



U.S. Citizenship  
and Immigration  
Services

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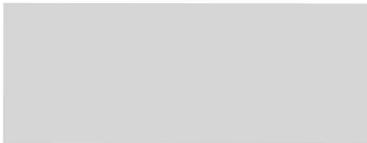
Date: **JUL 29 2015**

FILE #: [REDACTED]  
PETITION RECEIPT #: [REDACTED]

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](http://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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center (the director), denied the petition. 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the petitioner had been convicted of a crime involving moral turpitude and was not a person of good moral character. On appeal, the petitioner submits a brief and additional evidence.

*Applicable Law*

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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).

An alien who has divorced an abusive U.S. citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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, 8 U.S.C. § 1154(a)(1)(C), 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.

Section 204(a)(1)(J) of the Act 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 regulation at 8 C.F.R. § 204.2(c)(1) provides, 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. 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.

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.

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(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.

### *Facts and Procedural History*

The petitioner, a native and citizen of Mexico, claims to have last entered the United States in December 1989 without inspection, admission, or parole. She married J-R-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2007 in [REDACTED] Illinois and divorced him on [REDACTED], 2010. The petitioner filed the instant Form I-360 on December 28, 2010. The director issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character. The petitioner responded to the RFE with a brief, an affidavit, documentation relating to her criminal convictions for identity theft and battery, and additional evidence regarding her good moral character. The director found the evidence insufficient to establish that the petitioner was a person of good moral character, and denied the petition accordingly. The petitioner filed a timely appeal.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not demonstrate that the director's denial was in error. Therefore, we will dismiss the appeal.

### *Good Moral Character*

The record indicates that the petitioner has been convicted of two criminal offenses. On [REDACTED] [REDACTED] she pled guilty to battery, a class A misdemeanor, in violation of 720 ILCS 5/12-3(a)(1). She was sentenced to 12 months of conditional discharge, 50 hours of community service, and a fine. On [REDACTED] she pled guilty to identity theft in violation of 720 ILCS 5/16G-15(a)(1). She was sentenced to 24 months of probation, 500 hours of community service, and fines.

Although the petitioner's conviction for battery occurred more than three years prior to the filing of her petition, it is still relevant to our determination of whether the petitioner is a person of good moral character. Section 204(a)(1)(A)(iii) of the Act does not prescribe a time period during which a petitioner's good moral character must be established.

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

The petitioner's conviction for battery is not a crime involving moral turpitude. As a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of the immigration laws. *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996). However, this general rule does not apply where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon or serious bodily harm. See, e.g., *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988); *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967); *Matter of S-*, 5 I&N Dec. 668 (BIA 1954). The Board of Immigration Appeals (Board) has also found moral turpitude where a battery involved "infliction of bodily harm upon a person whom society views as deserving of special protection, such as a child, a domestic partner, or a peace officer . . ." *Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006).

Pursuant to 720 ILCS 5/12-3(a)(1), "A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." Based solely on the statutory language, 720 ILCS 5/12-3(a)(1) encompasses some conduct that involves moral turpitude and some conduct that does not. Therefore, the crime is not categorically one which involves moral turpitude, and we must review the record of conviction to determine whether the petitioner was convicted under this statute for conduct involving moral turpitude. The complaint relating to the petitioner's conviction states that the petitioner "knowingly/intentionally caused bodily harm to [the victim] in that she struck [the victim] in the face with her fist, and scratched [the victim] in the arm with a pen." The conviction record does not indicate that the petitioner was convicted for conduct involving serious bodily harm or any other aggravating dimension. Therefore, the petitioner's conviction for battery under 720 ILCS 5/12-3(a)(1) is not a crime involving moral turpitude.

