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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

Date: **APR 08 2013**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-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:

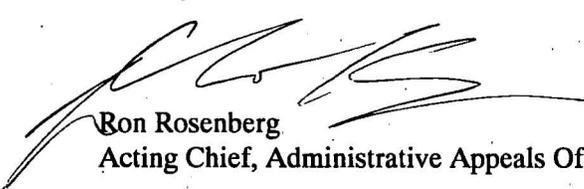
SELF-REPRESENTED

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, 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 June 4, 2012, the director denied the petition based on his determination that the petitioner's conviction of a drug offense barred a finding of her good moral character.

On appeal, the petitioner submits a brief and information regarding her son's medical condition.

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:

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. 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 . . . subparagraphs (A) and (B) of section 212(a)(2) [8 U.S.C. § 1182(a)(2)] and subparagraph (C) thereof of such section (except as such paragraph relates to simple possession of thirty grams or less of marijuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

* * *

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

* * *

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 violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance. . . .” Section 212(a)(2)(C) of the Act includes “any alien who the consular officer or the Attorney General knows or has reason to believe. . . is or has been an illicit trafficker in any controlled substance. . . .” Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), pertains to any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of “a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

As referenced in section 101(f)(8) of the Act, section 101(a)(43)(B) defines an aggravated felony, in pertinent part, as “illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substance Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code).”

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 Mexico who married her spouse, a U.S. citizen, on February 26, 2010. The petitioner filed the instant Form I-360 on August 6, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, joint residence with her husband, and 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 an aggravated felony and a drug trafficking crime and was not a person of good moral character. The petitioner then filed a timely appeal.

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. The petitioner's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Good Moral Character

The record reflects that on or about September 9, 1998, the petitioner was convicted in the Superior Court of Arizona, Maricopa County, of solicitation of sale of narcotic drugs, a felony, in violation of

section 13-1002, 3401, 3418, 701, 702 and 801 of the Arizona Revised Statutes.¹

On appeal, the petitioner admits that she was involved in the sale of narcotics and asserts that we all make mistakes and she has already paid for hers. She also discusses the negative ramifications that her removal to Mexico would have on her two U.S. citizen children.

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. The petitioner was convicted of solicitation of the sale of cocaine. Cocaine is a controlled dangerous substance under the Controlled Substances Act (CSA). Although in a previous statement the petitioner denied any wrongdoing, in her brief on appeal, the petitioner admits that she became “involved with the sale or disposition of drugs, cocaine.”

Section 101(f)(8) of the Act, 8 U.S.C. § 1101(f)(8), prescribes that no person shall be found to have good moral character if he or she at any time has been convicted of an aggravated felony. The director’s finding that the petitioner was convicted of an aggravated felony will be withdrawn. The petitioner has not been convicted of an aggravated felony as defined under section 101(a)(43)(B) of the Act, as a person who has been convicted of illicit trafficking in a controlled substance, as defined in the CSA because solicitation is not mentioned in the CSA. *See Leyva-Licea v. INS*, 187 F.3d 1147, 1150 (9th Cir. 1999).

However, the same offense does preclude a finding of good moral character because the petitioner has been convicted of a crime involving a violation of a controlled substance law and there is reason to believe, from both the conviction itself as well as the petitioner’s admission to such, that the petitioner was a controlled substance trafficker. *See* section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3). In addition, the petitioner has been convicted of a crime involving moral turpitude. *See Barragan-Lopez v. Mukasey*, 508 F.3d 899, 903-05 (9th Cir. 2007) (solicitation to possess marijuana for sale is a crime involving moral turpitude) (citing *Atl. Richfield Co. v. Guerami*, 820 F.2d 280, 282 (9th Cir. 1987) (noting that possession of heroin for sale is a “crime of moral turpitude”)).

Although the petitioner asserts that she should be forgiven for this crime and presents various equities as to why she should be allowed to stay in the United States, a self-petitioner may only be found to have good moral character despite an act or conviction that would otherwise bar such a finding under section 101(f) of the Act if: 1) the alien’s act or conviction is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) U.S. Citizenship and Immigration Services (USCIS) determines that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). The petitioner’s crime is not waivable under section 212(h) of the Act, as it was a trafficking offense, as opposed to a simple possession offense, and it involved cocaine, not marijuana. Lastly, even if the petitioner’s crime were waivable, the petitioner cannot demonstrate a connection between her conviction and her husband’s battery or extreme cruelty, as the crime occurred prior to

¹ Superior Court of Arizona, Maricopa County, Case number [REDACTED]

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their marriage and before the petitioner even met her husband. The present record thus fails to establish the petitioner's good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

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)(B)(ii) 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.