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 2 3 2014 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 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 was a person of good moral character.

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 –
>
> . . .
>
> (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) . . . if the offense described therein, for which such person was convicted . . . was committed during such period . . . .
>
> (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 . . . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A) of the Act, includes, "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 . . . ." 8 U.S.C. § 1182(a)(2)(A)(i)(I).

Section 204(a)(1)(C) of the Act further provides:

> 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) . . . if the [Secretary] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are 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, a citizen of Mexico, represents that she entered the United States without inspection by an immigration officer on November 1, 1998. The petitioner married J-R-[1], a U.S. citizen, on July in Indiana, and gave birth to the couple's first child in J-R- filed an immigrant visa petition on behalf of the petitioner, which was approved on May 17, 2002; however, the petitioner was not eligible to adjust her status to that of lawful permanent resident.

The record reflects that J-R- was involved in the production of fraudulent documents related to immigration, and provided information to U.S. Immigration and Customs Enforcement (ICE) regarding his activities. On February 7, 2007, the petitioner was arrested and charged with obstruction of justice in violation of Indiana Code section 35-44-3-4(a)(3) occurring on or about March 24, 2006 when she "did remove a computer from her residence that contained illegal documents with the intent to prevent said item from being used as evidence in an official investigation." Obstruction of justice, committed before July 1, 2014, is a Class D felony punishable by up to three years imprisonment. *Id.*; Ind. Code Ann. § 35-50-2-7(a) (West 2014). The petitioner pled guilty as charged on March and received a suspended sentence of six months of jail time, six months of supervised probation, fees and costs. County, Indiana Circuit Court Cause Number The petitioner gave birth to her and J-R-'s second child eight days later.

The petitioner filed the instant Form I-360 self-petition on May 13, 2013, and filed for divorce from J-R- on October 21, 2013. The director subsequently issued a Request for Evidence (RFE) and later, a Notice of Intent to Deny (NOID) the petition, advising the petitioner that her conviction barred a finding of her good moral character, pursuant to subsections 101(f)(3) and (7) of the Act. The director found the petitioner's responses to the RFE and NOID insufficient to establish her good moral character and denied the petition.

On appeal, counsel submits a brief and additional evidence. *De novo* review of the record, as supplemented on appeal, shows that the director erred in part of his determination, but does not establish the petitioner's good moral character. The appeal will be dismissed for the following reasons.

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

Section 101(f)(7) of the Act

The director found that section 101(f)(7) of the Act is applicable to the instant matter. 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. Section 101(f)(7) does not apply to the petitioner because she received a suspended sentence and was not confined to a penal institution as a result of her conviction. The petitioner received a sentence of six months of jail time, which was entirely suspended, and six months of probation. In her decision, the director conflated the statutory rules regarding the calculation of the length of a sentence or term of imprisonment at section 101(a)(48)(B) of the Act with the provisions of section 101(f)(7) of the Act, which requires actual confinement. Section 101(a)(48)(B) of the Act's inclusion of suspended sentences in any references to a "term of imprisonment or a sentence" applies, for example, to the use of "aggregate sentences" in the inadmissibility ground for multiple convictions at section 212(a)(2)(B) of the Act and "sentenced to a term of imprisonment" in the "petty-offense" exception to crimes involving moral turpitude at section 212(a)(2)(A)(ii)(II) of the Act. It does not, however, apply to section 101(f)(7) of the Act, which includes no reference to "term of imprisonment" or "sentence," but only concerns actual confinement to a penal institution resulting from a conviction. As the petitioner's jail sentence was entirely suspended, she was never confined to a penal institution as a result of her conviction, and section 101(f)(7) of the Act is not applicable to the instant case. The director's finding to the contrary is hereby withdrawn.

Section 101(f)(3) of the Act

Section 101(f)(3) of the Act precludes a finding of good moral character for an alien described in section 212(a)(2)(A) of the Act as having been convicted of a crime involving moral turpitude (CIMT), other than a purely political offense. Here, the petitioner was convicted under Indiana Code section 35-44-3-4(a)(3), which states in pertinent part that a person who "alters, damages, or removes any record, document, or thing with intent to prevent it from being produced or used as evidence in any official proceeding or investigation" commits obstruction of justice. Indiana's obstruction of justice statute categorically involves moral turpitude. *See Padilla v. Gonzales*, 397, F.3d 1016, 1020 (7th Cir. 2005) (obstruction of justice categorically involves moral turpitude); *see also Matter of Tejwani*, 24 I&N Dec. 97, 98 (BIA 2007) (crimes that impair and obstruct government functions by deceit or dishonest means, including concealing criminal activity and impeding law enforcement, inherently involve moral turpitude). On appeal, counsel concedes that the conviction is a CIMT.

