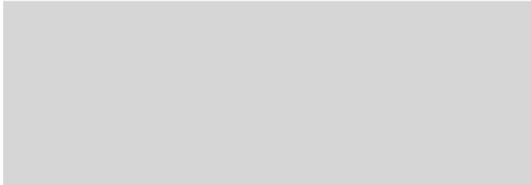


(b)(6)

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



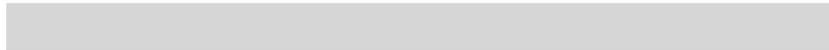
U.S. Citizenship  
and Immigration  
Services



DATE: **MAY 26 2015**

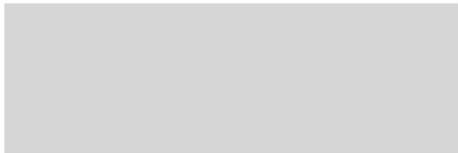


IN RE: Petitioner:



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:



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,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting 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 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, the petitioner submits a brief and additional evidence.

*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).

An alien who has divorced an abusive United States citizen may still self-petition as an abused spouse 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 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].

In regards to determining a petitioner’s 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 . . . 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).

For self-petitioning abused spouses, section 204(a)(1)(C) of the Act provides the following exception:

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 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 Trinidad and Tobago who indicates that she last entered the United States on August 3, 1994, as a nonimmigrant visitor. On [REDACTED] the petitioner married J-S<sup>1</sup>, a United States citizen, in Georgia and they later divorced on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on November 5, 2013. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the petitioner's requisite good moral character because the petitioner did not submit any police clearances or criminal history records as required by regulation. The petitioner timely responded with additional evidence which showed that shortly after filing her self-petition, the petitioner was convicted of felony possession of a controlled substance, heroin. The director denied the petition because the petitioner's criminal conviction prohibited a finding of her good moral character pursuant to section 101(f)(3) of the Act, and the petitioner 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*

The record reflects that on June 5, 2013, the petitioner was arrested and charged with Possession of a Schedule I Controlled Substance, Heroin, a felony, in violation of Georgia Annotated Code, Title 16, Chapter 13, Section 30(a) which states, in pertinent part:

Except as authorized by this article, it is unlawful for any person to purchase, possess, or

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

have under his or her control any controlled substance.

GA. CODE ANN., § 16-13-30(A).

Subsection (c) further explicates, in pertinent part:

...any person who violates subsection (a) of this Code section with respect to a controlled substance in Schedule I ... shall be guilty of a felony...

GA. CODE ANN., § 16-13-30(C).

Heroin, the relevant Schedule I controlled substance for which the petitioner was convicted, is listed at GA. CODE. ANN., § 16-13-25(2)(J).

The final disposition submitted by the petitioner shows that on January 6, 2014, the petitioner entered a negotiated plea under Georgia's First Offender Act for Possession of a Schedule I Controlled Substance and was placed on probation for 5 years. The accusation states that on June 5, 2013, the petitioner "did unlawfully possess and have under her control heroin, a schedule I controlled substance." The criminal warrant further details that on June 5, 2013, at 5:05 p.m., at an address in [REDACTED] specified in the warrant, the petitioner "was in possession of heroin, in a baggie, which was located on the dining room table in [her] hotel room in plain view." 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 she is a person described in section 101(f) of the Act. Section 101(f)(3) of the Act bars a finding of an alien's good moral character if the alien committed or was convicted of a crime relating to a controlled substance that does not fall within one of the exceptions set forth at section 212(a)(2)(A) of the Act.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines "conviction" for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Under Georgia's First Offender Act, a defendant may, upon a verdict or plea of guilty or a plea of nolo contendere but before an adjudication of guilt, defer further proceedings and be placed on probation. GA. CODE. ANN., § 42-8-60. A plea agreement under Georgia's First Offender Act, as in the instant case, constitutes a conviction for immigration purposes. *Mejia Rodriguez v. U.S. Dep't Homeland Sec.*, 629 F.3d 1223 (11th Cir. 1989) (citing to *Matter of Ozkok*, 19 I&N 546 (BIA 1988)). Further, the petitioner's conviction for possession of heroin constitutes a crime related to a controlled substance as

described at section 212(a)(2)(A)(i)(II) of the Act. Because her conviction relates to heroin and not to a single offense of simple possession of 30 grams or less of marijuana, she does not qualify for the sole exception for which a waiver is available at section 212(h) of the Act. Accordingly, the director correctly determined that the petitioner was convicted of a crime relating to a controlled substance, for which no waiver is available, which precludes a finding of her good moral character pursuant to section 101(f)(3) of the Act.

On appeal, the petitioner asserts that our inquiry into her good moral character “has to focus on” the three years immediately preceding the filing of her self-petition on November 5, 2013. She reasons that because her drug conviction occurred two months after she filed her Form I-360 self-petition, it should not impact the assessment of her good moral character. 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 acts committed by the petitioner which led to her charges and conviction were prior to filing her self-petition. Further, that she was not convicted of the offense until two months after she filed the Form I-360 self-petition does not preclude its consideration. To the contrary, the petitioner being convicted so recently of a controlled substance offense is a substantial negative impact on her moral character.

The petitioner further asserts that “there is nothing on record to show that [she] committed the alleged acts that gave rise to the conviction” and as the record only shows that there was a plea bargain on which the judge entered a probation sentence, “it is actually difficult to conclude that the conviction found in [her] criminal history record relates to the offence [sic] as charged.” The “Final Disposition: FELONY with PROBATION” shows that the petitioner’s sentence of five years probation and a \$1,000 fine was for a single charge of “Possession of a Schedule I Controlled Substance.” The disposition refers to Criminal Action # 13-9-2984-42 and Criminal Warrant # 13-WD-5573, both of which relate to the single charge of Possession of a Schedule I Controlled Substance, Heroin, in violation of GA. Code Ann. § 16-13-30(a). It is, therefore, clear from the administrative record that both the single charge and the single conviction relate to the petitioner’s possession of a controlled substance, heroin on June 5, 2013.<sup>2</sup> Inasmuch as the petitioner avers her lack of culpability, we cannot look behind her conviction to reassess her guilt or innocence. *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031 (BIA 1999) (unless a

<sup>2</sup> The petitioner adds and we acknowledge that she was sentenced under Georgia’s First Offender/Conditional Discharge statute, GA. Code Ann. § 42-8-60, and if she successfully completes the enumerated terms of her five-year probation sentence she may receive a conditional discharge. As the petitioner remains on probation until 2019, however, we need not address this eventual possibility but to state that expungement under a state or foreign equivalent of the Federal First Offenders Act remains a conviction for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999); *Matter of Salazar*, 23 I&N Dec. 223 (BIA 2002).

judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien's guilt or innocence); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996).

Finally, the petitioner asserts that pursuant to section 204(a)(1)(C) of the Act she may establish her good moral character because her controlled substance conviction was connected to having been battered or subjected to extreme cruelty by her former husband. The record shows that the petitioner's arrest and conviction occurred well after her [REDACTED] divorce from J-S- and she stated that they separated in [REDACTED]. As such, she has not shown a causal relationship between the abuse and her controlled substance offense. Regardless, the exception at 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. As the only waiver available, in either section, to a self-petitioner convicted of a crime relating to a controlled substance is for a single offense of simple possession of 30 grams or less of marijuana, the petitioner is ineligible for a discretionary determination of her good moral character despite her conviction. Accordingly, subsection 101(f)(3) of the Act bars a finding of the petitioner's good moral character.

#### *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.