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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



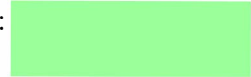
U.S. Citizenship  
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Services



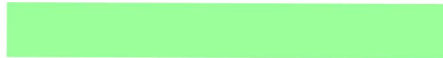
Date: FEB 19 2015

Office: VERMONT SERVICE CENTER

File:



IN E: 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)

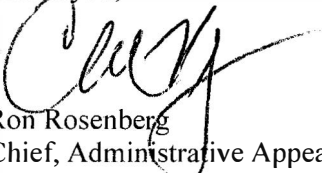
ON BEHALF OF PETITIONER:



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.

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 sustained.

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 . . . .

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, admission, or parole in 1994. The petitioner married M-M-<sup>1</sup>, a U.S. citizen, on [REDACTED] in [REDACTED] Arizona. On October 9, 2012, the petitioner applied for and was granted Deferred Action for Childhood Arrivals (DACA). On January 17, 2013, the petitioner was arrested at her place of employment during an immigration raid undertaken by the [REDACTED] Sheriff's Office. On May 22, 2013, the petitioner pled guilty to one count of criminal impersonation in violation of section 13-2006(A)(1) of the Arizona Revised Statutes, and was sentenced to twelve months of unsupervised probation. The petitioner filed the instant Form I-360 self-petition on August 5, 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 subsection 101(f)(3) 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, the petitioner submits a brief and additional evidence. *De novo* review of the record, as supplemented on appeal, shows that the director did not err in finding that the petitioner's conviction is a crime involving moral turpitude, but failed to consider whether the petitioner is still able to demonstrate her good moral character under section 204(a)(1)(C) of the Act. Upon review, in light of the provisions of section 204(a)(1)(C) of the Act, the petitioner has established her good moral character. The appeal will be sustained.

#### *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 section 13-2006(A)(1) of the Arizona Revised Statutes for using a fabricated social security number in order to gain employment. Relying on *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000), the petitioner asserts on appeal that in the Ninth Circuit, crimes based on the use of a false social security number to gain employment do not involve moral turpitude. However, the Ninth Circuit has since held that section 13-2006(A)(1) of the Arizona Revised Statutes, the petitioner's statute of conviction, is categorically a crime involving moral turpitude. *See De Martinez v. Holder*, 770 F.3d 823, 825 (9th Cir. 2014) (holding that crimes requiring proof of an "intent to defraud" necessarily involve moral turpitude and A.R.S. § 13-2006(A)(1) is such a crime).

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<sup>1</sup> Name withheld to protect the individual's identity.

In the alternative, the petitioner asserts that her conviction qualifies for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. This exception applies to a conviction where the maximum penalty possible for the crime does not exceed one year of imprisonment and the alien was not sentenced to a term of imprisonment of more than six months. Criminal impersonation in Arizona is a class 6 felony. A.R.S. § 13-2006(B). The maximum sentence for a class 6 felony for a first time offender is 1.5 years. A.R.S. § 13-702(D). The petitioner asserts that under Arizona's sentencing guidelines for first time offenders, she could not have been given anything more than the "presumptive" sentence of one year, and therefore qualifies for the petty offense exception. However, in *Mendez-Mendez v. Mukasey*, the Ninth Circuit specified that the petty offense exception's "maximum penalty possible" refers to the statutory maximum for the crime committed, not the maximum sentence that can be imposed on a particular defendant. 525 F.3d 828, 833 (9th Cir. 2008). Here, the statutory maximum penalty for the petitioner's crime is 1.5 years. As the maximum penalty for the crime of which the petitioner was convicted exceeds one year, she is not eligible for the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act.

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, the relevant evidence establishes such a connection. In a personal affidavit dated July 31, 2013, the petitioner credibly described her relationship with M-M-, which began 2008. She recounted his controlling behavior, including his psychological, physical, and financial abuse. She described how throughout their relationship, M-M- insisted that she work and controlled their joint bank account. She indicated that M-M- refused to tell her how much money he made, and used their first joint bank account, which they opened prior to their marriage, for his personal expenses. In a second affidavit, also dated July 31, 2013, the petitioner detailed how much of M-M-'s controlling behavior revolved around the couple's finances. She recounted that early in their relationship, M-M- began complaining that he did not make enough money to pay his bills. He asked the petitioner to open a bank account with him so that they could save for their vacations and wedding, but then proceeded to use the money for his own expenses. The petitioner stated that after much conflict, she ultimately closed the first account, but opened a second joint account with M-M- after the couple married and M-M- promised not to repeat his prior behavior. The petitioner described M-M-'s anger and manipulation after she applied for DACA and quit her job, and recounted that she ultimately went back to the job at M-M-'s insistence. The petitioner indicated that she wanted to go to school, but instead worked over 50 hours a week, and paid half of the couple's expenses. The petitioner noted that although M-M- worked at a bank, and she worked at a supermarket, he insisted that she took home more money than he did, and would not disclose his salary.

