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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: NOV 04 2013 Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) revoked approval of the immigrant visa petition after properly notifying the petitioner. 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)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident spouse.

The director revoked approval of the petition because the petitioner’s criminal convictions demonstrated that she lacked good moral character. On appeal, counsel submits a statement.¹

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent 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 the spouse of a lawful permanent resident under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

In regards to determining a petitioner’s good moral character, section 101(f) of the Act, 8 U.S.C. 1101(f), states in pertinent parts:

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--

...

¹ Counsel checked Box B in Part 2 of the Form I-290B, Notice of Appeal or Motion, indicating that a brief and/or additional evidence would be submitted within 30 days of the January 17, 2013 signature date on that form. However, to date, over nine months after the filing of the Form I-290B, the AAO has not received any subsequent brief or evidence.

(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) 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. . . .

Section 204(a)(1)(C) of the Act states:

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 further states, in pertinent part:

In acting on petitions filed under . . . 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 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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(B)(ii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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. 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 Jamaica who entered the United States on December 9, 1993 as a nonimmigrant visitor. The petitioner married M-P-, a lawful permanent resident,² on April 11, 2001 in [REDACTED] New York. The marriage ended in divorce and was terminated on January 24, 2011.

The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on December 19, 2008. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good moral character. The petitioner timely responded to the RFEs, and on November 17, 2009, the director approved the petition.

Subsequently, the petitioner was arrested and indicted on several drug related charges in Ohio on April 20, 2011, eventually leading to a November 18, 2011 conviction for Possessing Criminal Tools.

² Name withheld to protect individual's identity.

The director issued a Notice of Intent to Revoke (NOIR) on July 24, 2012, and notified the petitioner that the record indicated that she did not qualify as a person of good moral character. The petitioner, through counsel, submitted a timely response on August 23, 2012, and asserted that her criminal behavior was the result of ongoing mental health disorders connected to the abuse she suffered at the hands of her former husband. The director found the petitioner's response insufficient to overcome the proposed ground for revocation, and revoked approval of the petition on January 4, 2013.

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

The Petitioner's Criminal History

The record documents the petitioner's criminal record, as set forth below:

1. On August 13, 1997, the petitioner was convicted of Petit Larceny in violation of section 155.25 of the New York Penal Law (N.Y. Penal Law) pursuant to a guilty plea, and sentenced to three years of probation.³
2. On August 13, 1997, the petitioner also pled guilty and was convicted on a separate charge of Petit Larceny, for which she was sentenced to one year conditional discharge.⁴
3. On February 8, 1999, the petitioner pled guilty and was again convicted of Petit Larceny, for which she was sentenced to thirty days imprisonment.⁵
4. On February 8, 1999, the petitioner pled guilty and was convicted of Disorderly Conduct under N.Y. Penal Law § 240.20, for which she was sentenced to fifteen days imprisonment.⁶
5. On September 19, 2000, the petitioner pled guilty and was convicted of Petit Larceny, for which she was sentenced to conditional discharge until September 18, 2001 and ten days of community service.⁷
6. On August 26, 2001, the petitioner pled guilty and was convicted of Petit Larceny, for which she was sentenced to fifteen days imprisonment.⁸
7. On October 24, 2001, the petitioner pled guilty and was convicted of Grand Larceny in the Fourth Degree under N.Y. Penal Law § 155.30(1), for which she was sentenced to one year imprisonment.⁹

³ N.Y. Penal Law § 155.25, Docket No. [REDACTED] District Court of Nassau County, [REDACTED] NY.

⁴ N.Y. Penal Law § 155.25, Docket No. [REDACTED] District Court of Nassau County, [REDACTED] NY.

⁵ N.Y. Penal Law § 155.25, Docket No. [REDACTED] District Court of Nassau County, [REDACTED] NY.

⁶ N.Y. Penal Law § 240.20, Docket No. [REDACTED] District Court of Nassau County, [REDACTED] NY.

