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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9



FILE:  Office: VERMONT SERVICE CENTER

FILED: FEB 07 2011

IN RE: Petitioner: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 \$630. 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous AAO decision to deny the petition will be affirmed. The petition remains denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her United States citizen spouse.

On motion to reopen, the petitioner submits her statement and other documentation.

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 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 also explained 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 explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China. She entered the United States on May 8, 2001 as a B-2 visitor. On July 11, 2005, the petitioner married C-C-¹, the claimed abusive United States citizen spouse. On July 31, 2005, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, which was denied on or about July 27, 2006. The petitioner filed a Form I-485, Application to

¹ Name withheld to protect the individual's identity.

Register Permanent Residence or Adjust Status, also on July 31, 2005 which was denied on August 10, 2006. On April 21, 2008, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

The record includes the petitioner's following criminal history:

The petitioner's October 23, 2001 arrest for prostitution in violation of [REDACTED] public law 230.00 and the disposition of the arrest on June 27, 2002 with the petitioner's plea of guilty and the imposition of a fine of \$100 and a conditional discharge;

The petitioner's August 24, 2005 arrest for prostitution in violation of [REDACTED] public law 230.00 and the disposition of the arrest on November 14, 2005 with the petitioner's plea of guilty of violation of [REDACTED] public law 240.20, disorderly conduct, and the imposition of a conditional discharge and five days of community service; and

The petitioner's June 21, 2007 arrest for prostitution in violation of [REDACTED] law 230.00 and the disposition of the arrest on September 17, 2007 upon the petitioner's plea of guilty of violation of [REDACTED] law 240.20, disorderly conduct, and the imposition of a conditional discharge and five days of community service.

The director issued a Notice of Intent to Deny (NOID) the petition on August 3, 2009. The petitioner, through her counsel, responded to the NOID. On December 16, 2009, upon review of the record including the petitioner's response to the NOID, the director determined that the petitioner had not met the good moral character criterion for this petition type based upon her arrest and conviction for prostitution on October 23, 2001 under the law of the State of New York.

On September 8, 2010, the AAO withdrew the director's determination that the petitioner's conviction for prostitution rendered her inadmissible under section 212(a)(2)(D) of the Act, citing *Matter of T*, 6 I&N Dec. 474, 477 (BIA 1955). However, the AAO dismissed the appeal determining that the petitioner had not: submitted probative evidence demonstrating that her offenses were committed under extenuating circumstances; provided evidence to show that she had been rehabilitated and to support counsel's assertion that she is employed; or provided any support letters from responsible individuals knowledgeably attesting to her good moral character.

Good Moral Character

On motion, the petitioner provides a personal statement in which she declares: she has filed a motion to vacate her prostitution conviction based on the fact that she was misled by the interpreter and her attorney; her language barrier placed her at a disadvantage in the job market but she has been trying to live a decent life by selling computers and doing other odd jobs; she has never applied for any welfare programs; she has turned to God for mental rehabilitation and has attended churches for about two years; and she believes God has transformed her into a new person.

The petitioner also submits statements from other individuals as follows:

- A September 29, 2010 affidavit signed [REDACTED] who declares that: he shared a residential property with the petitioner in 2004 and with her husband in 2005; in 2005, the petitioner found a purse with money inside and waited until the owner returned to look for the purse to give it back and refused to accept a reward for the return; the petitioner is sympathetic to other abused women and helped them look for apartments in the neighborhood; and the petitioner has been attending church activities and has been helping his company promote computer sales.
- A September 20, 2010 affidavit signed by [REDACTED] who declares that: she has known the petitioner since 2005; the petitioner helps others clean the snow off the sidewalk; the petitioner gave donations to the victims of Hurricane Katrina and to homeless people; the petitioner has attended several different churches the past few years; and although the petitioner was arrested for working without a license, she had been trying to live a decent life by selling computers and doing odd jobs.
- A September 29, 2010 letter signed by [REDACTED] on September 30, 2010 who declares that: he owns a protective service and the petitioner had worked with him volunteering her translation skills and helping him serve the community.
- An October 4, 2010 signed by [REDACTED] who state that the petitioner has attended their Sunday Worship Service since September 26, 2010 and their wish that the petitioner would continue her attendance.
- A June 16, 2009 letter, notarized on June 17, 2009 and signed [REDACTED] who indicates that the petitioner is working full time as a sales representative with this company.

The record on motion also includes a copy of the petitioner's Notice of Motion to Vacate Judgment of the petitioner's criminal conviction for prostitution. Counsel also provides a December 6, 2010 letter indicating that the petitioner's motion to vacate the judgment is pending with the Criminal Court of The [REDACTED] as well as a copy of the petitioner's baptism certificate dated November 7, 2010 and photocopies of photographs of the petitioner's baptism ceremony.

After considering the information submitted on motion, the AAO acknowledges that the petitioner has provided support letters from individuals attesting to her good moral character and a letter indicating that as of June 16, 2009 she began working as a sales representative. These letters do not explain the circumstances of the petitioner's criminal acts or otherwise address in probative detail the petitioner's criminal acts and the petitioner's claimed rehabilitation. The letter from the pastors of the [REDACTED] is written one week after the petitioner began her attendance at the church and thus is of little probative value. The petitioner's baptism

certificate is not submitted timely, as it was submitted two months after the filing of the motion.² The petitioner does not provide a statement accepting responsibility for her past criminal acts and fails to offer evidence of her remorse at participating in illegal acts. The petitioner has not submitted probative evidence demonstrating that her offenses were committed under extenuating circumstances. The record remains insufficient to establish that the petitioner is a person of good moral character. As previously determined the petitioner's conduct evidences a lack of good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act prescribes, in pertinent part: "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further provides, in pertinent part:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character . . . although the acts do not require an automatic finding of lack of good moral character.

The petitioner has failed to produce evidence establishing extenuating circumstances regarding the unlawful acts she committed and has failed to persuade that her claimed rehabilitation is heartfelt rather than as a response to adverse decisions regarding her immigration status. The record does not establish that petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met, and the previous decision of the AAO will be affirmed.

ORDER: The September 8, 2010 decision of the AAO is affirmed. The petition remains denied.

² Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R §§ 103.5(a)(2) and (3).