



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

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

MATTER OF A-E-G-A-

DATE: OCT. 14, 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 spouse of a U.S. citizen. *See* section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the Petitioner did not establish that she resided with her spouse and is a person of good moral character. On appeal, the Petitioner submits a brief and additional evidence.

I. 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).

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].

The eligibility requirements 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)(1), which provides, in pertinent part:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser in the United States in the past.

....

(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.

....

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . ,

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deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

....

(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.

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

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).

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner claims to have last entered the United States on October 1, 1991 without inspection, admission, or parole. She married C-A-¹ a U.S. citizen, on [REDACTED] 2009 in [REDACTED], Arizona. The Petitioner filed the Form I-360 on August 18, 2014. The Director issued two requests for evidence (RFE) that the Petitioner had resided jointly with C-A- during marriage and that she

¹ Name withheld to protect the individual's identity.

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was a person of good moral character. The Petitioner responded to the RFEs with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition and the Petitioner filed a timely appeal.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal demonstrates that the Petitioner overcomes one, but not both, of the grounds discussed in the Director's decision to deny the petition. Therefore, we will dismiss the appeal.

III. JOINT RESIDENCE

The preponderance of the evidence establishes that the Petitioner resided with C-A- during their marriage. Although the Petitioner's personal declarations regarding her shared addresses with C-A- are not sufficiently detailed on their own, she submitted two supporting letters on appeal with credible accounts of her joint residence with C-A- during their marriage.

In the Form I-360, the Petitioner indicated that she and C-A- resided together from 2008 to August 19, 2012 and that their last shared address was [REDACTED]. In her personal declaration submitted with the Form I-360, the Petitioner stated that she and C-A- first lived together prior to marriage in C-A-'s father's home. The Petitioner did not provide the address of C-A-'s father's home. She claimed that, approximately two months before the birth of their son on [REDACTED] she and C-A- moved to an apartment on [REDACTED]. The Petitioner also stated that, prior to living in the apartment on [REDACTED], she and C-A- lived in a trailer park at [REDACTED]. She did not clarify whether this was the address of C-A-'s father or a different location. The Petitioner recounted that, after her son was born, C-A-'s father moved in with the couple again. She claimed that, in June or July of 2009, their shared apartment was raided because C-A- was selling drugs. The Petitioner stated that she "would have never lived with [C-A-]" if she had known he was selling drugs. She further stated that she and C-A- decided to get married before C-A- went to jail.

The Petitioner indicated that C-A- was in jail until September 2011 and that she visited him often. She stated that they did not resume their relationship immediately upon his release, but eventually moved back in together. The Petitioner further claimed that she went to jail and Immigration and Customs Enforcement (ICE) detention from November to December of 2011, and that she and C-A- moved into a house in [REDACTED] Arizona with their children upon her release. She stated that C-A- was abusive and moved out, but that they later lived together again, first in a trailer on a ranch owned by [REDACTED] and later in a house. The Petitioner recounted that she eventually left C-A- and obtained a restraining order against him, and that C-A- was later imprisoned. The Petitioner's declarations lack the dates and addresses of several of the residences she allegedly shared with C-A- during their marriage.

However, as supporting evidence, the Petitioner submits on appeal a credible letter from C-A-'s father, E-A-.² E-A- indicates that the Petitioner and C-A- lived with him in his mobile home at

² Name withheld to protect the individual's identity.

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██████████ in 2008, and that they then moved to an apartment at ██████████ E-A- states that, prior to the birth of the son of the Petitioner and C-A-, E-A- moved in with them at their apartment. He states that he paid the rent and utilities, and that the Petitioner partially reimbursed him. According to E-A-, the Petitioner and C-A- moved in together again a few months after C-A- was released from jail in September 2011. E-A- contends that the Petitioner and C-A- first rented a house in ██████████ but that it was too expensive, so they then moved to ██████████ ranch, which was next door to E-A-'s home. E-A- adds that the Petitioner moved out of the home she shared with C-A- in August 2012 after an incident of domestic violence.

The Petitioner also submits on appeal a credible letter from ██████████ who claims that the Petitioner and C-A- rented a trailer from him at ██████████ beginning in April 2012. ██████████ states that C-A- paid most of the rent by working on the ranch. According to ██████████, the Petitioner moved out at the end of August 2012, and C-A- remained living there for a few more months.

