

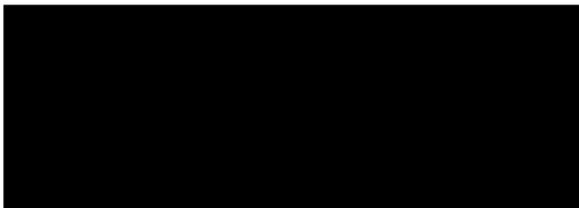
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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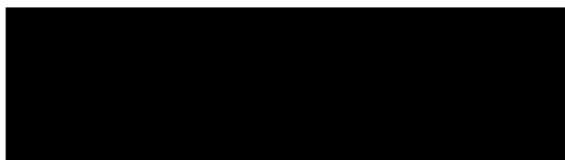


IN RE: Petitioner:



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)

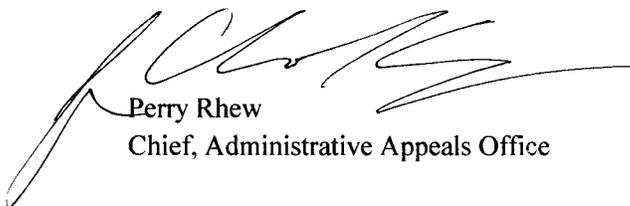
ON BEHALF OF PETITIONER:



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.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. Upon review of the record, the AAO issued a request for evidence (RFE) prior to adjudicating the appeal to afford the petitioner one additional opportunity to cure deficiencies of record. The appeal will be sustained. The petition will be approved.

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 a United States citizen.

The director denied the petition, after determining that the petitioner had not established that she had a qualifying relationship with a United States citizen and that she was a person of good moral character.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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 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.

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

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 paragraphs (2)(D), (6)(E), and (10)(A) of sections 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) [8 U.S.C. § 1182(a)(2)] . . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

* * *

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. . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A) of the Act, includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

Section 212(a)(2)(D) of the Act describes in pertinent part:

Any alien who –

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status . . .

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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Russia. She entered the United States on December 16, 2003 on a P-1 visa. The petitioner married [REDACTED]¹ the abusive United States citizen, on April 6, 2004. A Decree of Divorce terminating the marriage was issued on January 3, 2008 by a District Judge in Clark County, Nevada. The Decree of Divorce was filed on January 7, 2008 in Clark County, Nevada. On January 6, 2010, the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. Upon review of the record, including the petitioner's responses to requests for evidence (RFE) issued by the director, the director denied the petition for lack of the petitioner's qualifying relationship with a United States citizen and because the petitioner had not established that she is a person of good moral character. The petitioner, through counsel, timely appealed. On appeal, counsel reasserts the petitioner's eligibility and submits additional evidence. Upon review of the record, the AAO issued an RFE on the issue of the petitioner's good moral character. The petitioner provided her response. The record is considered complete.

Qualifying Relationship

¹ Name withheld to protect the individual's identity.

The director determined that the petitioner did not establish a qualifying relationship with her former husband because the Form I-360 was not filed “within two years” of the dissolution of their marriage. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act permits a divorced alien to self-petition based on the former marriage 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” (emphasis added). The director found that the petitioner had not filed the Form I-360 within two years of the dissolution of the marriage, as the District Judge issued the decree terminating the marriage on January 3, 2008.

On appeal, counsel for the petitioner asserts that under the State of Nevada’s Rules of Civil Procedure, a judgment is not effective until the date it is filed with the county clerk. Counsel submits a copy of Rule 58 which provides that the filing with the clerk of a judgment signed by the judge constitutes the entry of a judgment and no judgment shall be effective for any purpose until such entry. Counsel asserts that as the divorce decree terminating the petitioner’s marriage was filed on January 7, 2008 and the petitioner filed the Form I-360 on January 6, 2010, the petitioner filed the Form I-360 within two years of the dissolution of the marriage. We agree and the director’s decision to the contrary is withdrawn. Upon review of the record, the petitioner has also demonstrated that the divorce was connected to the battering or extreme cruelty perpetrated by the United States citizen spouse.

Good Moral Character

The director correctly determined that the petitioner had not established she is a person of good moral character because she failed to provide her criminal history record from the State of Nevada, where she lived during the three years prior to filing the petition. On appeal, counsel explained that the petitioner initially did not submit a Nevada criminal history record because she had been living in California for the previous three years and only visiting Nevada to check her mail and try to save the house she had owned with her husband from foreclosure. Counsel asserted that the petitioner was not trying to hide her Nevada arrest and conviction. The record before the director included a March 1, 2010 California criminal history response based on the petitioner’s fingerprints.

Counsel provided a criminal history record for the petitioner from Nevada which showed that she was arrested on March 8, 2008 and charged with embezzlement of a motor vehicle in violation of Nevada Statute NRS 205.300, a felony and that on July 16, 2008, the charge was reduced to theft in violation of NRS 205.083, a misdemeanor. The record also included a July 31, 2007 declaration of warrant, an incident report created by the Las Vegas Metropolitan Police Department, a voluntary statement provided by a representative of the aggrieved party, demand letters sent to the petitioner by the aggrieved party, and a criminal complaint filed against the petitioner, all relating to the petitioner’s March 8, 2008 arrest. The petitioner explained the circumstances of her arrest on March 8, 2008 as follows: she noted that she rented a car on May 23, 2007 and asked a friend to return the car for her; and her friend told her that he returned the car but after she was arrested on March 8, 2008, he told her the car had run out of gas and he had left it on the freeway. The petitioner reiterated that she was not trying to hide this information from United States Citizenship and Immigration Services (USCIS) as she believed she only needed to provide a California criminal

history clearance as she had been living in California for almost four years and was only returning to Nevada to visit. The record did not include the actual disposition of the matter. As the petitioner had not been given an opportunity to address this matter, the AAO issued an RFE requesting the disposition of the March 8, 2008 arrest.