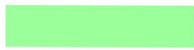
The petitioner stated that M-M- took all of her money out of the bank account while she was in immigration detention, claiming that he needed the money for her legal fees, and also for the bills because he was suffering financial hardship while she was out of work. After the petitioner was released from detention, M-M- ensured that the petitioner returned to her job at the supermarket. The petitioner recounted that shortly after she was released from detention, she ultimately learned that M-M- was leading a double life, and that he had a girlfriend at the bank with whom he maintained an ongoing relationship. The petitioner submitted an affidavit from M-M-'s girlfriend, describing how at

the bank, M-M- told everyone that he was single, lived with his parents, and that the petitioner was his "psycho ex-girlfriend." The petitioner provided an undated affidavit from her friend, [REDACTED] who discussed M-M-'s controlling behavior and seeing bruises on the petitioner's arm. In an affidavit dated July 31, 2013, the petitioner's sister also discussed M-M-'s control over the petitioner, indicating that M-M- did not permit the petitioner to go anywhere without his permission, and would tell the petitioner what she could and could not wear. The petitioner's sister stated that M-M- was "good with his words" and could "convince people of things."

The petitioner submitted a psychological evaluation dated June 18, 2013, prepared by psychologist [REDACTED] described M-M-'s psychological abuse of the petitioner, telling her that she was "seeing things" and that she needed professional help, and threatened to have her hospitalized. [REDACTED] indicated that the petitioner became a victim of learned helplessness from M-M-'s control, systematic denial of her experiences, and violent outbursts, to the point that the petitioner was unable to identify her thoughts clearly.

In response to the NOID, the petitioner submitted an additional personal affidavit dated April 1, 2014, in which she recounted how M-M- facilitated her original use of the false social security number so that she could become employed, and then subsequently insisted that she keep working. The petitioner stated that when she quit her job to apply for DACA to obtain a legal work permit, M-M- refused to support her financially. The petitioner indicated that when she obtained her work permit, she went back to the supermarket at M-M-'s insistence, and because M-M- made her feel guilty about not returning since the store manager had paid her bond. The petitioner submitted an affidavit from supermarket manager, [REDACTED] dated March 31, 2014. In the affidavit, [REDACTED] indicated that M-M- showed a lot of interest in the petitioner's job, and would often pick up her paychecks for her, even if the petitioner was at work. [REDACTED] noted that M-M- often came to the store when the petitioner was working and on several occasions asked [REDACTED] to give the petitioner a raise. M-M- told [REDACTED] that the petitioner was struggling financially and when the couple announced that they were getting married, M-M- asked [REDACTED] if she could give the petitioner more hours since he was not making enough at the bank. When the petitioner was detained, M-M- asked [REDACTED] to pay the petitioner's bond because he did not have enough money. [REDACTED] indicated that she now believes that M-M- had enough money to pay the bond, but wanted the petitioner to feel guilty and return to her job at the store.

When viewed in the aggregate, the relevant evidence establishes that petitioner's conviction for criminal impersonation, based on her usage of a false social security number to gain employment, was connected to M-M-'s extreme cruelty. Throughout their relationship, M-M- exhibited controlling behavior toward the petitioner and ensured that she remained at the same place of employment, where he monitored her and collected her paychecks. He facilitated her employment at that establishment by helping to obtain the false social security number, which was the basis of the petitioner's conviction. The petitioner has submitted college transcripts showing that she is an excellent student, and her administrative record reflects that she took steps to become legally employed through DACA. Upon *de novo* review of the relevant evidence, and in light of the provisions of section 204(a)(1)(C) of the Act, the petitioner has established her good moral character, as required under section



204(a)(1)(A)(iii)(II)(bb) of the Act. The portion of the director's decision finding to the contrary is hereby withdrawn.

*Conclusion*

The director denied the self-petition because the petitioner failed to establish her good moral character. On appeal, the petitioner has overcome the director's sole ground for denial. She is consequently eligible 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 been met. Accordingly, the appeal will be sustained and the self-petition will be granted.

**ORDER:** The appeal is sustained.