

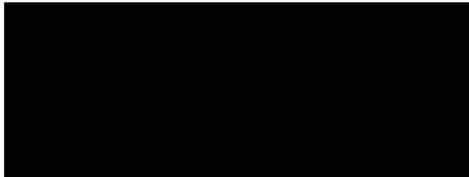
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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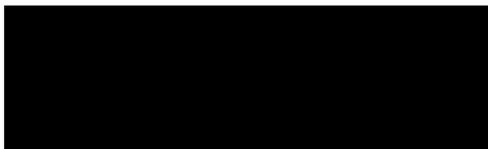
DATE: **JUL 18 2011** Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Self-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 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 for failure to establish a qualifying relationship, corresponding eligibility for immediate relative classification, battery or extreme cruelty, good-faith entry into the marriage, joint residence and good moral character. On appeal, counsel submits a brief and additional evidence.

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, the following:

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

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part, that:

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) . . . of section 212(a)(2) [regarding people who have committed a crime involving moral turpitude]. . . .

* * *

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 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:

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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. 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.

* * *

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner, a citizen of Mexico, married a citizen of the United States on February 10, 2001. They divorced on May 29, 2007. The petitioner filed the instant Form I-360 on August 1, 2008. The director subsequently issued a request for additional evidence (RFE), to which the petitioner, through counsel, responded with additional evidence. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition and counsel timely appealed.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A review of the entire record fails to demonstrate the petitioner's eligibility. Counsel has not overcome the grounds for denial and the appeal will be dismissed for the following reasons.

Good-Faith Entry into Marriage

In her initial declaration, dated July 22, 2008, the petitioner stated that she married her former husband in February 2001, but did not discuss how they met, their courtship, wedding or any of their shared experiences, apart from the abuse. In response to the director's RFE, the petitioner submitted a second declaration, dated May 25, 2010, in which she stated that she met her former husband at her mother's workplace, they began having lunch together a few times a week and quickly became romantically involved. The petitioner recounted that after dating for six months, they were married and they resided together in her mother's home. The petitioner did not describe their wedding, their marital residence or any of their shared experiences, apart from the abuse.

The petitioner submitted copies of bills individually addressed to her former husband and the record also contains copies of her federal income tax returns for 2002 through 2007, filed as "head of household." In her 2010 declaration, the petitioner explained her lack of joint documentation with her former husband. She stated that her former husband was not fiscally responsible, frequently asked her for money and did not financially support her and her children. She further explained that she refused to let her former husband claim her children as his dependents on his tax returns because he was not supporting them. The petitioner also recounted that when she finally left her former husband, he kept all of their photographs.

Although the petitioner credibly explained her lack of joint documentation with her former husband, she has not provided a probative and detailed account of their relationship sufficient to demonstrate her good faith in entering their marriage. The petitioner did not discuss, for example, her decision

to marry her former husband, their wedding, shared residence or any of their shared experiences, apart from the abuse. The petitioner also did not submit affidavits from other individuals with personal knowledge of her relationship with her former husband. *See* 8 C.F.R. § 204.2(c)(2)(vii) (listing such testimony and affidavits as evidence of good faith at the time of marriage).

On appeal, counsel asserts that the director erroneously discredited the petitioner's testimony due to a perceived inconsistency between her two statements regarding where she and her former husband lived after their marriage. We agree that there is no significant discrepancy between the petitioner's first statement that she "mov[ed] in with him" and her second statement that "[w]e moved in together" to her mother's home. Nonetheless, counsel fails to overcome the deficiencies in the record regarding the petitioner's entry into the marriage in good faith. As evidence of the requisite good faith, counsel cites unspecified evidence submitted with the petitioner's former husband's Form I-130, Petition for Alien Relative, filed on her behalf. However, the record of proceeding for the Form I-130 within the petitioner's administrative file contains only the former couple's Forms G-325A, Biographical Information, and copies of their marriage certificate, her former husband's naturalization certificate and their birth certificates. While those documents attest to their spousal relationship and her former husband's citizenship, they do not provide any evidence of the petitioner's intent in entering the marriage.

The relevant evidence fails to demonstrate that the petitioner entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The petitioner has also failed to overcome the director's determination that she did not reside with her former husband. On the Form I-360, the petitioner stated that she lived with her former husband from February 2001 until June 2003 and that their last joint residence was on [REDACTED] in Pacoima, California. The record contains copies of bills dated between July and November 2001 and addressed to the petitioner's former husband individually at the [REDACTED] residence, but the only document listing this address for the petitioner during that year is her Form G-325A dated March 30, 2001.

