



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF B-P-

DATE: NOV. 10, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL IMMIGRANT

The Petitioner seeks immigrant classification as an abused child of a U.S. citizen. *See* section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iv). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition based on a finding that the Petitioner did not establish that he is a person of good moral character. On appeal, the Petitioner submits a statement.

**I. APPLICABLE LAW**

Section 204(a)(1)(A)(iv) of the Act provides that an alien who is the child of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she was battered or subjected to extreme cruelty perpetrated by the alien's U.S. citizen parent. 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 parent, and is a person of good moral character. Section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv).

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 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].

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), provides the following definition of a child, in pertinent part:

[A]n unmarried person under 21 years of age who is . . . (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred . . . .

The eligibility requirements for a self-petition by the abused child of a U.S. citizen are explained further at 8 C.F.R. § 204.2(e)(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. 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)(iv) or (B)(iii) of the Act are explained further at 8 C.F.R. § 204.2(e)(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.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part:

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 . . . .

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

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), 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 . . . if the [Secretary] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

(b)(6)

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## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner last entered the United States on April 16, 2001, as a B-2 nonimmigrant visitor, when he was [REDACTED] years old. The Petitioner's mother married F-O-,<sup>1</sup> a U.S. citizen, on [REDACTED] 2003, in [REDACTED] Arizona, when the Petitioner was [REDACTED] years old.

The Petitioner pled guilty on [REDACTED] 2013, at the age of [REDACTED] to felony armed robbery in violation of Ariz. Rev. Stat. § 13-1904. He was convicted as an adult in the Superior Court of the State of Arizona, [REDACTED]. The Petitioner was sentenced to 60 days in jail, with credit for 133 days served, and was placed on probation under the supervision of the Adult Probation Department for five years, beginning on June 20, 2013. On [REDACTED], 2013, the Petitioner was found to be in violation of his probation. He was sentenced to serve two months in jail, beginning December 27, 2013, and the expiration date of his probation was revised to June 29, 2018. The Petitioner is currently in Immigration and Customs Enforcement (ICE) detention, and is in pending removal proceedings.

The Petitioner filed the Form I-360 on December 1, 2014. The Director issued a request for evidence (RFE) of, among other things, the Petitioner's good moral character. The Director subsequently issued a notice of intent to deny (NOID) based on a finding that the Petitioner's conviction was for a crime involving moral turpitude. The Petitioner responded to the NOID with additional evidence, which the Director found insufficient to establish that the Petitioner was a person of good moral character. The Director denied the petition, finding that the Petitioner did not submit evidence to refute the finding that he was convicted of a crime involving moral turpitude. The Director also found that, although the Petitioner submitted evidence to support his claim that his conviction was a result of abuse he suffered at the hands of his stepfather, the evidence was insufficient to make such a showing. The Director noted that, although the Petitioner provided medical records from the ICE detention center where he was detained which state that the Petitioner has dysthymic and bipolar disorders, the Petitioner did not submit a psychological evaluation from "an appropriate professional." Additionally, the Director found that letters from the Petitioner and a supporting witness did not establish that the battery or extreme cruelty the Petitioner suffered "compelled or coerced" the Petitioner to commit his crime.

With the Form I-290B, Notice of Appeal or Motion, the Petitioner submitted a short statement regarding the basis for his appeal. He also indicated that he would submit a brief within 30 days. As of the date of this decision, we have not received a brief or any additional statement or evidence. Therefore, we consider the record complete and will adjudicate the Petitioner's appeal based on the Petitioner's short statement on appeal and the other evidence in the record.

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

### III. GOOD MORAL CHARACTER

The Petitioner has not demonstrated that he is a person of good moral character. The Petitioner was convicted of a crime involving moral turpitude and, therefore, does not qualify as a person of good moral character under section 101(f)(3) of the Act. Additionally, he has not established eligibility for a waiver under section 204(a)(1)(C) of the Act by demonstrating that his conviction was connected to the battery or extreme cruelty to which he was subjected.