⁷ N.Y. Penal Law § 155.25, Docket No. [REDACTED] Criminal Court of the [REDACTED]

⁸ N.Y. Penal Law § 155.25, Docket No. [REDACTED] Criminal Court of the [REDACTED]

⁹ N.Y. Penal Law § 155.30(1), Indictment No. [REDACTED] Court, County of [REDACTED]

8. On November 18, 2011, the petitioner was convicted of Possessing Criminal Tools in violation of section 2923.24 of the Ohio Revised Code pursuant to a guilty plea, and was sentenced to one and a half years of Community Control.¹⁰

In addition, the petitioner submitted a Federal Bureau of Investigation (FBI) Identification Record, dated June 29, 2009, showing that she was arrested on May 28, 1998 in New York and subsequently convicted of Petit Larceny following a guilty plea. The petitioner was sentenced to conditional discharge and three days of community service.

Pursuant to 8 C.F.R. § 204.2(c)(1)(vii), the petitioner is required to establish her good moral character until such time her application for adjustment of status is approved. Thus, where the record indicates that a self-petitioner is no longer a person of good moral character, or has not been in the past, the approval of his or her self-petition will be revoked. Here, the petitioner's criminal history prior to the approval of her petition is significant and a serious adverse factor in the determination of her good moral character. The petitioner's most recent arrest and conviction for Possessing Criminal Tools in 2011 after the petition's approval further demonstrates a lack of rehabilitation and good moral character, which provided the director with good and sufficient cause to revoke the approval of her petition under section 205 of the Act and per 8 C.F.R. § 204.2(c)(1)(vii).

The Petitioner's Convictions for Crimes Involving Moral Turpitude Bar A Finding of Good Moral Character.

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. Section 101(f)(3) of the Act proscribes a finding of good moral character if an individual is a member of one or more of the classes of persons, whether inadmissible or not, described in section 212(a)(2)(A) of the Act.

Section 212(a)(2)(A) of the Act, referenced in section 101(f)(3) of the Act, states, in pertinent part:

(i) [A]ny 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, . . .

is inadmissible.

The petitioner's Petit Larceny and Grand Larceny convictions are crimes involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act., and consequently, are a statutory bar to a finding of good moral character pursuant to section 101(f)(3) of the Act.

¹⁰ Ohio Rev. Code § 2923.24, Case No. [REDACTED] In The Court of Common Pleas, [REDACTED], Ohio.

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 (8th Cir. 1995); *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). 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. *Matter of Silva-Trevino*, 24 I&N Dec. 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).

Courts have long held that convictions for Petit Larceny and Grand Larceny are crimes involving moral turpitude. See *Briseno-Flores v. Attorney General of the U.S.*, 492 F.3d 226, 228 (3d Cir. 2007) (finding that petty thefts constitute crimes involving moral turpitude); *Morasch v. INS*, 363 F.2d 30, 31 (9th Cir. 1966) (stating, “Obviously, either petty or grand larceny, i.e., stealing another’s property, qualifies [as a crime involving moral turpitude]”); *Matter of De La Nues*, 18 I. & N. Dec. 140, 145 (BIA 1981) (“Theft or larceny, whether grand or petty, are crimes involving moral turpitude”); *Matter of Scarpulla*, 15 I&N Dec. 139, 140 (BIA 1974) (stating, “It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude . . .”).

