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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

[redacted]

39

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 10 2011

IN RE: [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 $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 service center director 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 on the basis of his determination that the petitioner had failed to establish that she is a person of good moral character and the petitioner, through counsel, filed a timely appeal. On appeal, counsel submits two letters reasserting the petitioner's eligibility, and a fingerprint check from the Federal Bureau of Investigation (FBI).

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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

> 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

> (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

> *Evidence for a spousal self-petition –*
>
> (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.

As noted, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) states, in pertinent part, 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, 8 U.S.C. § 1101(f), states, in pertinent part, the following:

> (f) For the purposes of this Act --

> 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 212(a)(2). . . .
>
> * * *
>
> 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. . . .

Pertinent Facts and Procedural History

The petitioner, a citizen of Ghana, married M-A-, a citizen of the United States, on November 24, 2006. She filed the instant Form I-360 on October 27, 2009. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including counsel's responses to his requests for additional evidence, the director denied the petition on June 7, 2010.

The sole issue before the AAO on appeal is whether the petitioner has established that she is a person of good moral character. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

Good Moral Character

As evidence of her good moral character, the petitioner submitted, *inter alia*, a January 6, 2010 submission from the State of New Jersey Office of the Attorney General, Department of Law and Public Safety, Division of State Police. The cover letter to this submission stated that a search of the Master Fingerprint File of the New Jersey State Police's Identification and Information Technology Section revealed a criminal history for the petitioner.

The cover letter provided the petitioner's name as stated on the Form I-360, and provided her date of birth as March 27, 1987, which was the date of birth stated on the Form I-360. However, the January 5, 2010 document entitled "New Jersey Criminal History Detailed Record" (the criminal history record), which was attached to the cover letter, provided a different name and date of birth. The criminal history record, which we note was the result of a search of the petitioner's fingerprints, provided the petitioner's name as [redacted] and a date of birth as December 28, 1978 both of which, as indicated, differ from the information she provided on the Form I-360. The record states

that was convicted of theft on March 24, 2005 and convicted of theft of movable property on April 15, 2005. Moreover, the criminal history revealed that the petitioner had used December 28, 1977 as a date of birth in conjunction with the name The criminal history record also stated that the petitioner had used three other aliases: (1) , born on December 28, 1977; (2) , born on December 28, 1977; and (3) also born on December 28, 1977.

The petitioner also submitted a December 9, 2009 criminal background check issued by the Pennsylvania State Police, Criminal Records and Identification Division. According to this document, the petitioner has no criminal record in the State of Pennsylvania. However, as noted by the director in his decision, this document did not indicate that it had taken into account any of the aliases used by the petitioner; the search was performed using only the name provided by the petitioner on the Form I-360.

The director denied the petition on June 7, 2010, finding that because the Pennsylvania background check had not taken into account any of the aliases used by the petitioner, she had failed to establish that she is a person of good moral character.

In his July 12, 2010 letter submitted on appeal, counsel states that although the petitioner admits to having been convicted of theft under her alias , she denies having used the other three aliases listed on the New Jersey criminal history record. He also submits a letter from the FBI, dated August 18, 2010, which states that the petitioner has no arrest record.

Counsel's assertions on appeal fail to overcome the director's ground for denial. With regard to the petitioner's alias of which counsel states the petitioner admits to having used, the petitioner submits no evidence that the Pennsylvania State Police, Criminal Records and Identification Division searched its records for this name before issuing its clearance: first, the field following the header "Maiden Name and/or Alias" was left blank; and second, the document indicates that it was issued based upon the name provided by the petitioner alone and that fingerprint records were not searched. As fingerprint records were not searched, a search of the criminal history of the petitioner's use of this name could not have been performed unless she provided that name, and she did not. As such, the criminal background check submitted by the petitioner regarding her residence in the State of Pennsylvania is deficient.[1] For this reason alone, the petitioner has not established that she is a person of good moral character and the petition may not be approved.

We also agree with the director's determination that because the criminal background check submitted by the petitioner regarding her residence in the State of Pennsylvania fails to take into account her aliases of , and she has failed to establish that she is a person of good moral character. As noted previously, counsel states on appeal that the

[1] We note that the director specifically notified the petitioner in his February 9, 2010 request for additional evidence that if a police clearance was researched by name only (i.e., not by a fingerprint check), she must supply the law enforcement agency with any aliases she had used.

petitioner denies having ever used those names as aliases. However, the criminal history record issued by the State of New Jersey explicitly states that the petitioner has used those aliases, and the mere assertion that this document is incorrect is insufficient to rebut it. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nor does the FBI letter establish that the petitioner is a person of good moral character. Although this letter states that the petitioner has no record of arrests, that statement conflicts with both the New Jersey criminal history record and the petitioner's own admission of her felony theft conviction. Nor does this letter reference any of the aliases utilized by the petitioner.

In his February 9, 2010 request for additional evidence, the director notified the petitioner that if she had been arrested or charged with any crime, she was to submit: (1) copies of the arrest report(s); (2) copies of court documents showing final dispositions of the charge(s); and (3) relevant excerpts of law showing the maximum possible penalty for each charge. However, the petitioner did not submit any of these items. The record shows that the petitioner has two criminal convictions for theft from 2005, over a year before she states that she met her abusive spouse. Theft is a crime involving moral turpitude. *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2007). Convictions for such crimes are described at section 212(a)(2)(A)(i)(I) of the Act. Accordingly, the petitioner lacks good moral character pursuant to section 101(f)(3) of the Act.

For all of these reasons, we agree with the director's determination that the petitioner failed to establish that she is a person of good moral character.

Conclusion

On appeal, the petitioner has failed to overcome the director's ground for denial and has not established that she is a person of good moral character. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and her petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.