

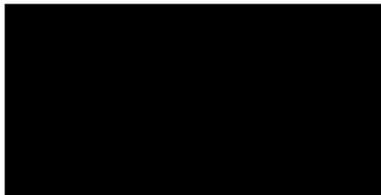
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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DATE: JUL 21 2011 Office: VERMONT SERVICE CENTER

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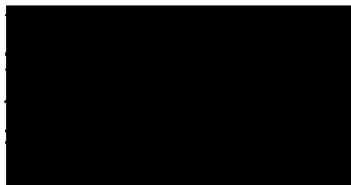


IN RE: Petitioner:



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 to reconsider will be granted. The motion to reopen will be denied. The previous AAO decisions will be affirmed. The petition will remain 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 this second motion, the petitioner submits a statement and her previously submitted affidavit.

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 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 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."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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-C¹, 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 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 New York 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 New York public law 230.00 and the disposition of the arrest on November 14, 2005 with the petitioner's plea of guilty of violation of New York 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 New York public law 230.00 and the disposition of the arrest on September 17, 2007 upon the petitioner's plea of guilty of violation of New York public 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.

¹ Name withheld to protect the individual's identity.

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.

On the petitioner's first motion, a motion to reopen, the petitioner submitted a personal statement, affidavits from other individuals, a copy of the petitioner's Notice of Motion to Vacate Judgment of the petitioner's criminal conviction for prostitution, a December 6, 2010 letter indicating that the petitioner's motion to vacate the judgment is pending with the Criminal Court of The City of New York in Queens County, and a copy of the petitioner's baptism certificate dated November 7, 2010. Upon review, the AAO determined that the petitioner had failed to produce evidence establishing extenuating circumstances regarding the unlawful acts she had committed and had failed to demonstrate that her claimed rehabilitation was heartfelt rather than as a response to adverse decisions regarding her immigration status.

Good Moral Character

Upon review of the motion to reopen, the petitioner has not submitted any new relevant and probative facts for consideration. The director and the AAO considered the petitioner's initial affidavit providing her explanation of the claimed circumstances surrounding her convictions and found that her explanation did not include adequate probative testimony credibly explaining the actual circumstances of her arrest and subsequent plea. The record on motion does not include any further information or evidence that overcomes the AAO's prior decisions.

The petitioner's reference to *Matter of Sanchez-Linn*, 20 I&N Dec. 362 (BIA 1991) and *Torres-Guzman v. INS*, 804 F.2d 531 (9th Cir. 1986) does not establish that the AAO's prior decisions were based on an incorrect application of law or United States Citizenship and Immigration Services (USCIS) policy based on the evidence of record at the time of the initial decision. Neither matter addresses an alien's failure to submit probative evidence demonstrating that the offenses committed were committed under extenuating circumstances or that the alien expressed remorse and accepted responsibility for her illegal acts. In this matter, the petitioner has not provided a probative account of her arrests and has not accepted responsibility for her past illegal conduct. Although the petitioner states that she was wrongly involved with illegal conduct and was punished, she does not further acknowledge or accept responsibility for her violations of New York law. 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 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 decisions of the AAO will be affirmed.

ORDER: The September 8, 2010 decision and the February 7, 2011 decision of the AAO are affirmed. The petition remains denied.