

(b)(6)



U.S. Citizenship  
and Immigration  
Services

Date: **APR 03 2013** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

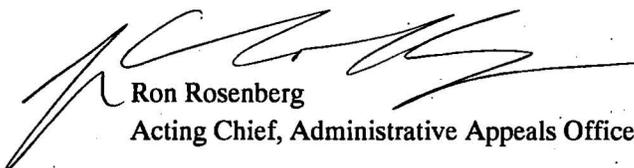
ON BEHALF OF PETITIONER:  
[REDACTED]

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 its 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 motion 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 any motion to 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 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 U.S. citizen spouse.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her former husband subjected her to battery or extreme cruelty during their marriage and that that she is a person of good moral character.

On appeal, counsel submits 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:

(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

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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.

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 . . . subparagraph[] (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...

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:

*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.

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(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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Colombia who entered the United States as a K-3 nonimmigrant on November 25, 2006. She married D-D<sup>1</sup>, a citizen of the United States, on May 24, 2008 and they divorced on April 26, 2011. The petitioner filed the instant Form I-360 on October 5, 2010. The director subsequently issued a request for additional evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and the petitioner's good moral character. The petitioner, through counsel, submitted additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

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<sup>1</sup> Name withheld to protect the individual's identity.

The AAO conducts appellate review on a *de novo* basis. *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. The petitioner's claims on appeal do not overcome the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that she is eligible for immediate relative classification based on her former marriage to D-D-.<sup>2</sup> The appeal will be dismissed for the following reasons.

### *Battery or Extreme Cruelty*

We find no error in the director's determination that the petitioner's former husband did not subject her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavits, a police incident report, and two letters from a mental health therapist, [REDACTED] who states her qualifications as "MS, CMPH, Register Marriage and Family Intern." [REDACTED] stated that the petitioner had been struggling in her marriage and had been exposed to domestic violence, but [REDACTED] did not provide any probative details regarding any abuse or extreme cruelty inflicted by D-D- upon the petitioner. [REDACTED] brief letters convey the petitioner's statements, but provide no further, substantive information regarding the claimed abuse. Likewise, the police incident report regarding a domestic dispute did not describe the dispute and stated that the petitioner "has no signs or complaints of injury."

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include ... [o]ther forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). Here, the petitioner failed to provide probative information to establish the claimed abuse. In her first affidavit, the petitioner stated that D-D- was controlling and jealous. She described one occasion when during an argument, he grabbed and pushed her, but she did not further describe this incident in probative detail, only stating that afterwards, D-D- became insulting and more physically abusive. She stated that on another occasion, D-D- dragged her out of a restaurant where she was dining with a friend. In her second affidavit, the petitioner repeated her earlier statements and recounted that D-D-'s jealousy caused her to alienate herself from her friends and family. Again, the petitioner did not provide any probative details about D-D-'s treatment of her. The petitioner's statements do not demonstrate that her former husband battered her, or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the petitioner submits a third letter from [REDACTED] who states that the petitioner reported emotional and psychological abuse at the hands of her husband. [REDACTED] states that the petitioner "exhibits depressed and sad mood and post-traumatic depressed disorder" but does not state how she came to this conclusion. When viewed in the aggregate, the relevant evidence in the record is insufficient to establish that D-D- battered the petitioner or that his behavior constituted

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<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that her former husband subjected her to battery or extreme cruelty during their 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 failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, beyond the director's decision, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

*Good Moral Character*

The record documents the petitioner's pertinent criminal history as follows:

- 1) On June 14, 2011, the petitioner was convicted of credit card theft in violation of section 817.481(3)(B) of the Florida Statutes, a second-degree misdemeanor.
- 2) On July 15, 2011, the petitioner was arrested and charged with giving false information to a law enforcement officer. The petitioner's criminal record from the Eleventh Judicial Circuit of Florida, Miami-Dade County, dated November 4, 2011 states that this charge is an open case. No court disposition was provided detailing its outcome.

As referenced in section 101(f)(3) of the Act regarding those who may not be found to have good moral character, section 212(a)(2)(A) of the Act states, in pertinent part:

(i) In General

Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –

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

(ii) Exception

Clause (i)(I) shall not apply to an alien who committed only one crime if –

. . . .  
(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

At the time of the applicant's conviction, Florida Statutes § 817.481(1) and (3)(b) provided:

(1) It shall be unlawful for any person knowingly to obtain or attempt to obtain credit, or to purchase or attempt to purchase any goods, property or service, by the use of any false, fictitious, counterfeit, or expired credit card, telephone number, credit number, or other credit device, or by the use of any credit card, telephone number, credit number, or other credit device of another without the authority of the person to whom such card, number or device was issued, or by the use of any credit card, telephone number, credit number, or other credit device in any case where such card, number or device has been revoked and notice of revocation has been given to the person to whom issued.

\* \* \*

(3)(b) If the value of the property, goods, or services obtained or which are sought to be obtained in violation of this section is less than \$300 the offender shall be guilty of petit larceny.

On appeal, counsel concedes that the petitioner's conviction under Florida Statutes § 817.481(3)(b) is a crime involving moral turpitude (CIMT), but correctly asserts that it falls within the petty offense exception from classification as a CIMT at section 212(a)(2)(A)(ii)(II) of the Act because the maximum term of imprisonment for a misdemeanor of the second degree is 60 days.<sup>3</sup>

Although the petitioner's criminal record does not invoke an enumerated bar to a finding of her good moral character at section 101(f) of the Act, her record still indicates that she lacks good moral character for other reasons under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that "[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." The petitioner submitted two affidavits below but did not explain in either statement the circumstances surrounding her conviction or any of her numerous arrests. She also submitted brief affidavits from family and friends who attest to her good moral character, but none of the affiants indicate that they are aware of the petitioner's criminal history and can knowledgeably attest to her good moral character.

Further, the petitioner was arrested numerous times prior to filing the Form I-360 and afterwards. As noted by the director, the petitioner did not disclose her arrests and conviction upon filing her Form I-360 and only submitted some of her criminal records in response to the RFE. After she filed her Form I-360 and while these proceedings were pending, the petitioner was convicted of credit card theft and her court record indicates that her July 15, 2011 charge for giving false information to a police officer remains pending. No additional evidence was submitted regarding this 2011 arrest and on appeal counsel simply asserts that the petitioner only has one conviction for immigration purposes. Counsel's assertion is insufficient to establish the disposition of the July 15, 2011 charge. In her September 30, 2010 affidavit, the petitioner asserted that she is a good mother, hard worker and has strong values and a good moral character, but the petitioner did not discuss or even acknowledge her criminal record. The

<sup>3</sup> F.S.A. § 775.082 (West 2009).

petitioner therefore has failed to submit the primary evidence of her good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v) and her criminal record adversely reflects upon her moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner has not demonstrated her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

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 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.