The Petitioner also submits on appeal copies of two rent receipts for a home at ██████████ bearing C-A-'s name, for February and March 2012. Although the rent receipts do not list the Petitioner's name, the Petitioner also submits a copy of an electric bill for the ██████████ address, addressed to her parents at a Post Office box address in ██████████ Arizona. The copy bears a handwritten notation from the Petitioner, and signed by the Petitioner's mother, stating that the Petitioner and C-A- put their electric bill in her parents' names because she and C-A- could not afford it on their own. The rent receipts which list C-A- as residing at the ██████████ address, when considered in conjunction with the electric bill for the same address being paid by the Petitioner's parents, support the Petitioner's claim that she and C-A- resided at that address together.

The Petitioner has provided relevant, credible evidence to show that she and C-A- resided together during their marriage. Therefore, she meets the joint residence requirement at section 204(a)(1)(A)(iii)(II)(dd) of the Act.

IV. GOOD MORAL CHARACTER

The evidence does not establish that the Petitioner is a person of good moral character. The Petitioner does not admit to all of her criminal convictions, incorrectly alleges that all of her criminal offenses occurred when she was a minor, and does not take responsibility or express remorse for her criminal history.

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In the brief on appeal, the Petitioner's counsel contends that she "has had minor traffic infractions" and that "[t]he totality of the criminal charges against Petitioner stemmed from incidents when she was [17] years old, or younger." The Petitioner alleges that, in relation to a matter on [REDACTED] 2011, she signed a Plea/Probation Violation Agreement regarding her probation for an incident that occurred in 2007 or 2008. She further contends that she pled guilty only to criminal trespass and that the remaining charges against her in the [REDACTED] 2011, matter were dismissed. The Petitioner asserts that she has since complied with the terms of her probation, continues making payments, completed her community service requirements, focuses on being a good mother to her children, and volunteers in her community.

The Petitioner submits on appeal a copy of her criminal history report from the Federal Bureau of Investigation (FBI), which indicates that the Petitioner was arrested on [REDACTED] 2011, at the age of [REDACTED] and charged with two counts of third degree burglary – use of master key, false report to law enforcement, disorderly conduct – fighting, and threat – intimidation with injury – damage to property. The charge for third degree burglary – use of master key was later changed to third degree burglary – felony unlawful entry. The FBI report indicates that the Petitioner pled guilty to third degree burglary and was sentenced to three years of probation and a fine. The remaining charges were dismissed. The associated police reports reflect that the Petitioner was arrested for knocking on the door of a home and threatening to kill the family inside, and then entering the family's vehicle without permission. According to the police reports, the Petitioner was intoxicated at the time of her arrest. While she was being transported to the hospital, the police received a second report of the Petitioner having entered a vehicle that did not belong to her.

A Minute Entry from the Superior Court of Arizona, [REDACTED] dated [REDACTED] 2011, states that the Petitioner appeared before the court for an Admission and Disposition Hearing relating to charges against her in Case [REDACTED] and a Change of Plea Hearing and Sentencing in Case [REDACTED]. The record does not clearly establish whether either of these cases were related to the Petitioner's arrest on [REDACTED] 2011 and her resulting conviction for third degree burglary, as reflected in the FBI report. The Minute Entry states that, pursuant to a Plea/Probation Violation Agreement, the court found the Petitioner guilty of a "Class Six non-dangerous, non-repetitive, non-violent Felony offense of Criminal Trespassing in the . . . 1st Degree." The Minute Entry also states that the Petitioner was found guilty of "the Class Three Felony offense of Theft of a Means of Transportation." The court also found the Petitioner to be in violation of her probation in Case [REDACTED]. The court placed the Petitioner on probation for three years, beginning on December 12, 2011, for Case [REDACTED], and reinstated her probation for Case [REDACTED].

The record does not support the Petitioner's counsel's claims on appeal that all of her criminal activity occurred while she was a minor when the record clearly indicates that she was no longer a minor when she was convicted on [REDACTED] 2001 of criminal trespassing and theft of a means of transportation. Petitioner's counsel also claims on appeal that she was only convicted of criminal trespassing, yet the Minute Order clearly indicates that she was also convicted of theft of a means of transport, as well as a probation violation from an earlier conviction. In addition, the FBI report and

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related police reports reflect that the Petitioner was arrested on [REDACTED] 2011, at the age of [REDACTED] and was convicted of third degree burglary for incidents that occurred on that date.