The Petitioner does not assert that his conviction was not for a crime involving moral turpitude. However, the Director did not conduct a detailed analysis of whether the crime for which the Petitioner was convicted was a crime involving moral turpitude, so we will do so here.

In assessing whether a conviction is a crime involving moral turpitude, we must first “determine what law, or portion of law, was violated.” *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). We engage in a categorical inquiry, considering the “inherent nature of the crime as defined by statute and interpreted by the courts,” not the underlying facts of the criminal offense. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). This categorical inquiry focuses on whether moral turpitude necessarily inheres in the minimal conduct for which there is a realistic probability of prosecution under the statute. *See Short*, 20 I&N Dec. 136; *Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684-1685 (2013); *Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815, 822 (2007).

The Petitioner was convicted of armed robbery under Ariz. Rev. Stat. § 13-1904, which provides:

- A. A person commits armed robbery if, in the course of committing robbery as defined in § 13-1902, such person or an accomplice:
1. Is armed with a deadly weapon or a simulated deadly weapon; or
  2. Uses or threatens to use a deadly weapon or dangerous instrument or a simulated deadly weapon.

Ariz. Rev. Stat. § 13-1902 provides the following definition of robbery:

- A. A person commits robbery if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.

The Board of Immigration Appeals (Board) has determined that “robbery is universally recognized as a crime involving moral turpitude.” *Matter of Martin*, 18 I&N Dec. 226, 227 (BIA 1982). The Board has noted that robbery is an offense against both person and property that is “a grave, serious, aggravated, infamous, and heinous crime.” *Matter of Rodriguez-Palma*, 17 I&N Dec. 465, 469 (BIA

1980). The statute under which the Petitioner was convicted meets the generic definition of the crime of robbery and, based on this case law, it is categorically a crime involving moral turpitude.

In his statement on appeal, the Petitioner asserts that the Director erred by finding that his criminal conviction was not related to the abuse he suffered. The Petitioner alleges that the Director incorrectly required a particular type of mental health documentation while dismissing the documentation that the Petitioner submitted.

In response to the NOID, the Petitioner submitted a brief in which he argued, through counsel, that the crime he committed was connected to the abuse he experienced at the hands of his U.S. citizen stepfather. Counsel asserted that children who are subjected to abuse “can suffer from Post-traumatic Stress Disorders, depression and a host of other physical or mental health conditions that cause the child to engage in criminal behaviors.” Counsel also claimed that the Petitioner did not “admit[] to himself” that he was a child abuse victim until after being placed in immigration detention, and that he did not receive regular mental health treatment prior to that time. Counsel stated that, although the Petitioner had “a loving substitute family,” he was abused and rejected by his biological family. Furthermore, counsel contended that the Petitioner was not yet “fully cognizant of the connection” between the abuse he suffered and the crime he committed, but that therapy may help him understand his feelings.

With the Form I-360, the Petitioner submitted a personal declaration in which he stated that he was depressed and abused as a child, but did not admit that to anyone until recently. The Petitioner claimed that his stepfather physically abused the Petitioner’s mother in front of the Petitioner and his siblings. The Petitioner claims that, when he tried to intervene, his stepfather was verbally abusive toward him. According to the Petitioner, his stepfather was particularly abusive after drinking alcohol. The Petitioner recounted that his stepfather and his stepfather’s brother physically abused him, that Child Protective Services responded to his home, and that the Petitioner’s step-brother was removed from the home.

The record also contains two letters of remorse from the Petitioner. The first, which was submitted with the Form I-360, was addressed to the convenience store where the Petitioner committed the armed robbery for which he was convicted. In that letter, the Petitioner apologized for robbing the store and expressed remorse for the fear that the robbery caused for the store clerk. He stated that, when he realized that the store clerk was a mother, he determined that he could not allow her to be hurt. The Petitioner declared that he risked his life and that of the clerk “just for some money and cigarettes, which was never worth it,” and that he wished he could take back his actions.

