

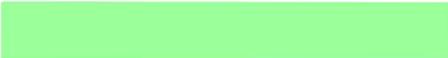


U.S. Citizenship
and Immigration
Services

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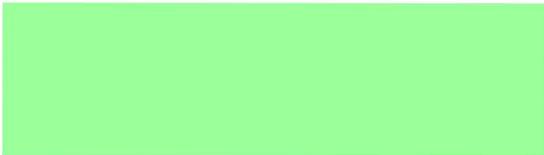


Date: **NOV 18 2013** Office: VERMONT SERVICE CENTER File: 

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:

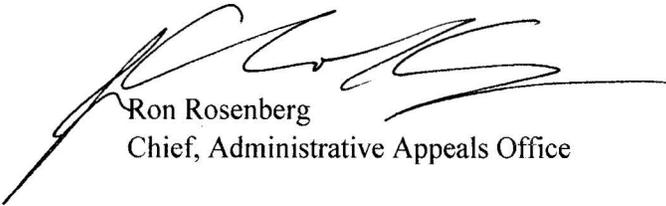


INSTRUCTIONS:

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, (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 his U.S. citizen spouse.

The director denied the petition for failure to establish the petitioner's good moral character. On appeal, counsel submits a statement.¹

Relevant Law and Regulations

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).

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--

...

(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) [of this Act] . . . ;

...

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),

¹ The petitioner 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. However, the AAO has not received any subsequent brief or evidence.

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 (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 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.

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:

(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 the Dominican Republic who entered the United States on September 22, 2006 as a B2 nonimmigrant visitor. He married M-M-, a U.S. citizen,² on January [REDACTED] in Rhode Island.

The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on March 12, 2012. 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. After considering the evidence of record, the director denied the petition on December 12, 2012. The petitioner filed a timely motion to reopen. The director granted the motion, but on February 5, 2013, affirmed the prior decision denying the petition. The petitioner filed the instant 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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. On appeal, the petitioner has failed to overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

The Petitioner's Convictions

The petitioner was convicted of Breaking and Entering a Vehicle in the Day Time in violation of section 18 of Chapter 266 of the Massachusetts General Law Annotated (Mass. Gen. Laws) (McKinney 2010) (last amended 1998) and Larceny over \$250 in violation of Mass. Gen. Laws ch. 266, § 30 (McKinney 2010) (last amended 1995).³ The criminal records in this case disclose that on January 25, 2011, the petitioner admitted to sufficient facts to warrant a finding of guilt on both charges. See Mass. R. Crim. P. 12. Based on the petitioner's admissions, the criminal court continued the proceeding without a finding of guilt until July 25, 2011 thereupon to be dismissed. The court imposed a victim assessment fee of \$50, and issued an order against the petitioner to stay away from the victim of the crime. The charges were thereafter dismissed on November 16, 2011 upon the recommendation of the probation department.

Although the petitioner's criminal charges were dismissed, he remains convicted of both charges for immigration purposes. A conviction is defined under the Act as "a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where: (i) a judge or jury has

² Name withheld to protect individual's identity.

[REDACTED]

found the alien guilty or the alien has entered a plea of guilty or nolo contendere *or has admitted sufficient facts to warrant a finding of guilt*; and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed." Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A) (emphasis added). The Board of Immigration Appeals (BIA) has recognized the Congressional intent behind section 101(a)(48)(A) of the Act to treat deferred adjudications or convictions that are expunged pursuant to state rehabilitative laws as convictions for immigration purposes. *Matter of Salazar*, 23 I&N Dec. 223, 230-31, 233 (BIA 2002) (holding that an alien, whose adjudication of guilt following a guilty plea was deferred pending completion of probation, was considered to have been convicted of the offense). Furthermore, the U.S. Court of Appeals for the First Circuit, within whose jurisdiction this case falls, has found that the "subsequent dismissal of [criminal] charges, based solely on rehabilitative goals and not on the merits of the charge or on a defect in the underlying criminal proceedings, does not vitiate the original admission" of guilt. *Herrera-Inirio*, 208 F.3d 299, 305 (1st Cir. 2000).

In the instant matter, under Massachusetts law, a continuance without a finding of guilt requires the tender of a guilty plea or admission of facts sufficient for finding of guilt. Mass. Gen. Laws ch. 278, § 18 (relating to requests to the court that a guilty finding not be entered and rather, that the case be continued without a finding to a specific date thereupon to be dismissed); *see Commonwealth v. Powell*, 453 Mass. 320, 327, 901 N.E.2d 686, 692 (Mass. 2009) (noting that a continuance without finding under Mass. Gen. Laws ch. 278 § 18 obtains, in advance of the continuance, the defendant's admission, so that any violation of the probationary terms may lead directly to an adjudication of guilt and imposition of sentence); *Commonwealth v. Tim T.*, 437 Mass. 592, 596-97, 773 N.E.2d 968, 971 (Mass. 2002). Here, the criminal court's continuance without a finding of guilt, following the petitioner's admission of facts sufficient to warrant a finding of guilt, and the imposition of court fees and assessments⁴ are sufficient to demonstrate that he has been convicted for immigration purposes as defined under Act, even if the criminal charges were subsequently dismissed.