On appeal, counsel contends that the petitioner's crime does not render her unable to establish her good moral character because she was convicted more than three years prior to filing the instant petition. Counsel indicates that pursuant to U.S. Citizenship and Immigration Services (USCIS) policy,[2] the agency may investigate a petitioner's character outside the three-year period if there is reason to believe that the petitioner lacked good moral character during that time, but asserts that in this case, the director

[2] William R. Yates, Assoc. Dir. of Operations, U.S. Citizenship and Immigration Services, *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, (Jan. 19, 2005).

had no reason to look beyond the three-year period. The policy counsel cites references the preamble to the interim rule. The preamble clarifies that the statutory provision requiring all self-petitioners to be persons of good moral character does not specify a period of time for which good moral character must be established, and explains that the rule requiring self-petitioners to provide evidence of their good moral character for a three-year period preceding the filing of a self-petition, "does not preclude the Service from choosing to examine the self-petitioner's conduct and acts prior to that period . . . if there is reason to believe that the self-petitioner may not have been a person of good moral character in the past." Self-Petitioning for Certain Battered or Abused Spouses and Children, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). Here, the petitioner's conviction for a CIMT revealed that she may not have been a person of good moral character in the past and provided the director with a reasonable basis to examine her character outside of the three years preceding the filing of her self-petition.

Under section 204(a)(1)(C) of the Act, a conviction for a CIMT will not necessarily preclude a self-petitioner from establishing his or her good moral character if she or he demonstrates that the conviction was connected to the battery or extreme cruelty. In this case, however, the relevant evidence does not establish such a connection. The petitioner's representations in her January 22, 2014 affidavit indicate that her crime was connected to J-R-'s abuse; however, her affidavits contain significant, unexplained inconsistencies regarding the circumstances that led to her conviction and the nature of her underlying conduct.

In her January 22, 2014 affidavit submitted in response to the NOID, the petitioner described J-R- pushing her and threatening her when she confronted him about his illegal activities, about one or two months before she was arrested in February 2007. She stated that he threatened to take their son away from her if she told anyone about his activities. The petitioner also recounted that while the couple was being arrested, J-R- told her to say that she did not know anything, or that he would keep his word regarding his threat about their son. The petitioner indicated that J-R- raped her before he went to jail to make sure that she did not abandon the relationship while J-R- was incarcerated, and that she became pregnant with the couple's second child as a result of the rape. The petitioner has credibly established that J-R- battered her and that she was under significant stress at the time of her arrest; however, she has not demonstrated that her conviction was connected to the abuse. The Information filed with the court, to which the petitioner pled guilty, states that on March the petitioner removed a computer from her residence that contained illegal documents. The petitioner has not described how her actions on March at least nine months before she claims to have confronted J-R- about his illegal activities, were controlled by J-R- or connected to his abuse.

In her affidavits, the petitioner has also presented discrepant accounts of the circumstances leading to her arrest. In her November 5, 2013 affidavit, submitted in response to the RFE, the petitioner claimed that the computer that she was accused of removing from her residence was always at her in-laws' house. In contrast, in her January 22, 2014 affidavit, the petitioner stated that at J-R-'s request, she arranged to pick up the computer from J-R-'s associate's cousin. She recounted that Federal Bureau of Investigation (FBI) agents followed her to another town where she obtained the computer. She then transported the computer to where her father-in-law turned it over to the FBI agents. She indicated that she pled guilty, in part, because her attorney informed her that the government had

evidence against her. On appeal, in an affidavit dated March 20, 2014, the petitioner states that she does not understand the circumstances that led to her arrest. The petitioner has not acknowledged or explained the discrepancies in her descriptions of the events that led to her arrest. In her January 22, 2014 affidavit, the petitioner stated that J-R- told her where the computer was located, but she did not indicate that J-R- engaged in any threats, coercion, or other abusive behavior causing her to commit the crime or otherwise connected to her conviction. It is not apparent from the record, as currently constituted, that the petitioner's actions on March were connected to the abuse.

The record contains evidence that the petitioner has a clear criminal record since 2008, that she completed her probation and payment of associated costs, that she has paid taxes, and volunteers at her son's school. In addition, the petitioner submitted support letters from her employer, religious leader, church member, and friend; however, the letters do not indicate that the authors are aware of the petitioner's criminal record, and can knowingly attest to her good moral character despite her conviction.

When viewed in the aggregate, the relevant evidence does not establish the petitioner's good moral character. The petitioner has provided varying accounts of her actions leading to her conviction, and has not acknowledged or explained the discrepancies in her statements. She also has not clearly stated her actual, underlying conduct nor shown that her husband's abuse was a causative or contributing factor to her culpable actions. Consequently, the petitioner has not established that her conviction for a CIMT was connected to her having been battered or subjected to extreme cruelty, and is therefore unable able to establish her good moral character through the application of section 204(a)(1)(C) of the Act. Section 101(f)(3) of the Act thus precludes a finding of the petitioner's good moral character, as required under section 204(a)(1)(A)(iii)(II)(bb) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

Conclusion

On appeal, the petitioner has not established her good moral character and is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish her eligibility. 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

ORDER: The appeal is dismissed.