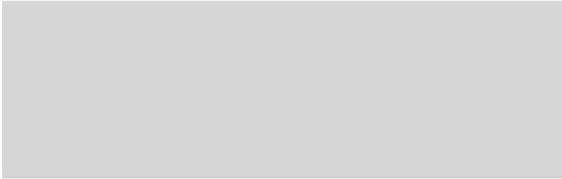




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 16 2015**

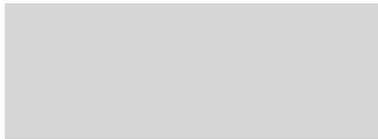
FILE #: [REDACTED]

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 immigrant visa 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 petition based on her determination that the petitioner did not establish her good moral character.

On appeal, the petitioner submits a brief and additional evidence.

#### *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). 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 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.

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 Costa Rica, entered the United States on September 29, 2010 as a nonimmigrant visitor to join her U.S. citizen husband, J-J-<sup>1</sup>, in the United States. The petitioner and J-J- married in Costa Rica on [REDACTED] 2006. At the time of the marriage, the petitioner had two children from prior relationships, B-A-<sup>2</sup> and F-V-<sup>3</sup>, and she and J-J- subsequently had a child together, J-J-V-<sup>4</sup>. After three marital separations and reconciliations, the petitioner, J-J-, F-V-, and J-J-V- moved to the United States in 2010. In [REDACTED] 2010, the petitioner was arrested for child

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

<sup>2</sup> Name withheld to protect the individual's identity.

<sup>3</sup> Name withheld to protect the individual's identity.

<sup>4</sup> Name withheld to protect the individual's identity.

abuse involving her eight-year-old daughter F-V-. On [REDACTED] 2011, the petitioner pled guilty to one count of misdemeanor battery and was sentenced to one year of probation, fines, and court fees. On July 11, 2011, the petitioner was placed in removal proceedings. In [REDACTED] 2012, the petitioner was arrested for trespass in a commercial establishment.

The petitioner filed the instant Form I-360 self-petition on November 4, 2013. The director issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good moral character. The petitioner responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition, and the petitioner timely appealed.

We review these proceedings *de novo*. 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*

In her initial affidavit, the petitioner recounted J-J-'s physical and emotional abuse, but did not discuss her criminal record or attest to her good moral character. She submitted a letter from F-V- who stated that she loves the petitioner and hopes they will not be separated. She also provided a letter from friend [REDACTED] who indicated that the petitioner now attends church, is in a recovery group, and has made great improvements in her life. Neighbor [REDACTED] attested that he has known the petitioner for four years, and over the last several months after he received a diagnosis of stage 4 lung cancer, she has helped him by cooking and cleaning, and providing positive support.

In response to the RFE, the petitioner submitted documentation regarding her criminal arrests and conviction. The record shows that the petitioner was arrested by the [REDACTED] Florida Police Department on [REDACTED] 2010 and charged with cruelty toward child-child abuse, a felony. The petitioner provided a police report stating that she bit her then eight-year-old daughter in the abdomen, leaving severe bruising and teeth marks, and then struck the child with a belt on the rear buttocks. The report indicates that the petitioner first admitted to biting the child but later retracted, and that the child advised that the petitioner bit her, but did not want her mother arrested. The record shows that the petitioner pled guilty on [REDACTED] 2011 to simple battery, a misdemeanor, and was convicted and sentenced to one year of supervised probation, fines and fees, and to special conditions including having no contact with the victim during the period of probation<sup>5</sup> and the completion of a Batterer's Intervention Program. The petitioner also submitted a certificate showing that she completed a ten-week parenting course in May 2012.

The record shows that the petitioner was subsequently arrested, on [REDACTED] 2012, by the [REDACTED] Florida's Sheriff's Office, and charged with trespass in a structure or conveyance, a misdemeanor. The arrest report submitted by the petitioner indicates that she caused a disturbance inside an adult-oriented establishment and refused several opportunities by the owner and by law

<sup>5</sup> The petitioner submitted an Order of Probation which directs that she "will have no contact with the victim except per dependency case during the period of supervision."

enforcement to leave the establishment. The petitioner pled no contest, the court found her to be guilty but withheld adjudication of guilt, and she was assessed costs of \$500.