The Petitioner’s other letter of remorse was submitted with his NOID response and was directed at immigration officials. In that letter, the Petitioner stated that he made poor decisions in the past, but still deserved to remain in the United States. He claimed that, in an effort to fit in, he spent time with people who were not good friends. According to the Petitioner, he committed armed robbery with two acquaintances, and that they acted under the influence of drugs and alcohol. He further stated that he was addicted to marijuana, which negatively affected his behavior and his relationships

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with his family, but that he learned from his mistakes and planned to make positive changes in the future.

Additionally, the Petitioner provided, in response to the NOID, a statement from [REDACTED] who provided housing and the support of [REDACTED] family to the Petitioner through much of his childhood. [REDACTED] claimed that the Petitioner's mother and stepfather did not pay attention to the Petitioner when he was a child. [REDACTED] stated that she took the Petitioner into her home full time when the Petitioner was [REDACTED] years old, when the Petitioner's stepfather attempted to send him to Zambia alone. She recounted that the Petitioner lived with her family for long periods of time, on and off, between 2002 and 2013 due to instability and mistreatment at his own home. According to [REDACTED], the "stress of the negative relationship with his mother and [stepfather] was affecting [the Petitioner]. He began acting out and getting into minor trouble." She also reported that, when the Petitioner was convicted for armed robbery, she spoke on his behalf at his sentencing hearing "to try to explain to the judge what turmoil [the Petitioner] had gone through in his short [REDACTED] years of life."

The Petitioner also submitted, with his NOID response, documentation from his mental health treatment at the ICE detention facility. This documentation stated that the Petitioner was diagnosed with dysthymic disorder and bipolar disorder. The records indicated that the Petitioner received medication, individual counseling, and group counseling at the detention center. Notes from a medical appointment on February 25, 2015 stated that the Petitioner "suffered from a mood disorder since the age of [REDACTED] and that, although he asked his parents to take him for a mental health evaluation, he "was ignored." The appointment notes also indicated that the Petitioner felt angry, sad, and depressed much of the time prior to receiving treatment in detention, and that he was hospitalized at age [REDACTED] for suicidal thoughts. The Petitioner also provided documentation regarding dysthymia, which is a chronic form of depression, and information regarding one of the medications he was prescribed.

The evidence does not establish that the Petitioner's conviction was connected to battery or extreme cruelty to which he was subjected by his stepfather. Although the Petitioner submitted evidence that he was diagnosed with, and treated for, depression and bipolar disorder while in ICE detention, the record does not provide details about the Petitioner's mental health sufficient to connect his diagnoses to the abuse he suffered or to his criminal activity. The medical records from the ICE detention center contain very little information regarding the onset of the Petitioner's mental health problems, any contributing factors, and the effects of his mental health problems on his life and behavior. The records also do not state that the Petitioner's depression or bipolar disorder caused, or were connected to, the Petitioner's arrest and conviction for armed robbery. Although counsel contends that children who are abused may experience mental health problems that lead to criminal activity, the record does not establish such a cause for the Petitioner's criminal activity in this case. Also, the Petitioner did not claim in his own declarations or letters of remorse that his conviction was connected to the abuse he suffered. Instead, he stated that he bore responsibility for his own actions, and that he was influenced by his drug addictions and his friendships with others. Although [REDACTED] noted in her letter that the Petitioner's relationship with his mother and stepfather caused

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him stress, which “affected” him and caused him to “act out,” she did not allege that the armed robbery he committed could be attributed to abuse by the Petitioner’s stepfather. Therefore, the evidence in this case is not sufficient to show that the Petitioner’s conviction for a crime involving moral turpitude was connected to his being battered or subjected to extreme cruelty.

Due to his conviction for a crime involving moral turpitude, the Petitioner is not a person of good moral character pursuant to section 101(f)(3) of the Act. Additionally, he has not established eligibility for a waiver under section 204(a)(1)(C) of the Act by demonstrating that his conviction was connected to the battery or extreme cruelty to which he was subjected.

#### IV. CONCLUSION

The evidence does not establish that the Petitioner is a person of good moral character. Consequently, he is ineligible for immigrant classification under section 204(a)(1)(A)(iii)(I) 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. Here, the Petitioner has not met that burden. Accordingly, the appeal is dismissed.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-P-*, ID# 15428 (AAO Nov. 10, 2015)