However, the BIA has also determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person’s property. See *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) (“Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended.”); *Matter of Jurado-Delgado*, 24 I&N Dec. 29, 33-34 (BIA 2006) (finding such intent in retail theft). Although the statutes under which the petitioner here was convicted, N.Y. Penal Law §§ 155.25 and 155.30,¹¹ do not make a

¹¹ On the occasions of the petitioner’s convictions for Petit Larceny, N.Y. Penal Law § 155.25 (McKinney 2013) (last amended 1965) provided in pertinent part: “[a] person is guilty of petit larceny when he steals property.” At the time of his 2001 conviction for Grand Larceny in the Fourth Degree, the relevant criminal statute provided that “[a] person is guilty of grand larceny in the fourth degree when he steals property and when: (1) The value of the property exceeds one thousand dollars.” N.Y. Penal Law § 155.30(1) (McKinney 2001). The term “larceny,” however, is defined as follows: “[a] person steals property and commits larceny when, *with intent to deprive another of property or to appropriate the same to himself or to a third person*, he wrongfully takes, obtains or withholds such property from an owner thereof.” N.Y. Penal Law § 155.05(1) (McKinney 2001) (last amended 1965) (emphasis added).

distinction as to whether a permanent or temporary taking is required, New York courts have found that a conviction under these statutes requires the intention to permanently deprive the owners of their property. *People v. Jennings*, 69 N.Y.2d 103, 118-122, 504 N.E.2d 1079, 1086-89 (N.Y. 1986) (noting that the concepts of “deprive” and “appropriate,” as utilized in the definition of larceny under N.Y. Penal Law § 155.05, are essential to the definition of larcenous intent and indicate an intent to exert permanent or virtually permanent control over the property taken); *People v. Jensen*, 86 N.Y.2d 248, 252, 654 N.E.2d 1237, 1239 (N.Y. 1995) (noting that the “intent to ‘deprive’ or ‘appropriate’ prescribed in section 155.05 is satisfied by the exertion of ‘permanent or virtually permanent control over the property taken.’”). Accordingly, convictions under the New York criminal statutes for Petit Larceny and Grand Larceny under which the petitioner was convicted require both reprehensible conduct and specific larcenous intent, and thus, categorically involve moral turpitude. *See Matter of Silva-Trevino*, 24 I&N Dec. at 689 n.1, 706; *see also Taveras v. Attorney General of the U.S*, 2013 WL 5433471, *1 (3d Cir. Oct. 1, 2013) (recognizing that a conviction for petit larceny in New York constituted a crime involving moral turpitude under the Act). Therefore, the petitioner’s Petit and Grand Larceny convictions bar a finding of her good moral character under section 101(f)(3) of the Act.

The Petitioner’s Aggravated Felony Conviction Bars A Finding of Good Moral Character.

Additionally, the petitioner’s October 24, 2001 conviction for Grand Larceny is an aggravated felony, which also bars a finding of good moral character under section 101(f)(8) of the Act.

Section 101(a)(43) of the Act provides, in pertinent part:

The term “aggravated felony” means –

- ...
- (G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year.

The petitioner’s conviction for Grand Larceny, for which she was sentenced to a term of one year imprisonment, is a theft offense and an aggravated felony, as defined under section 101(a)(43)(G) of the Act. *See Matter of Garcia-Madruga*, 24 I. & N. Dec. 436 (BIA 2008) (a theft offense as defined under INA § 101(a)(43)(G) “requires the taking of, or exercise of control over, property without consent and with the criminal intent to deprive the owner of ownership, even if such deprivation is less than total or permanent”); *In re V-Z-S*, 22 I&N Dec. 1338 (BIA 2000) (finding that a taking of property is a “theft offense” within the definition of aggravated felony under INA § 101(a)(43)(G) where there is criminal intent to deprive the owner of the rights of ownership). Accordingly, the petitioner’s grand larceny conviction precludes a finding of her good moral character under section 101(f)(8) of the Act.

The Petitioner’s Aggravated Felony Conviction Renders Her Ineligible for A Discretionary Determination of Good Moral Character under Section 204(a)(1)(C) of the Act.

On appeal, counsel asserts that, pursuant to section 204(a)(1)(C) of the Act, the petitioner's convictions do not bar a finding of her good moral character because her convictions were waivable and were connected to her former spouse's battery or extreme cruelty.

