking at the graduation ceremony of the 2006 Orphans Class in Dekalb County, Georgia, he also mentions that he was arrested for public intoxication in Cherokee County, Georgia in 2007, for which he was sentenced to six months probation. It is also noted that despite the petitioner's admission to his arrest in Cherokee County, Georgia, the criminal history report dated June 18, 2009, from the Chamblee, Georgia Police Department, which the petitioner has resubmitted on appeal, reflects "No Record." This report is based on a "name search only" of [REDACTED] [REDACTED] which does not account for the petitioner's additional 35 aliases.

In sum, the petitioner has not established his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. Under section 101(f)(3) of the Act, the petitioner is statutorily barred from establishing that he is a person of good moral character because of his conviction of at least eight crimes involving moral turpitude. The AAO also finds that, as a matter of discretion exercised under section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii), the petitioner has not established that he is a person of good moral character because of his extensive criminal record.

The petitioner has not demonstrated 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.

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

ORDER: The appeal is dismissed.