The Petitioner's Convictions Constitute A Crime Involving Moral Turpitude Barring 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, 8 U.S.C. § 1182(a)(2)(A), as referenced in section 101(f)(3) of the Act, states, in pertinent part:

⁴ *See Matter of Cabrera*, 24 I&N Dec. 459 (BAI 2008) (finding that imposition of costs and surcharges in the criminal sentencing context is a form of "punishment" or "penalty for purposes of establishing a conviction under section 101(a)(48)(A) of the Act).

(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 felony convictions for Breaking and Entering a Vehicle in the Day Time and for Larceny 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.

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 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).

Here, the petitioner's conviction for Larceny under Mass. Gen. Laws ch. 266, § 30 constitutes a crime involving moral turpitude. Courts have long held that theft offenses 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."). Massachusetts courts have defined larceny as "the taking without right of the personal property of another with the specific intent to deprive the other of the property permanently." *Commonwealth v. Murray*, 401 Mass. 771, 772, 519 N.E.2d 1293, 1294 (Mass. 1988); *Commonwealth v. Donovan*, 395 Mass. 20, 25-26, 478 N.E.2d 727, 732 (Mass. 1985). Accordingly, a conviction for Larceny under Mass. Gen. Laws ch. 30, § 266

requires a finding of both reprehensible conduct and a specific larcenous intent to permanently deprive another of property, and thus, qualifies as a crime involving moral turpitude. See *Matter of Silva-Trevino*, 24 I&N Dec. at 689 n.1, 706.

Additionally, the petitioner's felony conviction for Breaking and Entering a Vehicle under Mass. Gen. Laws ch. 266, § 18 also constitutes a crime involving moral turpitude. The BIA has maintained that the determinative factor in assessing whether burglary involves moral turpitude is whether the crime intended to be committed at the time of entry or prior to the breaking out involves moral turpitude. *Matter of M-*, 2 I&N Dec. 721, 723 (BIA 1946). For example, the BIA has held that burglary with intent to commit theft is a crime involving moral turpitude because the underlying offense intended, theft, involved moral turpitude. See *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982).

In the instant case, the criminal statute for Breaking and Entering requires only the commission of the offense with an intention to commit a felony to result in a conviction, but does not specify the underlying felony offenses. However, the charging document shows that the intended felony behind the petitioner's offense of Breaking and Entering was the offense of Larceny, of which he was simultaneously charged and convicted.

Thus, a review of the record demonstrates that the underlying intended offense behind the petitioner's conviction for Breaking and Entering a Vehicle was Larceny, which under Massachusetts law involves a permanent taking of property and is a crime involving moral turpitude. Therefore, the petitioner's conviction for Breaking and Entering a Vehicle also constitutes a crime involving moral turpitude. Accordingly, both of the petitioner's convictions bar a finding of his good moral character under section 101(f)(3) of the Act.

The Petitioner Is 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 did not bar a finding of the petitioner's good moral character because his convictions were waivable and were connected to his wife's battery or extreme cruelty.

The petitioner is not eligible for a discretionary determination of his good moral character under section 204(a)(1)(C) of the Act notwithstanding his convictions, because the record does not establish a causal connection between his convictions and his spouse's battery and extreme cruelty against him. The record demonstrates that beginning in January 2010 until approximately April 2012, the petitioner was in an abusive relationship with his wife, who subjected him to battery and extreme cruelty. However, the petitioner has shown no causal connection between his wife's abuse and his crimes. With respect to his conviction, the petitioner, in a statement dated September 12, 2012, asserts that his wife told him to get a car radio face plate from his workplace for her car and threatened she would report him to immigration officials if he did not do so. The petitioner admits that he removed a face plate from a car at work and hid the plate in his lunch box, but claims he did so because his wife "damaged his mind." An evaluation by [REDACTED] dated November 5, 2012, indicates

that the petitioner reported that his wife demanded that he “take” a face plate for her. [REDACTED] concludes that in his “professional opinion the [petitioner’s] criminal act was directly connected to the abuse” by his wife. While the AAO does not doubt [REDACTED] credentials and expertise in his field, neither the petitioner’s statement nor the evaluation indicate that the petitioner’s wife instructed him to steal a face plate rather than obtain one legally.

Counsel asserts that the police report for the incident, which occurred on April 30, 2010, supports the claim that the petitioner’s wife forced him to essentially steal the face plate. To the contrary, the police report indicates only that the petitioner, with the assistance of a Spanish interpreter, stated that “he had taken the face plate from the bait car because he needed the same type of face plate for his wife’s vehicle.” The report does not suggest that that the petitioner’s wife in any way coerced him into stealing the face plate or even that it was she who wanted the face plate for the car.