Additionally, the record reflects that the Petitioner has had other contacts with law enforcement that her counsel does not acknowledge in the appeal brief. The Petitioner submitted a letter from the [REDACTED] Arizona Police Department [REDACTED] which states that in 2004 and 2006, while the Petitioner was a minor, an [REDACTED] officer “assisted [the Petitioner’s] probation officer. The reason for probation is unknown.” According to the letter, the Petitioner was arrested in November 2011 pursuant to a warrant for probation violation and received a traffic citation in September 2013 for driving without a license and being unable to provide proof of insurance. The Petitioner paid a fine for the first charge and the second charge was dismissed when she provided proof of insurance. The Petitioner also submitted a letter from the [REDACTED] Arizona Police Department, which states that the Petitioner received a citation on [REDACTED] 2010 for driving without a license, no insurance, and no registration. On [REDACTED] 2011, she was again cited for driving without a license. This evidence does not support the Petitioner’s counsel’s claim that she has had only “minor traffic infractions” and that all criminal charges against her were related to incidents that occurred when she was 17 or younger.

Furthermore, the record does not establish whether the Petitioner was convicted of a crime involving moral turpitude. The Petitioner was convicted of theft of a means of transportation. Ariz. Rev. Stat. § 13-1814 lists several ways in which a person may commit theft of means of transportation, including by “[c]ontrol[ling] another person’s means of transportation with the intent to permanently deprive the person of the means of transportation.” Ariz. Rev. Stat. § 13-1814.A.1. Theft with intent to permanently deprive is a crime involving moral turpitude. *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973). However, Ariz. Rev. Stat. § 13-1814 also provides for conviction of theft of means of transportation through takings without the intent to permanently deprive. The record in this case does not establish under what subsection the Petitioner was convicted. If the Petitioner’s conviction was for a crime involving moral turpitude, she cannot qualify as a person of good moral character. Section 101(f)(3) of the Act.

Nevertheless, even if the Petitioner was not convicted of a crime involving moral turpitude, the record does not demonstrate that she is a person of good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) of the Act states, in pertinent part, that “[t]he 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.” The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes that:

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

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account the provisions of section 101(f) of the Act and the standards of the average citizen in the community

As support for her claim of good moral character, the Petitioner submitted a Certificate of Completion of Community Work Service, dated [REDACTED] 2014. She also supplied, in response to the RFE, several letters of support from family members and friends. The Petitioner's mother stated that the Petitioner is a responsible person and a good mother. [REDACTED] and a person named [REDACTED] all stated that the Petitioner is a good person, a good mother, and is helpful. [REDACTED] indicated that the Petitioner is kind, hardworking, reliable, and is a good mother and neighbor. [REDACTED] made similar claims and also noted that the Petitioner volunteers in her community. [REDACTED] also noted that the Petitioner is a hardworking person who is dedicated to her children. According to [REDACTED] and [REDACTED], the Petitioner faced challenges as a teenager but overcame those issues to become a responsible, hardworking, intelligent, and dependable person who is devoted to her children. [REDACTED] and [REDACTED] all noted that the Petitioner is a volunteer translator in the local court system and is kind, punctual, and professional.

The record establishes that the Petitioner is valued in her family and her community, volunteers as a translator, and works hard to provide for her children. However, the Petitioner did not discuss or express remorse in her declarations for any of her arrests or convictions. The Petitioner's brief on appeal mischaracterizes the Petitioner's criminal history, stating that she was involved in only "minor traffic infractions" and a single criminal conviction, and that all criminal charges against her were related to incidents that occurred when she was 17 years old or younger. This statement is contrary to the evidence in the record. The evidence shows that the Petitioner was repeatedly cited for driving without a license, as well as driving without registration and proof of insurance; was on probation in 2004 and 2006 for reasons that are not clear from the record; and was arrested in [REDACTED] 2011 in relation to an incident in which she threatened to kill a family and entered two vehicles that did not belong to her, and was convicted of, at minimum, felony criminal trespassing and felony theft of a means of transportation.

Furthermore, the record does not clarify whether the Petitioner's conviction for third degree burglary, as reflected in the FBI report of her criminal history and which lists a conviction apparently dated [REDACTED] 2011, was the same conviction as, or related to, either of her convictions listed in the [REDACTED] 2011, Minute Entry. Additionally, the Petitioner was found to be in violation of her probation, and her probation for one of her convictions was scheduled to end only recently, after she filed the Form I-360. In this case, the supporting letters the Petitioner submitted and the evidence of her volunteer work and role in her family do not overcome the Petitioner's criminal history, her mischaracterization of that history on appeal, and the lack of evidence that she has taken responsibility for or expressed remorse for her mistakes. Therefore, the evidence does not demonstrate that the Petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

V. CONCLUSION

The evidence does not establish that the Petitioner is a person of good moral character. Consequently, she 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 A-E-G-A-*, ID# 14728 (AAO Oct. 14, 2015)