



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

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

MATTER OF M-E-M-

DATE: SEPT. 2, 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* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center (Director), denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the petition based on her determination that the Petitioner had been convicted of an aggravated felony and was not a person of good moral character.

On appeal, the Petitioner submits a brief and previously submitted evidence.

I. RELEVANT LAW AND REGULATIONS

Section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I), 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, 8 U.S.C. § 1151(b)(2)(A)(i), 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).

With reference to determining a petitioner's good moral character, section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), states:

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), (A)(iv), (B)(ii), or (B)(iii) 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)

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J), 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 are further explained 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 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. 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.

II. FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico who claims to have first entered the United States with a Border Crossing Card on May 25, 1990. She married A-M-¹ a U.S. citizen, on [REDACTED] 1990 in [REDACTED] Michigan. The Petitioner filed the instant Form I-360 self-petition on December 26, 2012. The Director subsequently issued a request for evidence (RFE) seeking to obtain, in part, evidence of the Petitioner's good moral character. The Petitioner timely responded with additional evidence which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition based on her determination that the Petitioner had been convicted of an aggravated felony and was not a person of good moral character. The Petitioner filed a timely appeal.

We review these proceedings *de novo*. A full review of the record fails to establish the Petitioner's eligibility, and the appeal will be dismissed for the following reasons.

III. GOOD MORAL CHARACTER

The Director found that the Petitioner was convicted of an aggravated felony and as such was barred from relief under section 101(f)(8) of the Act, 8 U.S.C. § 1101(f)(8). The record reflects that on

¹ Name withheld to protect the individual's privacy.

(b)(6)

1996, the Iowa District Court for [REDACTED] convicted the Petitioner of forgery, a Class D felony under Iowa Code §§ 715A.2(1)(c) and 715A.2(2)(a)(4). The court sentenced the Petitioner to a term of imprisonment not to exceed five years, suspended the sentence, and ordered the Petitioner to serve a two-year period of probation [REDACTED].²

Section 101(a)(43)(R) of the Act, 8 U.S.C. § 1101(a)(43)(R), defines an aggravated felony to include, in part, any “offense relating to . . . forgery . . . for which the term of imprisonment is at least one year.” At the time of the Petitioner’s conviction, Iowa Code § 715A.2 provided, in pertinent parts:

1. A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by anyone, the person does any of the following:
 - a. Alters a writing of another without the other's permission.
 - b. Makes, completes, executes, authenticates, issues, or transfers a writing so that it purports to be the act of another who did not authorize that act, or so that it purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or so that it purports to be a copy of an original when no such original existed.
 - c. Utters a writing which the person knows to be forged in a manner specified in paragraph “a” or “b”.

...

2. a. Forgery is a class “D” felony if the writing is or purports to be any of the following:

...

- (4) A document prescribed by statute, rule, or regulation for entry into or as evidence of authorized stay or employment in the United States.

Iowa Code Ann. § 715A.2 (West 1997).

On appeal, the Petitioner cites *Vizcarra-Ayala v. Mukasey*, 514 F.3d 870 (9th Cir. 2008),³ in support of her argument that the Petitioner’s state conviction is not a categorical fit with the generic federal definition of forgery, and as such that the forgery conviction is not an aggravated felony. In *Vizcarra-Ayala*, the court examined the common law definition of forgery for the purpose of determining whether the California forgery statute at issue in that case constituted “an offense relating to . . .

² The record also reflects that on [REDACTED] 2002, the Petitioner was convicted of false reporting to a peace officer in violation of section 28-907(2) of the Nebraska Revised Statutes. The Petitioner was convicted on [REDACTED] 2012 of driving while under the influence in violation of sections 46.61.502(1) and 46.61.5055 of the Revised Code of Washington.

³ The instant case arises under the jurisdiction of the Ninth Circuit Court of Appeals. The court in *Vizcarra-Ayala* analyzed a criminal forgery provision in California to determine whether that crime constituted an aggravated felony.

forgery” under section 101(a)(43)(R) of the Act. *See* 514 F.3d at 876. The court stated that the essential elements of the common law crime of forgery are “(1) a false making of some instrument in writing; (2) a fraudulent intent; and (3) an instrument apparently capable of effecting a fraud.” 514 F.3d at 874 (citations omitted).

