

(b)(6)

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



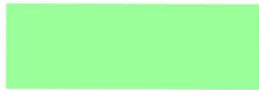
U.S. Citizenship  
and Immigration  
Services



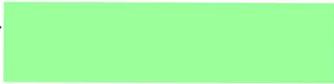
Date: JUL 01 2014

Office: VERMONT SERVICE CENTER

FILE:

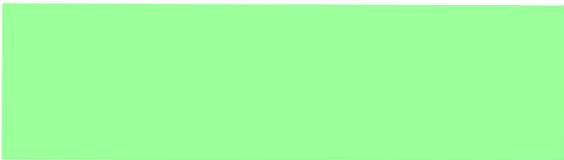


IN RE: Self-Petitioner



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 Director, Vermont Service Center (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 under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

On July 12, 2013, the director denied the petition based on her determination that the petitioner failed to establish her good moral character because she had been confined, as a result of convictions, to a penal institution for an aggregate period of 180 days or more.

On appeal, counsel does not submit a brief or any additional evidence.

*Applicable Law*

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A 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 . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

\* \* \*

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

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations,

the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

*Facts and Procedural History*

The petitioner is a citizen of El Salvador who married her husband, a U.S. citizen, on [REDACTED] 2003, in Texas. The petitioner filed the instant Form I-360 on August 6, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character. The petitioner, through counsel, responded with evidence which the director found insufficient to establish the petitioner's good moral character. The director denied the petition on that ground and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

*Good Moral Character*

Primary evidence of a self-petitioner's good moral character is his or her affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the self-petitioner's residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v). The petitioner has not submitted such evidence. In her declaration, the petitioner did not mention her moral character, nor did she mention her three convictions or any arrests. The petitioner submitted two affidavits in which [REDACTED] generally stated that the petitioner is a good person with good moral character. This evidence is insufficient to show the petitioner is a person of good moral character. Furthermore, the petitioner did not submit a local police clearance or a state-issued criminal background check from each locality or state in the United States in which she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition, nor did she explain why she failed to submit such evidence as required under 8 C.F.R. § 204.2(c)(2)(v).

The record reflects that on [REDACTED], 2003, the petitioner pled guilty in the U.S. District Court for the District of [REDACTED] Texas, to Assault – Family Member in violation of Texas Penal Code § 12.44(b), and was sentenced to and served ten days in jail.<sup>1</sup> On [REDACTED] 2010, the petitioner was convicted in [REDACTED] Texas, of Assault – Family Member and was sentenced to and served 59 days in jail.<sup>2</sup> On [REDACTED], 2010, the petitioner pled guilty to theft greater than \$50 but less than \$500 and

<sup>1</sup> Case number [REDACTED]

<sup>2</sup> Case number [REDACTED]

was sentenced to and served 180 days in jail.<sup>3</sup>

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)(7) of the Act prescribes that no person shall be found to have good moral character if he or she 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 director correctly determined that the petitioner was confined, as a result of her conviction for theft, to a penal institution for 180 days, which precludes a finding of her good moral character pursuant to section 101(f)(7) of the Act.

On the Form I-290B, Notice of Appeal or Motion, counsel asserts that the petitioner was sentenced to 180 days but not confined. Counsel offers no evidence or legal or factual analysis to support this contention. The register of actions submitted below states that the petitioner was sentenced to confinement for 180 days, and that she received 180 days credit. However, there is no indication that the credit was not for time served, particularly since she was "committed" on September 30, 2009. As such, the petitioner has not shown that she was not confined, as a result of her conviction, to a penal institution for 180 days. 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.

The Petitioner Lacks Good Moral Character for Other Reasons.

Even if the petitioner's convictions did not fall within any of the enumerated provisions of section 101(f) of the Act, the record still shows that she lacks good moral character for other reasons. Section 101(f) of the Act states, in pertinent part, "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." 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 petitioner has been convicted of two assaults against a family member and a theft crime. The petitioner does not discuss or even acknowledge her convictions in her affidavit, or attest to any other extenuating circumstances surrounding her crimes. The petitioner has not shown that there were any extenuating circumstances and she committed unlawful acts that adversely reflect upon her moral character and was convicted for them. Accordingly, the petitioner was convicted of unlawful acts which adversely reflect upon her moral character, which further prevents a finding that the petitioner is a person of good moral character pursuant to section 101(f) of the Act and the regulation at 8 C.F.R.

---

<sup>3</sup> Case number [REDACTED]

§ 204.2(c)(1)(vii). Ultimately, the present record fails to establish the petitioner's good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has failed to overcome the director's determination that she is not a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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.

**ORDER:** The appeal is dismissed.