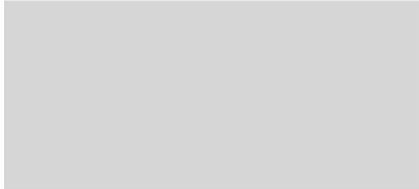


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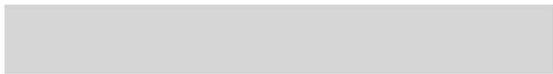
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: JUL 08 2015



IN RE: 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 PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (the “director”) revoked approval of the petition. 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 revoked approval of the petition, determining that the petitioner was not a person of good moral character.

Pertinent Facts and Procedural History

The petitioner is a citizen of Germany who married J-J¹, a U.S. citizen, on [REDACTED] in Georgia. The petitioner last entered the United States on March 7, 2010 under the visa waiver program. On June 25, 2012, pursuant to a negotiated plea, the petitioner was convicted in the Georgia District Court of six misdemeanor counts of Cruelty to Animals under Georgia Code Annotated § 16-12-4, and was sentenced to twelve months of jail time and 48 months of probation. Twelve months of time already served by the petitioner was credited towards the petitioner’s jail sentence.

The petitioner filed the instant Form I-360 self-petition on December 11, 2012. The director issued a Request for Evidence (RFE) on April 7, 2014 and approved the Form I-360 on May 28, 2014. On August 24, 2014, the director issued a Notice of Intent to Revoke (NOIR) the petition on the basis that the petitioner’s conviction constituted a crime involving moral turpitude and this fact, as well as the length of the sentence imposed for that conviction, precluded her from establishing her good moral character under respective sections 101(f)(3) and (7) of the Act, 8 U.S.C. 1101(f)(3), (7). The petitioner timely replied to the NOIR, but the director found the petitioner’s response insufficient to establish her good moral character. In this regard, the director first noted that the petitioner’s conviction was subject to a potential waiver under section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), and that, if waived, her conviction would not preclude a finding of a lack of good moral character under section 101(f)(3) of the Act. The director concluded, however, that the petitioner’s confinement in a penal institution for more than 180 days was a separate and unwaivable statutory bar to good moral character under section 101(a)(7) of the Act, and revoked approval of the petition. On appeal, the petitioner submits a brief and additional evidence. *De novo* review of the record, as supplemented on appeal, does not overcome the director’s ground for revocation for the reasons set forth below.

Relevant Law and Regulations

A. Visa Petition Revocation

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

¹ Name withheld to protect the individual’s identity.

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

B. Abused Spouse Immigrant Petition

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).

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

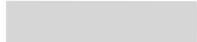
(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. . . . A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 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, . . . the approval of a self-petition will be revoked.

C. Good Moral Character

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 . . . subparagraph (A) [relating to crimes involving moral turpitude] . . . if the offense described therein . . . was committed during such period;

* * *

(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

D. Good Moral Character Waiver for Abused Spouse Self-Petitioners

Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), 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) of this title or deportability under section 237(a) of this title shall not bar [the Secretary of Homeland Security] from finding the petitioner to be of good moral character . . . if [the Secretary] finds that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty.

Discussion

The issue before us is whether the petitioner’s conviction for animal cruelty and/or the sentence imposed for that conviction bar her from showing good moral character, a requirement for immigrant status under section 204(a)(1)(A)(iii) of the Act. In response to the NOIR, the petitioner argued that section 101(f)(7) does not apply to her because all of the time she served in jail occurred prior to the date of her sentencing on June 25, 2012 and, as a result, she was not confined in a penal institution “as a result of” a conviction. The director correctly determined that the petitioner’s confinement in jail for twelve months prior to sentencing counts toward the length of her confinement under section 101(f)(7) of the Act because that period of confinement, in fact, was part of the conviction and sentence. See *Garcia-Mendoza v. Holder*, 753 F.3d 1165, 1169-71 (10th Cir. 2014) (holding that section 101(f)(7) of the Act refers to an actual period of confinement, and deferring to the Board of Immigration Appeals’ determination that pretrial confinement credited as time served counts toward the 180-day period of section 101(f)(7) of the Act); see also Georgia Code Annotated § 17-10-11 (requiring that pretrial confinement be credited as time served). Similarly, in *Arreguin-Moreno v. Mukasey*, the U.S. Court of Appeals for the Ninth Circuit held that a petitioner was not eligible for cancellation of removal because she served 180 days or more in a penal institution, which included pre-trial detention later credited at sentencing as time served, and was thus unable to satisfy the statutory good moral character requirement for cancellation of removal. 511 F.3 1229, 1233 (9th Cir. 2008). As a result, we agree with the director that the petitioner’s confinement bars her from establishing her good moral character under section 101(f)(7) of the Act.

On appeal, the petitioner also argues that her conviction is directly related to J-J-'s abusive treatment of her and that she accordingly qualifies for an exception to section 101(f) of the Act under section 204(a)(1)(C) of the Act because her conviction is waivable (under section 212(h)). In support of her claim, she references a memorandum of William R. Yates, Associate Director of Operations, USCIS, entitled *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, issued on January 19, 2005 ("Yates Memo"), which addresses the application of section 204(a)(1)(C) of the Act to Violence Against Women Act (VAWA) self-petitions.

We agree that the petitioner's lack of good moral character due to her conviction for animal cruelty is waivable under section 204(a)(1)(C) of the Act. However, we do not reach the issue of whether her conviction was connected to having been battered or subjected to extreme cruelty by J-J- for purposes of such a waiver because her period of confinement independently bars her from establishing her good moral character under section 101(f)(7) of the Act. Although certain criminal convictions may be waived, there is no corresponding waiver for a conviction's associated period of incarceration, and this is reflected in the Yates Memo referenced above (*see* Attachment 1). Therefore, section 204(a)(1)(C) of the Act is inapplicable here. As the petitioner's 12-month period of confinement precludes her from establishing her good moral character under section 101(f)(7) of the Act, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

Conclusion

The petitioner bears the burden of proof to establish 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 not been met.

ORDER: The appeal is dismissed. Approval of the petition remains revoked.