However, the petitioner's conviction for identity theft under 720 ILCS 5/16G-15(a)(1) is a crime involving moral turpitude. The conviction records indicate that the petitioner was convicted for knowingly using the social security number of another person "to fraudulently obtain more than \$2,000 but less than \$10,000" from the [REDACTED] Credit Union, where she was also employed,

The statute under which the petitioner was convicted, 720 ILCS 5/16G-15(a)(1),<sup>2</sup> provides, in pertinent part:

A person commits the offense of identity theft when he or she knowingly:

(1) uses any personal identifying information or personal identification document of another person to fraudulently obtain credit, money, goods, services, or other property[.]

The Board has found that where a statute includes a specific intent to defraud, it is categorically a crime involving moral turpitude. *Matter of Bart*, 20 I&N Dec. 436, 437-38 (BIA 1992); *Matter of Flores*, 17 I&N Dec. 225, 227-28 (BIA 1980).

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<sup>2</sup> This statute has been repealed.

In her brief on appeal, the petitioner asserts that her conviction was not for a crime involving moral turpitude.<sup>3</sup> In response to the director's statement that "identity theft is generally a crime involving moral turpitude," she contends that identity theft is typically "a form of theft where the perpetrator knowingly takes from another by use of another's information." The petitioner claims that she believed the social security number she was using was fake and that she was not aware that it belonged to another person. However, where a statute of conviction categorically involves moral turpitude, our analysis ends and we do not consider the underlying facts. *See, e.g., Shepard v. United States*, 544 U.S. 13, 17 (2005); *Taylor v. United States*, 495 U.S. 575, 602 (1990). Furthermore, even if we could consider the facts of the petitioner's conviction, the Appellate Court of Illinois has stated that a conviction under 720 ILCS 5/16G-15(a)(1) "required the State to prove defendant knew the personal identifying information that she used was that 'of another person.'" *People v. Hernandez*, 967 N.E.2d 910, 920 (Ill. App. Ct. 2012).

The petitioner has not demonstrated that her conviction for identity theft was connected to the battery or extreme cruelty she experienced in her marriage with J-R-. In her affidavit dated December 30, 2014, the petitioner states that she worked at the [REDACTED] Teachers Credit Union from 2006 through 2010 using a social security number which she believed was fake. She further asserts that in March 2008, she took out a \$5,000 loan from the credit union because J-R- "continually pressured [her] to bring home more money to support his disability." She states, "He was abusive, and I took out the loan because of fear of what he might do if I did not bring additional money home." The petitioner also claims that J-R- threatened to turn her into immigration authorities if she did not support him financially. According to the petitioner, J-R- attempted to have her fired from her job at the credit union by reporting that she did not have proper authorization, and that after she separated from him, J-R- stole her personal documents, including her Individual Taxpayer Identification Number (ITIN). She indicates that one week after her divorce from J-R- became final, she was fired from her job based on an anonymous electronic message (email) to the credit union. The petitioner was told that the email included her ITIN and information that she was using a fake social security number. She believes that J-R- sent the email to the credit union as retaliation for the divorce court's determination that the petitioner would not support J-R- financially through alimony.

In her appeal brief, the petitioner contends that "portions of her act and the entire reason of her conviction were connected to" J-R- and his abusive behaviors. She asserts that J-R- "coerced her into debt to support his disability" and "forced [the petitioner] to incur . . . expenses by exploiting [her] lack of legal documentation so he could gain leverage over her. Once this debt was incurred, [J-R-] then manipulated her into taking out a loan to pay off the debt." However, according to her affidavit of December 15, 2010, the petitioner used the false social security number to obtain employment at the credit union prior to moving in with J-R- in November 2006 and prior to the incident that resulted in his disability, in April 2007. Additionally, conviction records show that she used the social security number to obtain a loan from the credit union in November 2006. Although she was only convicted for her use of the social security number in relation to her March 2008 loan, the petitioner does not dispute

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<sup>3</sup> In her brief dated November 17, 2014, counsel conceded, on the petitioner's behalf, that "[a]s stated in the NOID, identity theft is considered a crime involving moral turpitude for immigration purposes . . . ." However, we will address the petitioner's assertion on appeal that her conviction was not for a crime involving moral turpitude.

that she used the false social security number prior to that time. There is no evidence that J-R- pressured the petitioner to begin using the social security number to obtain work or to obtain a loan prior to 2008. The petitioner has not explained how her actions in 2008 can be separated from her actions in 2006, when she was not yet married to J-R- or experiencing abuse by him.

