

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



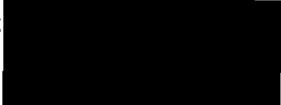
U.S. Citizenship
and Immigration
Services

B9



Date: **DEC 19 2012**

Office: VERMONT SERVICE CENTER

FILE: 

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:

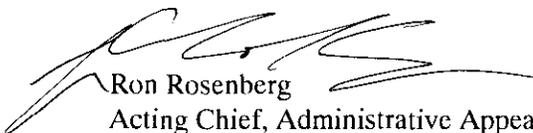
SELF-REPRESENTED

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the 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.

On July 25, 2012, the director denied the petition based on his determination that the petitioner was not a person of good moral character. On appeal, counsel submits a brief.

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

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 . . . [subparagraph] (A) . . . of section 212(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;

* * *

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)). . .

As referenced in subsection 101(f)(3) of the Act, subsection 212(a)(2)(A)(i) of the Act describes,

in pertinent part:

Any alien convicted of . . . (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime

As referenced in subsection 101(f)(8) of the Act, subsection 101(a)(43)(M)(i) of the Act defines an aggravated felony as “an offense that . . . involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000 . . .”

In regards to determining a self-petitioner’s moral character, section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), 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] finds that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty.

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

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated 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 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, 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. . . .

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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. . . . 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.

Facts and Procedural History

The petitioner is a citizen of the Philippines who married her spouse, a U.S. citizen, on November 26, 2007, in California. The petitioner filed the instant Form I-360 on July 15, 2011. The director subsequently issued a request for evidence of, among other things, the petitioner's good moral character. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition based on his determination that the petitioner had been convicted of a crime involving moral turpitude and confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more and was, therefore, not a person of good moral character. Counsel has filed a timely appeal.

On appeal, counsel submits a brief in which she asserts that the director abused his discretion because he did not reference or analyze the good moral character exception for Violence Against Women Act (VAWA) self-petitioners. Counsel further contends that the petitioner's conviction was connected to her abuse and therefore does not prevent her from showing good moral character.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's ground for denial. A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Analysis

The record fails to demonstrate that the petitioner is a person of good moral character due to her criminal convictions. The record reflects that on November 4, 2009, the petitioner was convicted in the Superior Court of California, Marin County, of embezzlement by a caretaker of an elder or dependent adult in violation of section 368(e) of the California Penal Code (CPC). The petitioner was sentenced to three years imprisonment. The conviction record shows that the amount of property that the petitioner fraudulently obtained was \$74,774. The petitioner's embezzlement is a crime involving moral turpitude. *See Matter of Batten*, 11 I&N Dec. 271, 272 ("There is no question but that embezzling . . . involves moral turpitude.") Her embezzlement conviction is also an aggravated felony as defined at section 101(a)(43)(M) of the Act. Consequently, the petitioner's embezzlement crime bars a finding of her good moral character pursuant to subsections 101(f)(3) and (8) of the Act.

On appeal, counsel asserts that the petitioner is not barred from establishing her good moral character because her embezzlement offense is waivable under section 212(h) of the Act as a crime involving moral turpitude. Counsel claims that the petitioner's offense was connected to her husband's abuse and that she merits a favorable exercise of discretion in finding her to have good moral character despite her conviction pursuant to section 204(a)(1)(C) of the Act. However, counsel has not shown that her conviction is waivable. The implementing regulations at 8 C.F.R. § 204.2(c)(1)(vii) provide that a self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. As the director noted in his decision, the petitioner is barred from showing good moral character under section 101(f)(7) of the Act, which states that no person shall be found to have good moral character who "during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more. . . ." Here, the petitioner was confined as a result of a conviction to a penal institution for three years, which precludes a finding of her good moral character pursuant to section 101(f)(7) of the Act.

