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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: **SEP 18 2014** Office: VERMONT SERVICE CENTER File: [Redacted]

IN RE: Self-Petitioner: [Redacted]

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 THE PETITIONER:

[Redacted]

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 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 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.

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 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).

In regards to determining a petitioner’s good moral character, section 204(a)(1)(C) of the Act states:

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), (A)(iv), (B)(ii), or (B)(iii) if the [Secretary] finds that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty.

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:

(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 Western Samoa who indicates that she last entered the United States in December 1986 as a nonimmigrant tourist. On August 8, 1994, the petitioner married W-U¹, a United States citizen, in California. The petitioner filed the instant Form I-360 self-petition on

¹ Name withheld to protect the individual's identity.

February 20, 2013. At the time of filing, the petitioner was serving a 16-month sentence of imprisonment for vehicle theft. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the petitioner's requisite good moral character, and a Notice of Intent to Deny (NOID) because the petitioner's criminal conviction and incarceration prohibited a finding of her good moral character pursuant to section 101(f)(7)-(8) of the Act. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Good Moral Character

The petitioner lacks good moral character under section 101(f)(7)-(8) of the Act because she was convicted of an aggravated felony and imprisoned for more than 180 days. The record reflects that on [REDACTED] the petitioner pled guilty and was convicted in the Superior Court of California, County of [REDACTED] of theft and unlawful taking or driving of a vehicle, in violation of California Vehicle Code (VC) section 10851(A). On [REDACTED] the petitioner was sentenced to three years of probation, six days in county jail, restitution, and 20 days community service. On [REDACTED] the petitioner was convicted of violation of probation, sentenced to 28 days in jail, and her probation was reinstated. On [REDACTED] the petitioner was again convicted of violation of probation, sentenced to 72 days in jail, and her probation was reinstated.

On [REDACTED] the petitioner was convicted in the Superior Court of California, County of [REDACTED] of possession of controlled substance paraphernalia, in violation of California Health and Safety Code (HS) Section 11364.² She was sentenced to 18 months of probation and eight days in county jail. On [REDACTED] the petitioner was convicted of violation of probation, given credit for time served in the amount of 141 days, her probation was revoked and she was sentenced for the vehicle theft conviction to 16 months in state prison.

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 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. 8 U.S.C. § 1101(f)(7). In this case, the petitioner was imprisoned for 16 months for her vehicle theft conviction and consequently, section 101(f)(7) prohibits the petitioner from demonstrating good moral character. Section 101(f)(8) of the Act further prescribes that no person shall be found to have good moral character if he or she at any time has been convicted of an aggravated felony. 8 U.S.C. § 1101(f)(8). The director correctly determined that the petitioner's vehicle theft conviction was an aggravated felony as defined under section 101(a)(43)(G) of the Act, as: "a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year." 8 U.S.C. § 1101(a)(43)(G). The petitioner was convicted of theft and unlawful taking or driving

² This conviction was later vacated on [REDACTED]

of a vehicle and after three violations of probation, was sentenced to a term of imprisonment of one year and four months. Accordingly, the petitioner was convicted of an aggravated felony, which also precludes a finding of her good moral character pursuant to section 101(f)(8) of the Act.

On appeal, counsel asserts that the petitioner is not barred from establishing her good moral character because her theft offense is waivable under section 212(h) of the Act as a crime involving moral turpitude. Counsel claims that the petitioner's offense was connected to her spouse's abuse and that she merits a favorable exercise of discretion finding her to have good moral character despite her conviction pursuant to section 204(a)(1)(C) of the Act. The record shows that the petitioner was arrested and convicted five years after she stated that she and her husband separated in 2001. Nonetheless, regardless of whether the petitioner's offense was connected to her spouse's abuse or was also a crime involving moral turpitude, the exception at section 204(a)(1)(C) of the Act does not apply to self-petitioners convicted of an aggravated felony. Section 204(a)(1)(C) of the Act requires that the criminal conviction be waivable with respect to the petitioner under section 212(a) or 237(a) of the Act. Section 237(a)(2)(A)(vi) of the Act only provides a deportability waiver for aliens convicted of an aggravated felony who have been granted a full and unconditional pardon by the President of the United States or by a State Governor. 8 U.S.C. § 1127(a)(2)(A)(vi). U.S. Citizenship and Immigration Services (USCIS) does not have the authority to grant such a pardon and the record does not indicate that the petitioner has received such a pardon. Consequently, the "waiver authorized" by section 237(a)(2)(A)(vi) of the Act is not "waivable with respect to the petitioner" in this case under section 204(a)(1)(C) of the Act.

Counsel also contends that the director erred in concluding that the petitioner's criminal history was not connected to her husband's abuse and when notice of this deficiency was not provided in the RFEs or NOID it violated agency procedures and due process. Counsel further asserts that the director stated in the second RFE that the petitioner established her good moral character because her vehicle theft and drug offenses occurred more than three years before the filing of her Form I-360 self-petition.³ While that initial finding was erroneous, the director's ultimate determination was correct and compliant with the statute and regulations. Although the record shows the petitioner's aggravated felony occurred five years after her final separation from her husband, we do not reach the issue of whether her offense was connected to his battery or extreme cruelty. Even had the petitioner established a connection between her criminal acts and having been subjected to battery or extreme cruelty, sections 101(a)(43)(G) and 101(f)(7)-(8) of the Act bar a finding of her good moral character due to her conviction for an

³ While the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires evidence of the petitioner's good moral character during the three years preceding the filing of the petition, the regulation does not limit the temporal scope of U.S. Citizenship and Immigration Services' (USCIS') inquiry into the petitioner's moral character because section 204(a)(1)(A)(iii) of the Act does not prescribe a time period during which a self-petitioner's good moral character must be established. *See Self-Petitioning for Certain Battered or Abused Spouses and Children*, 61 Fed. Reg. 13061, 13066 (Interim Rule Mar. 26, 1996) (USCIS may investigate the self-petitioner's character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time). In this case, the petitioner was still serving her 16-month sentence of imprisonment for her vehicle theft conviction at the time she filed her self-petition providing reasonable cause to examine the entire record of the petitioner's criminal history.

aggravated felony and her 16-month sentence of imprisonment. The present record thus fails to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to demonstrate her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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 and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.