In response to the second RFE, the petitioner submitted an affidavit from [REDACTED], in whose home she resided, who attested to the petitioner's commitment to her GED classes, and to her children. Friends [REDACTED] and [REDACTED] also attested to the petitioner's dedication to her education and her children, and her willingness to help others. In a letter from the [REDACTED] Adult Education Center, teacher [REDACTED] reported that the petitioner is an outstanding student and regularly attends classes. A report from the [REDACTED] Circuit Court Juvenile Division, dated February 7, 2012, indicated that the petitioner had complied with the case plan and had achieved the case goal of reunification with her children. The report indicated that it was in the best interests of her children to remain in her custody, with her and J-J- sharing custody of their son. The petitioner submitted evidence that she has been in a therapy program since March 2014 to deal with the effects of the abuse she suffered and other mental health issues including bipolar disorder, and anxiety disorder, among others. Further, the petitioner submitted a letter from her therapist, [REDACTED] indicating that she has worked on positive parenting techniques, along with her mental health issues. The petitioner also submitted documentation of monetary contributions that she has made to her son's care.

On appeal, the petitioner submits state and county criminal history records reflecting only the previously disclosed offenses. In a second personal affidavit, the petitioner describes the circumstances leading to her March 2011 conviction for battering her daughter. The petitioner states that J-J- brought her to the United States at the end of September 2010 claiming to have a house and a job, but upon arrival she discovered that he had neither. The family lived in J-J-'s mother's unit in a retirement community, and the children were not allowed to play outside. The petitioner recounts the stress she was under stemming from the international move away from her family, her living conditions with her husband in the United States, and his abusive treatment. She explains how two days before the incident for which she was arrested, her daughter stole hair ties from a store, and on the date of the incident, she discovered that her daughter had taken two toys from a neighbor's house. The petitioner states that she "lost it" because she had been drinking, but does not specifically describe the behavior in which she engaged. The petitioner has not addressed the inconsistent statements attributed to her in the police report and raised by the director, in which she first admitted that she bit her daughter and later denied it. Rather, she states that at the time of the incident, she was drunk and not herself, and that it is hard to remember what she did. The petitioner does, however, express remorse for the incident, and details various efforts she has made to improve her and her children's quality of life since that time. The petitioner has not, below or on appeal, addressed the circumstances surrounding her 2012 trespassing arrest.

*De novo* review of the entire record does not establish the petitioner's good moral character. Neither the petitioner's battery of her daughter, nor the trespassing incident, triggers a statutory bar under section 101(f) of the Act; however, the petitioner's behavior falls below the standards of the average citizen in the community. See 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act states that "[t]he fact that any person is not within any of the [enumerated] classes shall not preclude a finding that for other reasons such a person is or was not of good moral character." In exercising

discretion under this section, USCIS is guided by the regulation at 8 C.F.R. § 204.2(c)(1)(7), which provides that:

[a] self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

Here, the record indicates that the petitioner bit her eight-year-old daughter in the abdomen, leaving severe bruising and teeth marks, and struck her with a belt while the petitioner was intoxicated. The incident was so severe that the petitioner temporarily lost custody of her children. The petitioner was subsequently arrested for trespassing after refusing to leave a commercial establishment. The petitioner has not adequately explained her behavior during either of these incidents, both of which occurred within the three-year period prior to filing the instant Form I-360 self-petition. The petitioner has expressed remorse for battering her daughter and presented some evidence that she has taken steps toward rehabilitation, including documentation indicating that she completed a parenting skills class and has sought additional therapy. However, when viewed in the totality, the preponderance of the relevant evidence does not demonstrate the petitioner's good moral character, as required under section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not overcome the director's ground for denial. She has not established that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. 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. The appeal will be dismissed.

**ORDER:** The appeal is dismissed