While the petitioner credibly explained her lack of joint documentation with her husband, she failed to provide probative testimony regarding their shared residence sufficient to establish her claim. In her first declaration, the petitioner stated that they began living together after their marriage, but she did not state their address or otherwise discuss their marital residence. In her second declaration, the petitioner stated that after their marriage, she and her former husband lived together in her mother's home, but she again failed to state their address or provide any further information regarding their shared residence. Contrary to counsel's assertion on appeal, the petitioner's brief statements and the bills addressed to her former husband individually are insufficient to establish that she resided with him, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In her first declaration, the petitioner recounted that her former husband began to abuse her and her children soon after their marriage. She stated that her former husband refused to give her any money for their household expenses and insisted that she loan him money that he never repaid. The petitioner explained that her former husband grabbed and shook her and her children when he was annoyed with them and that he would verbally abuse her children in front of her. In June 2001, the petitioner recounted that she was frightened that her former husband was going to hurt her or her children and she called the police, but they did not arrest her former husband. Instead, the police referred her to a child protective agency where she and her children received counseling. After this incident, the petitioner stated that she began to believe her former husband's threats to withdraw her immigrant petition and get her and her children deported and she never called the police again. The petitioner also recounted that she was hospitalized twice during the marriage due to stress.

In her second declaration, the petitioner described incidents when her former husband made her engage in certain sexual acts against her will while insulting her and questioning her fidelity. The petitioner explained that she became unable to handle her children due to the abuse and her resultant stress and depression and that one day she hit one of her children. The petitioner explained that her children were taken away and it was when she was placed in therapy that she realized she was being abused by her former husband. The petitioner recounted that she then began to stand up for herself against her former husband, but his violence increased.

The petitioner recounted that in 2005 she was sued due to her involvement in an automobile accident. She stated that her former husband filed for divorce in 2006 because he did not want to be responsible for, or help her with, any financial liability she would accrue as a result of the accident. According to the petitioner, her former husband prepared all the divorce paperwork and just told her where to sign the documents and she later realized that he had ensured that she would not be able to claim any spousal support from him.

The record contains numerous documents relevant to, but inconsistent with the petitioner's statements. A July 3, 2001 letter from the [REDACTED] addressed to the Department of Children and Family Services (DCFS) verified that the petitioner was enrolled in the Center's Anger Management Program on June 20, 2001 and had attended two of 26 required parenting classes. The record contains no evidence that the petitioner successfully completed the program. The record also lacks any explanation of why the petitioner was enrolled in an anger management program as a result of an incident which she described as arising from her former husband's abuse, not her own actions. In addition, although the petitioner stated that she was twice hospitalized due to the stress of her abusive marriage, she submits only a single billing statement from [REDACTED] Hospital, which states that the petitioner was discharged on February 12, 2002, but provides no information regarding her medical condition and treatment. The petitioner submitted no record of a second hospitalization.

The petitioner submitted other documents indicating that she and her children received counseling in 2004 and 2005. A February 8, 2005 "Progress Letter" from [REDACTED] addressed to DCFS, verified that the petitioner began individual therapy on October 1, 2004, attended 14 sessions, had

excellent attendance, and was working to prevent her children from harming each other and satisfying their needs. The letter noted that the petitioner wished to continue her psychological treatment because she recognized both that she needed help and had already been helped in raising her family. A February 6, 2009 letter from [REDACTED] verified that the petitioner and her four children received mental health services from November 4, 2004 to March 16, 2005. The letters contain no information regarding why the petitioner and her children received counseling and they do not mention the petitioner's former husband or any domestic violence. The letters are also inconsistent with the petitioner's testimony in these proceedings. In her first statement, the petitioner explained that she and her children received counseling after the June 2001 incident, but she did not discuss any treatment they received in 2004 or 2005 related to her former husband's abuse. In addition, the petitioner stated on her Form I-360 that she ceased residing with her former husband in June 2003.

The record contains two "Investigator Contact" letters addressed to the petitioner from the Los Angeles Police Department. The June 10, 2003 letter requests the petitioner to contact the police detective concerning a crime report that she completed. The September 2, 2003 letter requests her to contact the police detective "to discuss the report that was made by [REDACTED]" [REDACTED] is the surname of the petitioner's youngest child and the child's father. The record indicates that the petitioner's former husband (not [REDACTED]) was arrested for spousal injury, but that prosecution of the offense was deferred on October 29, 2003. This evidence is inconsistent with the petitioner's assertion in her first declaration that she never called the police again after the June 2001 incident. In her second declaration, the petitioner did not discuss any contact with the police.

The director determined that the petitioner had not submitted "corroborating evidence to support [her] claims." The director also determined that the petitioner's testimony was inconsistent because she did not discuss the sexual abuse in her first declaration and because of the perceived discrepancy in her statements regarding where the former couple lived together after their marriage (discussed in the preceding section). The director concluded that the petitioner's declarations were consequently "insufficiently reliable to show that [her] claims are credible."