The petitioner further claims that she would not have been convicted in relation to her loan if J-R- had not reported her use of a false social security number to the credit union. She contends that credit union officials “only reported the issue because the . . . loan became delinquent and [they] would otherwise need to report it to a collections agency,” and that she would not have become delinquent on the loan if J-R- had not filed a report to have her fired. However, the petitioner submits on appeal an affidavit from [REDACTED], Sales and Collections Manager of the [REDACTED] Credit Union, who states that he learned in December 2010 that the petitioner had obtained her March 2008 loan through a fraudulent social security number. Mr. [REDACTED] states that he filed a police report, which “was based solely on [the petitioner’s] use of the fraudulent social security number in obtaining the loan.” This does not support the petitioner’s claim that she would not have been reported to the police and eventually convicted if she had not become delinquent on her loan as a result of being fired. Instead, it indicates that credit union officials reported the loan due to the petitioner’s use of a social security number that did not belong to her. Even if J-R- reported this information to the credit union, it was truthful information regarding the petitioner’s commission of a crime.

As additional support for her claim, the petitioner submits an assessment from the Institute on [REDACTED] at the University of [REDACTED] at [REDACTED]. The assessment indicates that coerced debt is a form of domestic violence and can involve “an abusive partner obtain[ing] credit in the victim’s name through fraud, manipulation, and coercion.” The assessment further states that J-R- was financially coercive toward the petitioner in that he “blamed [the petitioner] for his disability and demanded that she care for him and provide for him, regardless of the financial cost to her.” According to the assessment, J-R- refused to contribute to household expenses and insisted that the petitioner purchase equipment to accommodate his disability, then exploited “her lack of legal documentation, to increase his power and control over her by coercing her into debt, and then manipulating her into taking out loans to pay off the debt.” The assessment indicates that the petitioner provided financially for J-R- through loans in order to prevent him from fulfilling threats to report her to immigration, have her fired, or kill her. This assessment supports the petitioner’s claim that she was the victim of battery and extreme cruelty by J-R- and that she assisted J-R- financially. However, it does not outweigh the petitioner’s use of a social security number that did not belong to her, for purposes of obtaining employment and a loan, prior to moving in with J-R-, getting married, and becoming the victim of his abuse. The assessment does not explain how the petitioner’s use of the social security number in 2008 was separate from her use of it in 2006.

The petitioner has submitted numerous other affidavits from friends and family members who state that J-R- was abusive toward the petitioner and that the petitioner is a person of good moral character. For example, her boyfriend, [REDACTED], notes that the petitioner has overcome hardship to become a good mother. The petitioner’s father, [REDACTED], indicates that the petitioner is a helpful and valued member of her family. A friend, [REDACTED], states that the petitioner “is a kind, ambitious, hardworking, responsible role model and now a mother.” Although

the affidavits from the petitioner's friends and family establish that the petitioner is a good mother and a valued member of her family, they do not demonstrate that her conviction for identity theft was connected to battery or extreme cruelty by J-R-.

Although the petitioner has shown that she was battered and subjected to extreme cruelty in her marriage to J-R-, she has not provided sufficient evidence to establish that J-R-'s abuse was a causative or contributing factor to her conviction for identity theft in the state of Illinois, which is a crime involving moral turpitude. Therefore, she has not demonstrated that she is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

*Conclusion*

The record does not demonstrate by a preponderance of the evidence that the petitioner is a person of good moral character. Accordingly, she has not demonstrated eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proving eligibility for the 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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.