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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



Bq

DATE: **APR 05 2012** 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 Director, Vermont Service Center denied the immigrant visa petition (Form I-360) 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 determined that the petitioner had failed to establish his good moral character and denied the petition accordingly. 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).

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:

(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, 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) . . .

\* \* \*

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, 8 U.S.C. § 1182(a)(2)(A), 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 204(a)(1)(C) of the Act further provides:

Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner’s admissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding the petitioner to be of good moral character under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if the [Secretary of Homeland Security] finds that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty.

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:

(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, a native and citizen of Mexico, was admitted to the United States as an H-2B temporary worker on January 21, 2005. On November 9, 2006, he married a citizen of the United States. The petitioner filed the instant Form I-360 on December 4, 2009. The director subsequently issued a request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on March 22, 2011 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). In so far as the director's decision cites to inadmissibility under section 212(a)(2)(B) of the Act, 8 U.S.C. § 1182(a)(2)(B), the AAO withdraws that portion of the director's decision; however, the petitioner has failed to overcome the ground for denial. The appeal will be dismissed for the following reasons.

#### *The Petitioner's Criminal Convictions*

The record shows that the petitioner has been convicted of the following offenses:

- 1) On March 19, 2006, the petitioner pled guilty to and was convicted of domestic abuse assault in violation of section 708.2A of the Iowa Code. The petitioner was sentenced to 2 days in jail.
- 2) On April 28, 2006, the petitioner pled guilty to and was convicted of violating a no contact order in violation of section 236.8 of the Iowa Code. The petitioner was sentenced to 24 hours in jail.
- 3) On May 8, 2006, the petitioner pled guilty to and was convicted of operating while intoxicated in violation of section 321J.2 of the Iowa Code. The petitioner was sentenced to 30 days in jail.
- 4) On December 18, 2006, the petitioner pled guilty to and was convicted of domestic abuse assault causing bodily injury in violation of section 708.2A(3)(a) of the Iowa Code. The petitioner was sentenced to 60 days in jail with 58 days suspended and one year of probation.

5) On February 26, 2007, the petitioner was convicted of contempt in violation of section 665.2 of the Iowa Code. The petitioner was sentenced to 5 days in jail.

*The Petitioner's Convictions Bar a Finding of His Good Moral Character*

The petitioner was convicted of two crimes involving moral turpitude, which bar a finding of his good moral character pursuant to section 101(f)(3) of the Act. The term "crime involving moral turpitude" is not defined in the Act or the regulations, but has been part of the immigration laws 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). The Board of Immigration Appeals (BIA) has explained that moral turpitude "refers generally to conduct which is 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 (8<sup>th</sup> 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. *Id.* at 696; *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999); *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If there is no realistic probability that the statute of conviction would be applied to conduct that does not involve moral turpitude, then convictions under the statute may categorically be treated as crimes involving moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. at 697. Such a realistic probability exists when there is an actual case in which the criminal statute was applied to conduct that did not involve moral turpitude. *Id.* Where the alien bears the burden of proof to establish eligibility for the benefit sought, the alien also bears the burden of showing that the criminal statute has been applied to conduct that did not involve moral turpitude. *Id.* at 703 n.4.

While offenses involving simple assault or battery are generally not considered to involve moral turpitude, such offenses may involve moral turpitude when committed with domestic violence. *See Garcia v. Att'y Gen. of the U.S.*, 329 F.3d 1217, 1222 (11th Cir. 2003); *Pichardo v. INS*, 104 F.3d 756, 760 (5<sup>th</sup> Cir. 1997); *Grageda v. U.S. INS*, 12 F.3d 919, 921-22 (9th Cir. 1993); *Matter of Sanudo*, 23 I&N Dec. 968, 970-72 (BIA 2006); *Matter of Tran*, 21 I&N Dec. 291, 294 (BIA 1996). Although Iowa's assault statute encompasses both simple and aggravated offenses (at section 708.1 of the Iowa Code) the petitioner in this case was convicted of domestic abuse assault under section 708.2A of the Iowa Code, which is defined as an assault under section 708.1 which is also domestic abuse under section 236.2 of the Iowa Code. On appeal, counsel has not shown that domestic abuse assault under section 708.2A of the Iowa Code has been applied to conduct that did not involve moral turpitude.

Section 101(f)(3) of the Act bars a determination that an alien has good moral character if he or she is described in section 212(a)(2)(A)(i)(I) of the Act, as an alien convicted of "a crime involving moral turpitude." The petitioner's convictions in 2006 for domestic abuse assault are crimes

involving moral turpitude. Accordingly, the petitioner's convictions for these two crimes of moral turpitude prevent a finding of his good moral character pursuant to section 101(f)(3) of the Act.