However, the petitioner has not demonstrated that she is eligible for a discretionary determination of her good moral character despite her conviction, because her aggravated felony conviction is not waivable as required under section 204(a)(1)(C) of the Act. 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. United States Citizenship and Immigration Services (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)(B)(ii)(II)(bb) of the Act.

Moreover, even if her offense was waivable, she has not demonstrated a connection between the abuse she suffered and her convictions (aggravated felony convictions and crimes involving moral turpitude). The record demonstrates that the petitioner's abusive relationship with her ex-husband lasted from sometime in 1999 until approximately March 2002, during which time her ex-husband unquestionably subjected her to battery and extreme cruelty. However, the record does not demonstrate the requisite causal connection between the petitioner's ex-husband's abuse and her own criminal convictions. The record contains four statements from the petitioner. In her first detailed statement, dated December 15, 2008, the petitioner refers to only two of her nine arrests, and asserts that her ex-husband coerced her into stealing at a New York outlet mall sometime in November 2000 against her moral values. The record contains no evidence, such as a certified disposition, of this November 2000 arrest. In statements, dated April 3, 2009 and October 18, 2010, the petitioner reiterated that her ex-husband forced her to steal. A statement, dated November 3, 2009, makes no references to the petitioner's criminal record. None of the statements offer any explanation for the petitioner's five convictions prior to meeting her ex-husband in 1999, or demonstrate a causal relationship between those offenses and her ex-husband's battery and extreme cruelty to her.

On appeal, counsel asserts that a causal connection exists between the petitioner's convictions and the abuse she endured because her criminal behavior is attributable to post-traumatic stress disorder (PTSD) and brain trauma arising from that abuse. An evaluation, dated January 31, 2009, by [REDACTED] LPPC (Licensed Professional Clinical Counselor), concludes that the petitioner had symptoms of Major Depressive Disorder and PTSD. In a follow up evaluation, dated August 17, 2012, Mr. [REDACTED] adds that the petitioner suffered from General Anxiety Disorder and also notes that there "are some indications going back far before her marriage that point to mental health and neurological issues that clearly explained her criminal convictions even prior to meeting her [ex-]husband." Mr. [REDACTED] did not specify these referenced indications and provided no explanation as to why these conclusions were not included in the original report.

In another evaluation completed August 20, 2012, Dr. [REDACTED] M.D., M.P.H., concludes: (1) that

life threatening abuse at the hands of the petitioner's ex-husband between 1999 and 2000 precipitated typical symptoms of PTSD in the petitioner; (2) that the petitioner was diagnosed with bipolar disorder with psychotic features (1996 onset) and depressive mood disorder; and (3) that the petitioner may also suffer from Traumatic Brain Injury arising from a 2000 head trauma.¹² Dr. [REDACTED] concluded that since the petitioner's "PTSD is a direct result of her domestic violence, which may or may not have triggered the bipolar disorder, and since [the petitioner's] behavior seems to lead her to criminal conduct, one might infer, that [the petitioner's] problems with the law, or her criminal convictions[,] are connected to her PTSD and thus connected to the domestic abuse she suffered." Dr. [REDACTED] does not explain how the domestic violence and resulting PTSD in 2000 could have triggered bipolar disorder in the petitioner, as the report concludes that the onset of the bipolar disorder was in 1996. Further, even if the petitioner were able to demonstrate that the PTSD led to her poor choices precipitating her criminal behavior, as Dr. [REDACTED] opines, the record still does not establish any causal connection between the abuse her ex-husband inflicted from 1999 to March 2002 and her convictions for crimes involving moral turpitude which predate that relationship.

Even if all of the petitioner's convictions were waivable, she still has not demonstrated the connection between those offenses and her ex-husband's abuse. Consequently, the petitioner is ineligible for a discretionary determination of her good moral character despite her convictions pursuant to section 204(a)(1)(C) of the Act. Accordingly, subsections 101(f)(3) and (8) of the Act bar a finding of the petitioner's good moral character.

