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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

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: **AUG 31 2010**

IN RE: Petitioner:

PETITION: Petition for Immigrant Battered 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:

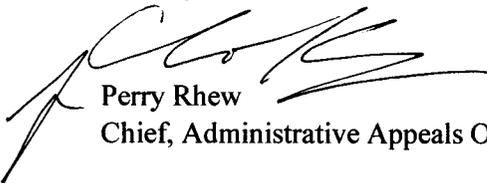
SELF-REPRESENTED

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. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision of the AAO will be withdrawn and the petition will be approved.

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 on June 25, 2008, determining that the petitioner had not established that he is a person of good moral character due to his past criminal convictions and failure to disclose his arrests and convictions during an interview regarding his Form I-485, Application to Adjust Status. The AAO concurred with the director's ultimate decision, finding: that the petitioner had been convicted of four criminal offenses, one of which involved moral turpitude; that although the convictions occurred five years prior to the filing of the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, the petitioner had lied about his criminal record in 2002, 2006, and in 2008; that his false statements evidenced a continuing lack of good moral character; and that the petitioner failed to submit primary evidence of his good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). The AAO concluded that the petitioner had failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act and was consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." On motion, the petitioner submits a personal affidavit and a number of affidavits and statements from friends, family, and school and local government officials attesting to his good moral character. Accordingly, the AAO shall grant the motion and enter a new decision into the record.

On motion, the petitioner submits a personal affidavit in which he declares, in pertinent part, that he failed to disclose his arrests at the immigration interview because he did not understand what the immigration officer was asking as he did not understand English well at that time. The petitioner explains that his convictions were related to his sale of fake compact discs because he did not have employment authorization, but had to support his family. The petitioner expresses remorse and apologizes for his actions. The petitioner also submits an Order of the Family Court of the State of New York, County of Sullivan awarding the petitioner custody of his two United States citizen children. The petitioner asserts that the court would not have granted custody if the court did not believe he is a person of good moral character. The petitioner submits several letters and affidavits from knowledgeable individuals attesting to his good character as a father, neighbor, and friend. The supporting statements include letters from the manager of the Sullivan County, New York Head Start Program and the Head Teacher at the Children's Center for Sullivan County Family Court who both attest to the petitioner's excellent care for his children and his demonstrated responsibility and dedication to his children as their sole custodial parent. The petitioner asserts that these letters and affidavits demonstrate that he is a person of good standing in the community in which he resides.

Upon review of the full record, the AAO observes that although the petitioner checked the wrong box on his Form I-485s indicating that he did not have any arrests or convictions, the petitioner acknowledged that he needed a waiver to adjust status by filing a Form I-601 on October 1, 2002. The AAO recognizes that in this matter, the information the petitioner supplied to United States Citizenship and Immigration Services (USCIS) regarding his arrests and convictions was inconsistent. However, as the AAO previously determined, only one of the petitioner's convictions involved moral turpitude and that crime is subject to the petty offense exception and was committed more than five years prior to the filing of the petition. Considering the complete record, the petitioner's statement on motion, and the affidavits, statements and additional evidence submitted on motion, the AAO withdraws its previous decision regarding the petitioner's failure to establish he is a person of good moral character.

On motion, the petitioner has established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The petitioner has overcome the sole ground for the denial of the petition and has met his burden of proof to establish his eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Accordingly, the prior decisions of the director and the AAO will be withdrawn and the petition will be approved.

**ORDER:** The June 25, 2008 decision of the director and the January 8, 2009 decision of the AAO are withdrawn and the petition is approved.