Additionally, as noted by the director, the petitioner’s September 12, 2012 statement contradicts an earlier statement on a separate waiver application, Form I-601, Application for Waiver of Grounds of Inadmissibility, signed and dated June 7, 2011, in which the petitioner essentially denied culpability for the criminal offenses and stated that he mistakenly took the face plate while gathering his things in a rush to leave. The petitioner stated on that form that he was wrongly accused of theft and no evidence was found. However, the criminal documents in the record show that both the face plate and a speaker were recovered from the petitioner, who now admits to having stolen the face plate.

On a motion to reopen the director’s denial of the petition, counsel asserted that the inconsistency in the earlier Form I-601 statement was due to the fault of the petitioner’s wife and an office that presented itself as a law office and prepared his immigration forms.⁵ Counsel stated that the petitioner signed the waiver statement “under the control of his abusive wife” and that it was “more likely than not that [the petitioner’s wife] did control” the waiver application process. In support of this assertion, counsel submitted a statement from the petitioner’s wife, another statement from his wife in support of a bar complaint, and a brief statement from [REDACTED]. The petitioner’s wife’s statements indicate that the petitioner did in fact take the face plate for her, and that the petitioner’s inconsistent waiver statement was prepared by an office that put itself forward as a law office and advised that the petitioner should not disclose the true facts regarding his arrest. Further, she states that because of this bad legal advice, she had the petitioner sign the statement, even though she knew it was false. She states that she does not believe the petitioner knew what the statement said. [REDACTED] in an updated letter dated

⁵ Inasmuch as counsel suggests that the inconsistency between the statements should be attributable to ineffective assistance of counsel in this matter, the petitioner has not properly articulated a claim for ineffective assistance of counsel under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *affd*, 857 F.2d 10 (1st Cir. 1988). A claim based upon ineffective assistance of counsel requires the affected party to, *inter alia*, file a complaint with the appropriate disciplinary authorities or, if no complaint has been filed, to explain why not. The instant appeal does not address these requirements. The petitioner does not explain the facts surrounding the preparation of the petition or the engagement of the representative. Further, the record does not reflect whether the petitioner or his wife actually filed a complaint with appropriate disciplinary authorities, and if not why not. Accordingly, the petitioner did not articulate a proper claim based upon ineffective assistance of counsel.

February 5, 2013, concludes that the petitioner's wife's letter showed her remorse and good intentions "to rectify the emotional and psychological abuse that she imposed on" the petitioner. However, neither statement shows that the petitioner's wife asked him to steal, take property without authorization, or otherwise caused him to violate the law. Furthermore, although counsel relies on the petitioner's wife's statements to assert that it was she who made the petitioner sign the untranslated waiver statement without reviewing it, the petitioner does not himself make this assertion. In fact, the petitioner does not provide any explanation, in his own words, for the inconsistency between his statements on his Form I-601 and the instant petition, even on his motion, following the initial denial of the petition where the inconsistency was raised.

Even if the petitioner's wife is responsible for the inconsistency in the record between the petitioner's statements, the record does not demonstrate that the petitioner's wife forced him to steal or otherwise establish that his criminal acts were attributable to the abuse he suffered at her hands.

Therefore, even if the petitioner's convictions were waivable, he still has not demonstrated the connection between those offenses and his wife's battery or extreme cruelty. Consequently, the petitioner is ineligible for a discretionary determination of his good moral character pursuant to section 204(a)(1)(C) of the Act despite his convictions. Accordingly, subsection 101(f)(3) of the Act bars 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 an enumerated provision of section 101(f) of the Act, the record still shows that he 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."

The primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). In his September 12, 2012 declaration, the petitioner asserted that his convictions were caused by his former wife's abuse because she demanded he take a face plate from his workplace. As discussed in the preceding section, the petitioner has not demonstrated a connection between his assault conviction and his wife's battery and extreme cruelty against him. The police report also does not indicate that the petitioner committed the offense because of the abuse he suffered, contrary to his assertion in connection with the instant petition. The petitioner's statements also do not show that he has taken any responsibility for his criminal actions, despite the fact that he pled guilty on both charges.

As such, while the record demonstrates the serious hardships the petitioner has faced, the record here does not establish his good moral character. The petitioner has been convicted for committing unlawful acts that adversely reflect upon his moral character and fall below the standards of the

average citizen in the community. 8 C.F.R. § 204.2(c)(1)(vii). He has failed to establish extenuating circumstances to account for or excuse his unlawful acts. *Id.* Accordingly, the petitioner has failed to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The petitioner's convictions for Breaking and Entering a Vehicle and Larceny bar a finding of his good moral character pursuant to subsection 101(f)(3) of the Act. In addition, the petitioner did not demonstrate eligibility for a discretionary determination of good moral character under section 204(a)(1)(C), because he did not show a causal connection between his convictions for crimes involving moral turpitude and the abuse he suffered. A careful review of the record, therefore, establishes that the petitioner failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II) of the Act.

On appeal, the petitioner has failed to establish that he is a person of good moral character. He 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 his 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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.