The record also included a Las Vegas Township Court docket sheet. The record showed that the petitioner was arrested on or about February 11, 2003 and was charged with two counts of soliciting prostitution and that on a motion by the State of Nevada, on March 19, 2003, the charge was amended to one count misdemeanor "Loitering for Purpose of Prostitution" and that the petitioner pled guilty and was fined \$400 and an additional \$100 in fees. The record reflected that the fine was paid on May 16, 2003. The summary also indicated that on June 16, 2004, the Court amended the complaint to misdemeanor –"Loitering." As the record did not include the petitioner's explanation of the circumstances of this arrest and the subsequent actions taken by the State of Nevada and the director had not referenced these arrests in an RFE or the decision, the AAO asked the petitioner for an explanation of the circumstances of her February 2003 arrest.

In response to the AAO's RFE, the petitioner provides the record regarding the March 8, 2008 arrest. The disposition shows that on July 16, 2008, the State of Nevada amended the complaint to misdemeanor theft, the petitioner was found guilty and sentenced to a six-month suspended sentence, ordered to pay \$2,460.17 in restitution, to do 50 hours of community service, and to stay out of trouble. On October 16, 2008, the court found that the petitioner had paid the restitution in full, had completed the community service, and had stayed out of trouble and thus the case was closed. The petitioner also provides her explanation of the circumstances of her arrest in February 2003 and the subsequent actions taken by the State of Nevada. She explained that she was with friends including her boyfriend and that they had been drinking and were arguing in the casino when a security guard asked them to leave. She states that her boyfriend told security to kick her out because she was trying to pick them up and security told her she had to leave. The petitioner admits that she was mad and so started arguing with the security guard(s) until the police showed up and took her to the security office. She explains that the police gave her some kind of ticket but because her English was not good, she did not understand what it was for until she showed a friend who put her in touch with an attorney. The attorney told her that she needed to pay a fine which she did on May 16, 2003 but that she did not understand that by paying the fine she was pleading guilty. The petitioner states that when she realized what was on her record, she filed an appeal and requested that the charges be dismissed but that on June 16, 2004 the court only amended the charge to loitering. The petitioner states that looking back she realizes how young and stupid she was to not obey the authority figures in the first place and that this incident made her grow up, helped her learn the rules and laws, and become a law abiding citizen.

The AAO first observes that to establish good moral character for this benefit, the statute does not state a time period during which the self-petitioner must demonstrate his or her good moral character. See Section 204(a)(1)(A)(iii)(II)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a self-petitioner's good moral character includes local police clearances or state-issued criminal background checks from each place where the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. The regulation's designation of the three-year

period preceding the filing of the petition does not limit the temporal scope of USCIS' inquiry into the petitioner's good moral character. The agency may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). The petitioner's criminal record provided a reasonable basis to examine her moral character beyond the preceding three years.

Upon review, the petitioner's offenses do not pose an automatic bar to a finding of her good moral character. The petitioner's theft conviction falls within the petty offense exception to being considered a crime involving moral turpitude at section 212(a)(2)(A)(ii)(II) of the Act. The petitioner's 2004 conviction was for loitering, not prostitution, and the record lacks evidence that the petitioner engaged in prostitution in the last ten years. Consequently, her loitering offense does not fall within section 212(a)(2)(D) of the Act. Accordingly, none of the enumerated bars found in section 101(f) of the Act preclude a finding of the petitioner's good moral character.

Nonetheless, the petitioner's criminal record requires a full examination of all the relevant evidence to determine whether the positive factors in this matter outweigh the petitioner's past offenses. *See Torres-Guzman v. INS*, 804 F.2d 531, 533-34 (9th Cir. 1986) (where there is no per se bar at section 101(f) of the Act that is applicable, all factors relevant to the determination of the alien's good moral character must be considered). In this matter, the petitioner has provided a letter from the program director of CBD College, Surgical Technology Department, praising the petitioner's diligence and work ethic and her academic excellence in the college program. The record further indicates that the petitioner has had no further arrests or convictions in the past three years. Although the petitioner's criminal record is not condoned, "good moral character does not mean moral excellence and . . . it is not destroyed by 'a single lapse'." *Matter of Sanchez-Linn*, 20 I&N Dec. 362, 366 (BIA 1991) citing *Matter of B-*, 1 I&N Dec. 611 (BIA 1943)).

The petitioner has admitted her offenses, fully complied with the court orders regarding her offenses, expressed remorse, and demonstrated rehabilitation. A full review of the record shows that the positive factors in this case outweigh the negative factors and the petitioner merits a favorable exercise of discretion finding her to be a person of good moral character.

Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained. The petition is approved.