*The Petitioner Lacks Good Moral Character for Other Reasons*

Although the petitioner's remaining convictions do not place him within any of the enumerated bars to good moral character at section 101(f) of the Act, those offenses still indicate a lack of good moral character. In addition to his convictions, the petitioner has failed to support his dependents as is reflected by the income withholding order from the Iowa Department of Human Services, indicating that the balance is in arrears. Finally, the petitioner's conviction record in regard to operating while intoxicated reflects that the petitioner was sentenced under section 321J.2(2)(b) of the Iowa Code for a second offense and the petitioner has failed to provide records pertaining to his first conviction for operating while intoxicated. When viewed in the aggregate, these acts reflect adversely upon the petitioner's moral character and indicate that his behavior has repeatedly fallen below the standards of the average citizen. Accordingly, the petitioner also lacks good moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

*The Petitioner Does Not Merit a Favorable Exercise of Discretion*

On appeal, counsel claims that the petitioner is a person of good moral character despite his criminal record because his convictions were connected to his wife's abuse. The record does not support counsel's assertions.

In an attachment to the Form I-360, the petitioner stated that his wife called the police and falsely accused him of hitting her. He stated that his wife became angry and yelled at him after he asked her not go out with her friends, grabbing a spoon and scratching the driver's side of his car door. He stated that he grabbed his wife gently by the shoulders and forced her to lie down.

In an attachment to the Form I-360, the petitioner stated that he violated the no contact order after his wife informed him that she had taken care of the no contact order. He stated that his wife began yelling, accusing him of having an affair and hit the wall with a hammer when she attempted to hit him in the head with it.

In an undated letter, the petitioner stated that he was first arrested by the police after his wife falsely accused him of choking her. He stated that his wife called the police because he refused to live with her. He stated that he was arrested for violating a no contact order and because his wife falsely accused him of destroying her apartment. He stated that he went to his wife's apartment, where she accused him of dating all of her friends. He stated that his wife grabbed a hammer and told him that she was going to destroy her apartment and blame it on him when he informed her that he was leaving.

The petitioner's explanations in the attachments and letter are not sufficiently probative. Moreover, the petitioner's explanations in the letter and the attachments are contradictory: (1) the petitioner explains in the attachment that the first arrest was initiated by an argument over his wife's intentions to go out with friends and in his letter stated that the argument stemmed from his intentions to leave the dwelling; (2) the petitioner explains in the attachment that the first arrest was because his wife falsely accused him of hitting her and in his letter stated that she accused him of choking her; (3) the petitioner explains in the attachment that the damage to the apartment in the second arrest was because his wife threw a hammer at him and it missed and in the letter omits that a hammer was thrown at him and stated that his wife informed him that she would damage her apartment and blame it on him.

The petitioner submitted below letters from [REDACTED] and his wife's grandmother who discuss his wife's abuse and maltreatment, but which do not specifically address the events surrounding any of the petitioner's convictions.

On appeal, counsel submits a third letter purportedly from the petitioner's wife's grandmother in which she reiterated her general description of the abuse and described how the petitioner's wife is mentally ill. This letter again fails to provide any probative details of the incidents surrounding the petitioner's convictions. Additionally, the signature on the letter does not appear to match the signatures on the previously submitted hand-written letters from the petitioner's wife's grandmother.

On appeal, counsel submits three letters from the petitioner's friends and former neighbor attesting to his good character and how he was abused by his wife. These letters also fail to provide any probative details of the specific incidents leading to the petitioner's convictions.

The relevant evidence is insufficient to establish any connection between the petitioner's criminal convictions and his wife's battery or extreme cruelty such that those convictions would not bar a finding of his good moral character pursuant to section 204(a)(1)(C) of the Act.

### *Conclusion*

The petitioner was convicted of two crimes involving moral turpitude which preclude a finding of his good moral character under section 101(f)(3) of the Act. The petitioner's other offenses and his failure to pay child support also show a lack of good moral character under the final paragraph of section 101(f) of the Act and 8 C.F.R. § 204.2(c)(1)(vii). The petitioner has not established a connection between his criminal convictions and his wife's battery or extreme cruelty meriting a favorable exercise of discretion finding him to have good moral character despite his criminal record under section 204(a)(1)(C) of the Act. Consequently, the petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish 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 sustained that burden and he is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Consequently, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.