The aggravated felony definition under section 101(a)(43)(R) of the Act does not include solely forgery offenses as contemplated under the common-law offense of forgery, but includes “offense[s] relating to . . . forgery” (emphasis added). The court in *Vizcarra-Ayala* indicated that “relating to” forgery includes activities ancillary to the core offense, for example, possession of counterfeit or forged documents, and forging documents with the intent to deceive, and does not include conduct where documents are not altered or falsified. *Id.* at 877. As the plain language of Iowa Code § 715A.2(1)(c) requires the alteration of a writing, or the making, completion, execution, authentication, issue or transfer of a false writing, the prohibited acts are ancillary to and thus relating to the common law crime of forgery. Accordingly, the Petitioner’s conviction is an offense related to forgery within the meaning of section 101(a)(43)(R) of the Act.

The Petitioner was sentenced to serve two years of probation and a term of imprisonment of not more than five years for her forgery conviction. Although the Petitioner’s sentence to imprisonment was suspended in full, it is considered a term of imprisonment under the Act. *See* Section 101(a)(48)(B) of the Act, 8 U.S.C. § 1101(a)(48)(B). Accordingly, the Petitioner was convicted of an aggravated felony. The implementing regulations at 8 C.F.R. § 204.2(c)(1)(vii) provide that a Petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Section 101(f)(8) of the Act prescribes that no person shall be found to have good moral character if he or she at any time has been convicted of an aggravated felony.

On appeal, the Petitioner contends that even if her forgery offense is an aggravated felony, the conviction is directly related to A-M-’s abusive treatment of her and that she accordingly qualifies for a discretionary determination of her good moral character under section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), because her conviction is waivable. In support of her claim, she references a memorandum of William R. Yates, Associate Director of Operations, United States Citizenship and Immigration Services (USCIS), entitled *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, issued on January 19, 2005 (“Yates Memo”), which addresses the application of section 204(a)(1)(C) of the Act to Violence Against Women Act (VAWA) petitions.⁴

The Petitioner states on appeal that her forgery conviction is a crime involving moral turpitude, which is a ground of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), and that this ground of inadmissibility is waivable under section 212(h) of the Act, 8 U.S.C. § 1182(h). We agree that the Petitioner’s lack of good moral character due to her conviction of a crime of moral turpitude is waivable under section 204(a)(1)(C) of the Act. However, we do not reach the issue of whether her conviction was connected to having been battered or subjected to extreme cruelty by A-M- for purposes of section 204(a)(1)(C) of the Act because her aggravated

⁴ Memorandum from William R. Yates, Associate Director for Operations, USCIS, HQOPRD 70/8.1/8.2, *Determinations of Good Moral Character in VAWA-Based Self-Petitions* (Jan. 19, 2005), http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2005/gmc_011905.pdf.

felony conviction bars her from establishing her good moral character under section 101(f)(8) of the Act. Although certain criminal convictions may be waived, there are no corresponding waivers for an aggravated felony conviction, and this is reflected in the Yates Memo referenced above (*see* Attachment 1 to the Yates Memo). The Petitioner argues that her conviction is waivable under section 237(a)(2)(A)(vi) of the Act, 8 U.S.C. § 1127(a)(2)(A)(vi), which provides a deportability waiver for aliens convicted of an aggravated felony who have been granted a full and unconditional pardon by the President of the United States or by a State Governor. USCIS does not have the authority to grant such a pardon. Consequently, the “waiver authorized” by section 237(a)(2)(A)(vi) of the Act is not “waivable with respect to the petitioner” in this case under section 204(a)(1)(C) of the Act. Therefore, section 204(a)(1)(C) of the Act is inapplicable here.

IV. CONCLUSION

The Petitioner’s conviction of an aggravated felony precludes her from establishing her good moral character under section 101(f)(8) of the Act. The present record thus fails to establish the Petitioner’s 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.

In these proceedings, the Petitioner bears the burden of proof to establish her 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.

Cite as *Matter of M-E-M-*, ID# 13391 (AAO Sept. 2, 2015)