This portion of the director's decision will be withdrawn. The director mistakenly indicated that corroborative evidence is required to establish battery or extreme cruelty. The regulations do not require a self-petitioner to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). In addition, the fact that the petitioner discussed sexual abuse in her second declaration, but not her first, does not render her testimony inconsistent. In the RFE, the director explicitly requested the petitioner to submit further, specific and detailed statements describing the abuse.

The record does not, however, support counsel's claim on appeal that "there were no material inconsistencies" in the petitioner's statements and "[e]ven if there were minor inconsistencies in the affidavits, there was ample external evidence of all of the Petitioner's claims." As previously discussed, the petitioner's account of the abuse, her contact with the police, and the reasons why she and her children received therapy are inconsistent with the other, relevant evidence. The petitioner stated that she contacted the police on only one occasion during her marriage in June 2001, but the record shows that she contacted the police again in June 2003. The petitioner recounted that she

and her children received counseling as a result of the June 2001 incident, but the record shows only that she was enrolled in an anger management program as a result of that incident. Although the record shows that the petitioner and her children received mental health treatment in 2004 and 2005, the relevant documents and the petitioner's declarations fail to explain any connection between that treatment and her former husband's abuse. Consequently, the preponderance of the evidence does not establish that the petitioner's former husband subjected her or her children to battery or extreme cruelty during the marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has not established the requisite battery or extreme cruelty, she has also failed to establish a qualifying relationship with her former husband based on a connection between such abuse and their divorce, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Without establishing a qualifying relationship with her former husband, the petitioner is unable to demonstrate her eligibility for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The Petitioner's Criminal Conviction Bars a Finding of Her Good Moral Character

The record shows that in August 2005, the petitioner was driving a car with her mother and two minor nieces when she was involved in an accident. The petitioner's mother and nieces were injured. As a result of the accident, charges were filed against the petitioner and on November 8, 2005, she was convicted of driving without a license, in violation of California Vehicle Code (CVC) § 12500(a), and willful harm or injury to a child in violation of California Penal Code (CPC) § 273a(a).¹ For driving without a license, the petitioner was sentenced to 81 days of imprisonment. For willful harm or injury to a child, the petitioner was sentenced to 365 days of imprisonment, three years of probation, and was ordered to pay restitution and attend parenting classes.

The director determined that the petitioner's conviction for willful harm or injury to a child was a crime involving moral turpitude, which barred a finding that the petitioner had good moral character under section 101(f)(3) of the Act. The director also concluded that the petitioner did not establish a connection between her conviction and her former husband's abuse or that she merited a favorable exercise of discretion to find her to be a person of good moral character despite her conviction. On appeal, counsel asserts that the petitioner was not convicted of a crime involving moral turpitude and that she is not barred from establishing her good moral character because the California child injury statute is divisible.

Counsel's claim on appeal fails to overcome the director's determinations. Although the California statute is divisible, the record in this case shows that the petitioner was convicted under the provisions involving moral turpitude. The term "crime involving moral turpitude" is not defined in the Act or in the regulations, but has been part of the immigration laws of the United States 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). Moral turpitude "refers generally to conduct which is

¹ California Superior Court, Los Angeles County, Case [REDACTED]

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. *See Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 186 (2007) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)); *Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009); *Matter of Silva-Trevino*, 24 I&N Dec. at 696. In evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability” that the statute would be applied to conduct that does not involve moral turpitude. *Matter of Silva-Trevino*, 24 I&N at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). If so, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” *Id.* at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry by reviewing the record of conviction to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 690, 698-699. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

In this case, the petitioner was convicted under the following section of California’s child injury statute:

Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six years.

Cal. Penal Code § 273a(a) (West 2005).

This statute is divisible because it encompasses a range of conduct from child endangerment due to criminal negligence and willful injury to a child. *See e.g., People v. Sanders*, 10 Cal. App. 4th 1268, 1274 (5th Dist. 1992) (child endangerment requires only criminal negligence, not an intent to harm). Counsel is correct that because the statute is divisible, it does not categorically involve moral turpitude.

Counsel is mistaken, however, in assuming that the inquiry stops there. If a statute is divisible, we examine the record of conviction to determine whether the section under which the petitioner was convicted involves moral turpitude. *See Hernandez-Cruz v. Holder*, No. 08-73805, 2011 WL 2652461, at *8-11 (9th Cir. July 8, 2011) (affirming the modified categorical approach to determining whether or not a crime involves moral turpitude); *Matter of Silva-Trevino*, 24 I&N at

690. In this case, the record of conviction shows that the petitioner was convicted of the following count of the criminal complaint:

On or about August 24, 2005, in the County of Los Angeles, the crime of CHILD ABUSE, in violation of PENAL CODE SECTION 273a(a), a Felony, was committed by [the petitioner], who did willfully and unlawfully, under circumstances likely to produce great bodily harm and death, injure, cause, and permit a child, ERIKA A., to suffer and to be inflicted with unjustifiable physical pain and mental suffering, and, having the care and custody of said child, injure, cause, and permit the person and health of said child to be injured and did willfully cause and permit said child to be placed in such situation that his/her person and health was/were endangered.