Counsel's reliance on section 204(a)(1)(C) of the Act is misplaced as the bar to a finding of good moral character in the petitioner's case is not waivable for purposes of determining inadmissibility or deportability under sections 212(a) or 237(a) of the Act. Section 204(a)(1)(C) of the Act allows U.S. Citizenship and Immigration Services (USCIS) to find, notwithstanding section 101(f), as a matter of discretion, that a self-petitioner is a person of good moral character despite his or her conviction if the crime is waivable for purposes of determining admissibility under section 212(a) or deportability under 237(a) of the Act and the crime was connected to the self-petitioner's having been battered or subjected to extreme cruelty. Although a conviction for a crime of moral turpitude is waivable under section 212(h)(1)(C) of the Act, the bar under section 101(f)(7) of the Act is not waivable, and counsel has not cited to any provision of law that allows for such a waiver.

Furthermore, even if a waiver for section 101(f)(7) of the Act were available, the petitioner has failed to show a connection between her 2010 embezzlement conviction and her husband's abuse. In her affidavits, the petitioner stated that her husband demanded money from her and that they had financial problems. In her original statement, the petitioner explained, "I did not want to accept another failed relationship, and vowed that this time that I was not going to run away from it without giving in a fight.

I tried to handle my problems in the best way possible the best way I could [sic], which was resorting to stealing money from my employer... I kept thinking that I was doing this to save my marriage and my kids.” The petitioner fails, however, to credibly articulate any connection between her conviction and her husband’s abuse.

Beyond the director’s decision, the petitioner has also failed to show she is a person of good moral character because she has been convicted of an aggravated felony under section 101(a)(43)(M) of the Act. Section 101(a)(43)(M) of the Act describes an aggravated felony as, *inter alia*, an offense that involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000. Here, the petitioner’s conviction was for embezzlement where she “did willfully and unlawfully secret said property with a fraudulent intent...” and the amount of loss to the victims was \$74,774. *See* Criminal Complaint at 2. Accordingly, the petitioner was convicted of an aggravated felony, which precludes a finding of her good moral character pursuant to section 101(f)(8) of the Act.

For the purpose of determining admissibility under section 212(a) of the Act, a conviction for an aggravated felony is not waivable. Because no inadmissibility waiver exists for aggravated felony convictions, the exception at section 204(a)(1)(C) of the Act does not apply to the petitioner’s conviction. Similarly, section 237(a)(2)(A)(vi) of the Act, 8 U.S.C. § 1127(a)(2)(A)(vi), only provides a deportability waiver for aliens convicted of an aggravated felony who have been granted a full and unconditional pardon by the President of the United States or by a State Governor. USCIS does not have the authority to grant such a pardon and the record does not indicate that the petitioner has received such a pardon. Consequently, the “waiver authorized” by section 237(a)(2)(A)(vi) of the Act is not “waivable with respect to the petitioner” in this case under section 204(a)(1)(C) of the Act. The present record thus fails to establish the petitioner’s good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

On March 29, 2005, the petitioner was convicted in the Superior Court of California, County of Contra Costa, of petty theft and was sentenced to five days imprisonment and two years of probation. The petitioner’s 2005 theft conviction is also a conviction for a crime involving moral turpitude. The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has determined that petty theft under the statute for which the petitioner was convicted, CPC § 484(a), is a crime categorically involving moral turpitude.¹ *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9th Cir. 2009). On appeal, counsel claims that the petitioner’s 2005 conviction falls outside of the three-year period for which the petitioner is required to establish her good moral character. Counsel is mistaken. 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)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). Although the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires police clearances or criminal background checks for the three-year period preceding the filing of a petition under section 204(a)(1)(A)(iii) of the Act, the regulation’s designation of the three-year period does not limit the temporal scope of USCIS’s inquiry into the petitioner’s good moral character. The agency may investigate the self-petitioner’s character

¹ Because the petitioner has two convictions for crimes involving moral turpitude, the “petty offense” exception in section 212(a)(2)(A)(ii) of the Act does not apply.

beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). While the ground of inadmissibility for a conviction for a crime involving moral turpitude is waivable, the petitioner has not shown that there is any connection between her spouse's abuse and this conviction, which occurred before the petitioner even met her U.S. citizen husband. As such, section 204(a)(1)(C) of the Act does not apply to the petitioner's petty theft conviction and the petitioner has failed to establish her good moral character for this additional reason.

Conclusion

On appeal, the petitioner has failed to overcome the director's determination that she is not a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.