

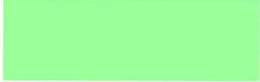
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U.S. Citizenship  
and Immigration  
Services



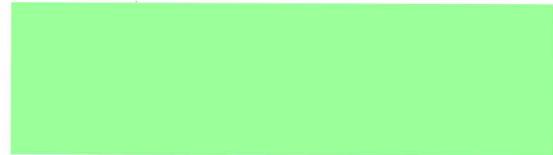
Date: **SEP 16 2014** Office: VERMONT SERVICE CENTER

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,

A handwritten signature in black ink that appears to read "Ron Rosenberg".

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, counsel submits a brief and a court order.

*Relevant Law and Regulations*

Section 204(a)(1)(A)(iii)(I) 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 was last admitted to the United States on December 2, 1985 as a nonimmigrant visitor. The petitioner married a U.S. citizen on February 9, 2007. The petitioner filed the instant Form I-360 on July 2, 2012. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good moral character. The petitioner responded to the RFEs with additional evidence, which the director found insufficient to establish eligibility. The director denied the petition and the petitioner timely appealed.

We conduct appellate review on a *de novo* basis. *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 and the additional evidence submitted on appeal do not overcome the director's determination. The appeal will be dismissed for the following reason.

*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 July 2009 and ending in July 2012). The record reflects that the petitioner has resided in Georgia since 2004. In her initial filing, the petitioner did not submit the requisite local police clearance or state-issued criminal background check. In her affidavit, the petitioner stated that she was arrested “two or three times for shoplifting” and on another occasion in 1986 for an unknown reason. She indicated that she does not remember her plea. The petitioner did not further discuss her moral character or arrests in her affidavit.

In response to the first RFE, the petitioner submitted a clearance from the [REDACTED] County Police central records section in [REDACTED], Georgia based upon a name and date of birth search, which showed that she had no criminal history record within the files of the Georgia Crime Information Center. She did not, however, provide the underlying court dispositions for the arrests she discussed in her affidavit. The director then issued a second RFE, notifying the petitioner that a Federal Bureau of Investigation (FBI) record based upon her fingerprints reflects that she was arrested in 1993 for shoplifting in California and in 1994 for failure to pay drug stamp tax and possession of a controlled substance in Utah. The director requested that the petitioner provide: her arrest reports; court documents with the final disposition of the charges; and relevant excerpts of law showing the maximum possible penalty for each charge. In response to the second RFE, the petitioner provided another police clearance from the [REDACTED] County Police central records section in [REDACTED] Georgia. She did not, however, provide court dispositions related to her arrests in California and Utah.

In denying the petition, the director determined that the section 101(f)(3) of the Act bars a finding of the petitioner's good moral character because her FBI record shows that she was arrested on July 9, 1986 for transporting and selling narcotics; May 31, 1990 for petty theft; June 8, 1993 for burglary; November 7, 1993 for theft; and December 9, 1994 for possession of marijuana with intent to distribute, possession of drug paraphernalia, child abuse and no Utah drug tax stamp.

On appeal, counsel contends that the petitioner was not convicted of the 1993 arrests for theft and burglary and since her arrests occurred more than 20 years ago the dispositions are unavailable. However, counsel failed to provide statements from the courts or other local government authorities with jurisdiction over the disposition of the petitioner's arrests to establish that the records are no longer available. See 8 C.F.R. § 103.2(b)(2)(ii). Counsel's unsupported assertion that the petitioner was not convicted of the charges related to her arrests in 1993 is also not supported by any evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, counsel also asserts that the petitioner's convictions related to her December 9, 1994 arrest for possession of marijuana with intent to distribute, possession of drug paraphernalia, child abuse and no Utah drug tax stamp were set aside and dismissed on November 24, 2008. Counsel submits an order to withdraw judgment and entry of oral plea in abeyance agreement, *nunc pro tunc*, from the Seventh Judicial District Court, ██████ County, Utah, dated November 24, 2008. The agreement, however, does not provide any information on the underlying conviction(s) for which it was issued and counsel has not submitted any related disposition(s). Moreover, the petitioner has not shown that the convictions were vacated due to procedural or substantive defects in the criminal proceedings. See *Pickering v. Gonzales*, 465 F.3d 263, 266 (6<sup>th</sup> Cir. 2006) (affirming this interpretation of conviction at section 101(a)(48)(A) of the Act, as stated by the Board of Immigration Appeals in *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), while vacating that decision on other grounds). A "plea in abeyance agreement" means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance. Utah Code Ann. § 77-2a-1 (West 2008). In *U.S. v. Zamudio*, the Tenth Circuit Court of Appeals determined that a guilty plea held in abeyance entered in a Utah state court satisfies the definition of a "conviction" for immigration purposes under section 101(a)(48)(A) of the Act. 314 F.3d 517, 521-22 (10th Cir. 2002).

On appeal, counsel also asserts that the petitioner is not inadmissible for transporting and selling narcotics because the case was dismissed after she served 30 days in jail and "received a plea and drug diversion." Counsel also contends that the petitioner is not inadmissible if she was convicted of petty theft because the crime falls under the petty offense exception of section 212(a)(2)(A)(ii)(II) of the Act. As discussed, counsel has not submitted any court dispositions for the petitioner's arrests and any assertions from counsel about the petitioner's convictions will not be given any weight in the absence of documentary evidence.<sup>1</sup>

In summary, an FBI record based upon the petitioner's fingerprints shows that she was arrested for transporting and selling narcotics, petty theft, burglary, theft, possession of marijuana with intent to distribute, possession of drug paraphernalia, child abuse and no Utah drug tax stamp and the petitioner acknowledged at least two of those arrests. The petitioner has failed to provide any court

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<sup>1</sup> Even if we considered counsel's assertions, the petitioner has still failed to demonstrate that she is a person of good moral character. For example, a sentence of 30 days in jail for transporting and selling narcotics indicates a restraint on the petitioner's liberty, and thus a conviction under section 101(a)(48)(A) of the Act. Such a conviction bars a finding of the petitioner's good moral character pursuant to three classes of persons provided under section 101(f)(3) of the Act. First, the conviction is a violation of a law relating to a controlled substance under section 212(a)(2)(A)(i)(II) of the Act. Second, it is crime involving moral turpitude as defined under section 212(a)(2)(A)(i)(I) of the Act. See *Matter of Khourn*, 21 I&N Dec. 1041, 1047 (BIA 1997) (possession of a controlled substance with intent to distribute is a crime involving moral turpitude). Third, it is a drug trafficking offense under section 212(a)(2)(C)(i) of the Act. In addition, section 101(f) of the Act prescribes, 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."

dispositions related to her arrests or evidence that such records are unavailable. Nor has she discussed her moral character and the circumstances surrounding her arrests in her affidavit. She has consequently 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.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.