In addition to child endangerment, the petitioner was convicted of willfully causing injury and unjustifiable physical pain and mental suffering to a child under her care and custody. This form of child abuse involves moral turpitude. *See Hernandez-Perez v. Holder*, 569 F.3d 345, 348 (8th Cir. 2009) (child endangerment resulting in injury was a crime involving moral turpitude because the statute required the conscious disregard of a substantial risk to a child in the perpetrator's care). Accordingly, section 101(f)(3) bars a finding of the petitioner's good moral character.²

The Petitioner Lacks Good Moral Character for Other Reasons

In addition to her conviction, the record indicates that the petitioner lacks good moral character because: her conviction reflects adversely upon her moral character and she did not establish any extenuating circumstances; her behavior fell below the standards of the average citizen; and she failed to submit primary evidence of her good moral character. *See* 8 C.F.R. § 204.2(c)(1)(vii) (prescribing these additional grounds for finding a lack of good moral character).

Primary evidence of a self-petitioner's good moral character is his or her own affidavit. 8 C.F.R. § 204.2(c)(2)(v). In her first declaration, the petitioner did not discuss her moral character. In her second declaration, the petitioner briefly mentioned that she was involved in an automobile accident in 2005, but she did not discuss her actions, resultant conviction, or otherwise discuss her moral character. Without such explanation, the record lacks the requisite primary evidence of good moral character.

The record contains four letters praising the petitioner's character. In his August 25, 2006 letter, the petitioner's eldest son stated that the petitioner is a very good mom who helps him with everything. In her August 17, 2006 letter, the petitioner's sister-in-law explained that her daughter was injured during the 2005 accident, but that she believed the accident was not the petitioner's fault. She noted that she had known the petitioner for six years and attested to the petitioner's honesty and good conduct. The petitioner's friend, [REDACTED], in her August 12, 2006 letter, stated that she had known the petitioner for five years and described her as an understanding parent and a kind,

² Because the petitioner has not demonstrated her former husband's battery or extreme cruelty, she also has not established any connection between her conviction and his abuse such that would permit a discretionary finding of good moral character despite her conviction pursuant to section 204(a)(1)(C) of the Act.

sympathetic and generous person. [REDACTED] noted that the petitioner had helped other individuals in her community obtain employment and that one of the petitioner's children was an excellent student. In his August 21, 2006 letter, the petitioner's probation officer, [REDACTED], confirmed that the petitioner had complied with all the terms and conditions of her probation to date.

Despite these positive affirmations, the relevant evidence indicates that the petitioner's conduct resulting in her conviction fell below the standards of the average citizen. The record contains a police report and a probation officer's report regarding the automobile accident that led to the petitioner's conviction. These reports state that when the accident occurred the petitioner was driving the car with her two nieces in the back seat. The petitioner's younger niece, who was one year old at the time, was sitting in a booster seat improper for her age and weight under the relevant section of the California Vehicle Code. The petitioner's older niece, who was five years old at the time, was not sitting in a booster seat as required by the relevant section of the California Vehicle Code. Both of the petitioner's nieces were seriously injured during the accident and hospitalized.

On appeal, counsel asserts that there is no basis "that would render [the petitioner] ineligible to prove good moral character," but he does not acknowledge the petitioner's failure to address her moral character in her declarations and the resultant lack of this requisite primary evidence. Counsel also does not address the relevant evidence regarding the petitioner's actions leading to her conviction. In addition, the record fails to explain why the petitioner was enrolled in an anger management program in 2001 or establish any extenuating circumstances surrounding her 2005 offense. The letters from the petitioner's family, friend and probation officer do not outweigh the evidence indicating that the petitioner's conduct adversely reflects upon her moral character and fell below the standards of the average citizen. Accordingly, even apart from her conviction, the record shows that the petitioner lacks good moral character for other reasons. See section 101(f) of the Act, 8 U.S.C. § 1101(f); 8 C.F.R. § 204.2(c)(1)(vii).

Conclusion

On appeal, the petitioner has failed to overcome the grounds for denial. She has not established that she had a qualifying relationship with her former husband, was eligible for immediate relative classification on the basis of such a relationship, entered into marriage with her former husband in good faith and resided with him, that her former husband subjected her or any of her children to battery or extreme cruelty during their marriage, and that she is a person of good moral character. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met this burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.