The Petitioner Lacks Good Moral Character Even If The Statutory Bars Did Not Apply

Even if the petitioner's unlawful acts did not fall within the enumerated provisions of section 101(f) of the Act, the record still shows that she lacks good moral character. Section 101(f) of the Act states, in pertinent part, that "[t]he 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 regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes that, "[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."

As noted, the record shows that the petitioner was arrested and convicted again in Ohio after the initial approval of the instant petition. The charges lodged against the petitioner included drug trafficking and drug possession, but a certified docket sheet and disposition in the record indicate that the only charge prosecuted was for Possessing Criminal Tools, of which she was ultimately convicted on November 18, 2011. The record, however, does not contain the arrest report, indictment or other evidence of the underlying circumstances of the offense for consideration in a

¹² The petitioner did not submit any medical or hospital records regarding any brain trauma she suffered in 2000.

discretionary determination of the petitioner's good moral character.¹³ Counsel asserted in response to the director's NOIR that the 2011 arrest was a situation of the petitioner being at the wrong place at the wrong time, but submitted no additional statement from the petitioner or other relevant evidence to support this claim.

Additionally, primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). The record here contains four written statements from the petitioner, none of which acknowledge the petitioner's responsibility for her involvement in any of her criminal offenses. Although the petitioner asserts that her spouse forced her to steal, she identifies only two arrests in her December 15, 2008 statement, in contrast to her nine documented convictions. In addition to the previously referenced November 2000 arrest, the petitioner states that she was accused of and arrested for stealing in May 2001¹⁴ after trying on clothes. She again does not acknowledge guilt or remorse for this offense or any of her other crimes, although the conviction records show that the petitioner pled guilty in all her criminal cases. Lastly, as indicated, the record lacks evidence of the circumstances of the petitioner's most recent arrest. The petitioner did not submit a statement offering an explanation or expressing any regret for this arrest and conviction. Accordingly, the petitioner has not demonstrated responsibility for her actions or shown rehabilitation, remorse, or otherwise established her good moral character despite her convictions.

On appeal, counsel also suggests that the petitioner should not be found to lack good moral character as a result of her convictions, including those predating the abuse she suffered beginning in 1999, because the petitioner could not have controlled her actions given her serious mental health disorders. As previously explained, the psychological evaluations in the record fail to establish that the petitioner suffered from any disorders prior to 1999. Counsel also asserts that the petitioner will be seeking to withdraw her guilty plea and modify her most recent conviction in 2011 based on her diminished mental capacity and inability to understand the nature of the proceedings. However, the record lacks evidence that this conviction was vacated due to a legal or procedural defect in the underlying criminal proceedings such that it would no longer constitute a conviction for immigration purposes. *See Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003) (holding that if a conviction is vacated for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains "convicted" for immigration purposes); *Matter of Roldan*, 22 I&N Dec. 512, 523, 528 (BIA 1999). As such, while the record attests to the serious difficulties and hardships the petitioner has faced, including the abuse she suffered in her prior marriage, the present record does not establish her good moral character.

The petitioner's convictions for Grand Larceny and Petit Larceny bar a finding of her good moral character pursuant to section 101(f) of the Act. In addition, the petitioner is not eligible for a discretionary determination of good moral character under section 204(a)(1)(C), because she has been convicted of an aggravated felony that is not waivable and did not show a causal connection

¹³ The director's August 13, 2009 RFE specifically requested copies of arrest reports for the petitioner's convictions.

¹⁴ Like the November 2000 arrest referenced in the petitioner's December 15, 2008 statement, there is no evidence of this May 2001 arrest in the record.

between her convictions and the abuse she suffered. A careful review of the record, therefore, establishes that the petitioner failed to demonstrate her 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 establish that she is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the approval of the petition will remain revoked for the reasons stated above.

ORDER: The appeal is dismissed.