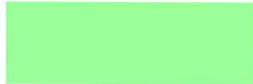


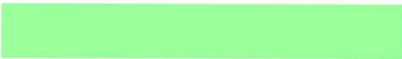
(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **JUL 15 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:

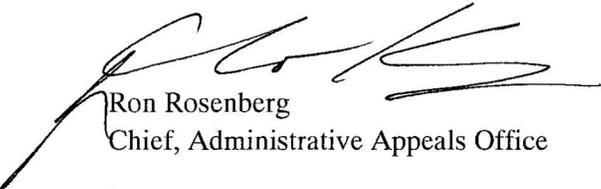
SELF-REPRESENTED

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 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, the petitioner submits a statement and a criminal disposition.

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).

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:

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. 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 claims that she entered the United States on September 3, 1992 as a visitor. The petitioner married a U.S. lawful permanent resident on March 27, 2006 in Brooklyn, New York. On September 14, 2012, the petitioner's husband was naturalized and became a U.S. citizen. The petitioner filed the instant Form I-360 on October 18, 2011. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good moral character. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish eligibility. The director denied the petition and the petitioner 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. The petitioner's

claims do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, 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 October 2008 and ending in October 2011). In her initial filing, the petitioner did not submit the requisite local police clearance or state-issued criminal background check.

In response to the first RFE, the petitioner submitted a police clearance based upon a fingerprint search from the [REDACTED] Police Department, reflecting that she has a criminal record. She did not, however, provide the underlying court disposition(s) for her criminal record. The director then issued a second RFE, notifying the petitioner that Federal Bureau of Investigations (FBI) records reflect that she was arrested on May 31, 1994 and charged with: kidnapping with intent to collect ransom; conspiracy; coercion to cause fear to persons or property; unlawful imprisonment; and acting in a manner to cause injury to a child less than 17. The director requested that the petitioner provide: her arrest reports; court documents with the final disposition of the charges; relevant excerpts of law; and an explanation for the arrest and/or convictions. In response to the second RFE, the petitioner provided another police clearance from the [REDACTED] Police Department. The second police clearance reflected that she does not have a criminal record. The petitioner also submitted a sealed court disposition from the Criminal Court of the City of [REDACTED] County. The disposition reflects that on July 20, 2007 she was convicted of disorderly conduct in violation of section 240.20 of the New York Penal Law. She was sentenced to a conditional discharge for one year and five days of community service.

In denying the petition, the director stated that the petitioner failed to provide arrest report(s), court documents, excerpts of relevant law and a written explanation for her May 31, 1994 arrest. The director also stated that on the petitioner's adjustment of status application (Form I-485) she indicated that she had never been arrested, but the record clearly demonstrated that she had been arrested. On appeal, the petitioner submits a disposition from the Supreme Court of the State of New York, [REDACTED] which provides that on March 9, 1995 she pled guilty to endangering the welfare of a child in violation of subsection 260.10(1) of the New York Penal Law and was sentenced to three years of probation.

On appeal, the petitioner asserts that in May 1994 she was living at her aunt's apartment in [REDACTED] after giving birth to her son. She states that there were children living at her aunt's apartment and she was told that the children had just arrived from Jamaica and their parents would be picking them up in a few days. She contends that there was never any indication that the children were being held against their will. The petitioner states that it was not her apartment and she did not have control of the circumstances. She asserts that she was arrested because she was residing in the apartment and was present during the police raid. She states that she only pled guilty in order to regain custody of her infant son and to avoid prison. Inasmuch as the petitioner avers her lack of culpability, we

cannot look behind her conviction to reassess her guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien's guilt or innocence); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1974) (same).

Petitioner Lacks Good Moral Character under Section 101(f) and the Regulation

The petitioner's conduct evidences a lack of good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). 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.

Primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). In her initial affidavit, the petitioner stated that she is "law abiding" and did not acknowledge her convictions. On the petitioner's adjustment of status application (Form I-485) filed on October 28, 2013, she indicated that she had never been arrested. Although the petitioner asserts on appeal that this is a typographical error of the office that prepared her application, she does not explain why she also failed to acknowledge her arrests and convictions in her initial statement or in response to the RFEs. In her statement submitted on appeal, the petitioner does not acknowledge responsibility for her involvement in the child endangerment offense. Nor does she discuss the circumstances behind her conviction for disorderly conduct. The petitioner still has not provided any of her arrest reports and charging and sentencing documents, despite requests from the director for her criminal records. Moreover, the petitioner has not provided evidence that she successfully completed the terms of her three years of probation for her child endangerment offense. The petitioner failed to discuss her conviction for disorderly conduct and her brief description of the events surrounding her child endangerment offense fails to establish that she was convicted under extenuating circumstances. The petitioner has not demonstrated responsibility for her actions and shown rehabilitation or otherwise established her good moral character despite her convictions.

The petitioner committed unlawful acts which adversely reflect upon her moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). She has therefore failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

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

(b)(6)

NON-PRECEDENT DECISION

Page 6

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.