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

(b)(6)

U.S. Citizenship and Immigration Services

Date: DEC 0 4 2014 Office: VERMONT SERVICE CENTER File:

IN RE: Self-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 Vermont Service Center acting director, (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 for failure to establish that the petitioner is a person of good moral character. On appeal, counsel submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

> (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:

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

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. . . . 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 claimed she entered the United States on January 1, 1997.[1] The petitioner subsequently became a conditional lawful permanent resident on

[1] The petitioner was placed into removal proceedings on May 24, 2001 and was issued a final order of removal on July 15, 2004. The Board of Immigration Appeals (BIA) denied the petitioner's motion to reopen her case on December 9, 2004.

December 10, 1993, but her status was terminated on December 10, 1995. The petitioner married G-R-[2], a U.S. citizen, in New York, New York on July The petitioner filed the instant Form I-360 self-petition on April 13, 2012. The director subsequently issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) the petition for failing to establish the petitioner's good moral character. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's good moral character. The director denied the petition and counsel appealed.

We review these proceedings *de novo*. A full review of the record as supplemented on appeal, fails to establish the petitioner's eligibility. The petitioner has not overcome the director's ground for denial and the appeal will be dismissed.

Good Moral Character

The petitioner's criminal record shows that she was convicted three times under section 230.20 of New York Penal Law:

> A person is guilty of promoting prostitution in the fourth degree when he or she knowingly:
>
> 1. Advances or profits from prostitution; or
>
> 2. With intent to advance or profit from prostitution, distributes or disseminates to ten or more people in a public place obscene material, as such terms are defined by subdivisions one and two of section 235.00 of this title, or material that depicts nudity, as such term is defined by subdivision one of section 245.10 of this part.
>
> Promoting prostitution in the fourth degree is a class A misdemeanor.

N.Y. PENAL CODE § 230.20 (West 1998-1999).

The petitioner was also convicted under section 460.20(1)(a) of the New York Penal Law:

> 1. A person is guilty of enterprise corruption when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with such enterprise, he:
>
> (a) intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity. . .

N.Y. PENAL CODE § 460.20(a) (West 2001).

On the petitioner entered a plea of guilty and was convicted of three counts of promoting prostitution in the fourth degree in violation of New

[2] Name withheld to protect the individual's identity.

York Penal Law § 230.20. For each conviction, the petitioner paid fines and was given a conditional discharge of one year. On March the petitioner entered a plea of guilty and was convicted of one count of enterprise corruption and was sentenced to one to three years of imprisonment and ordered to pay a fine.

On appeal, counsel contends that the director erred because the petitioner's convictions occurred outside of the three-year period immediately preceding the filing of the self-petition. Contrary to counsel's assertion, the statute does not state a time period during which a self-petitioner must demonstrate his or her good moral character. *See* Section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). The regulation provides at 8 C.F.R. § 204.2(c)(2)(v) that primary evidence of a petitioner's good moral character is the petitioner's self-affidavit accompanied by local police clearances or state issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case during the period beginning in April of 2009 and ending in April of 2012). This regulatory provision does not create a statutory period for establishing good moral character for self-petitioners and does not limit the scope of USCIS' inquiry in making such a determination. Accordingly the director correctly considered the petitioner's four criminal convictions in making her determination that the petitioner lacks good moral character.

On appeal, counsel states that the petitioner served one year in prison for the 2001 enterprise corruption conviction and argues that the aggregate sentence for this conviction was three years and not five years as determined by the director, and therefore the petitioner is not barred from a finding of good moral character under section 101(f)(3) and section 212(a)(2)(B) of the Act. Counsel further asserts that the director erroneously concluded that the petitioner was also barred from a finding of good moral character under section 101(f)(8) of the Act because she was convicted of an aggravated felony without actually specifying which of the aggravated felonies enumerated under section 101(a)(43) of the Act applied. The record supports counsel's claims. The petitioner's convictions for promoting prostitution and enterprise corruption do not appear to fall under any of the aggravated felony provisions and the director did not specify which provision applied.[3] To the extent that the director determined that the petitioner failed to demonstrate her good moral character under sections 101(f)(3) and 101(f)(8) of the Act, those portions of the director's decision are withdrawn.

Nonetheless, the petitioner has not demonstrated that she is a person of good moral character. Section 101(f)(7) of the Act bars a finding of an alien's good moral character if the alien was confined to a penal institution for an aggregate period of 180 days or more resulting from a conviction. Here, as conceded by counsel on appeal, the petitioner served one year in prison as a result of her 2001 conviction for enterprise corruption. As the petitioner was confined to a penal institution for an

[3] *See e.g., Prus v. Holder*, 660 F.3d 144 (2d Cir. 2011) (conviction for promoting prostitution in New York is not categorically an aggravated felony under section 101(a)(43)(K)(i) of the Act because it does not relate to owning, controlling, managing or supervising a prostitution business).

aggregate period of more than 180 days, section 101(f)(7) of the Act prohibits her from demonstrating her good moral character.[4]

Additionally, the petitioner did not submit primary evidence of her good moral character as required by 8 C.F.R. § 204.2(c)(2)(v). The petitioner did not submit a personal affidavit attesting to her good moral character or explaining the circumstances surrounding any of her four convictions in New York. Instead, the petitioner submitted a state-issued police clearance showing she had no criminal record in New Jersey and numerous letters from family and friends. The petitioner's son and several of her friends briefly assert that her past should not affect a determination of her good moral character but they do not indicate that they are fully aware of her criminal record. The 23 letters from members of the petitioner's church identically attest to her good moral character, but do not substantively explain the basis of their knowledge or indicate any awareness of her criminal record. The record also lacks evidence of any connection between her convictions and her husband's battery or extreme cruelty that would permit a finding of her good moral character despite her offenses under section 204(a)(1)(C) of the Act.[5] Accordingly, the petitioner has not established 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 to establish her eligibility for the immigration benefit sought. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.

[4] Because section 101(f)(7) of the Act applies, we do not reach the issue of whether the petitioner's convictions are crimes involving moral turpitude which would also bar a finding of her good moral character under sections 101(f)(3) and 212(a)(2)(A)(i)(I) of the Act.

[5] The record shows that the petitioner was convicted of enterprise corruption over three years prior to her marriage to G-R-.