



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

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

MATTER OF M-R-M-

DATE: JUNE 2, 2016

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 lawful permanent resident of the United States. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(B)(ii), 8 U.S.C. § 1154(a)(1)(B)(ii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition for preference classification rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner was not a person of good moral character because of her convictions for prostitution, a crime of moral turpitude (CIMT), and for battery, for which she was confined to a penal institution for 180 days, and that she was not entitled to a waiver as a matter of discretion.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief and previously submitted evidence. The Petitioner claims that she is a person of good moral character, as her prostitution conviction was connected to the abuse, that her confinement to 180 days in a penal institution was not the result of the conviction, and that she is entitled to a finding of good moral character as a matter of discretion.

Upon *de novo* review, we will dismiss the appeal.

**I. APPLICABLE LAW**

Section 204(a)(1)(B)(ii) of the Act allows the spouse of a lawful permanent resident of the United States to self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

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].

The eligibility requirements for good moral character are further explicated 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. . . .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.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), defining the term “good moral character.” 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)<sup>1</sup> . . . if the offense described therein, for which such person was convicted . . . was committed during such period . . .

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<sup>1</sup> Section 212(a)(2)(A) refers, in part, to a person who has committed a CIMT.

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without 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. . . .

Section 204(a)(1)(C) of the Act provides:

Notwithstanding section 101(f) of this title, 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) of this title or deportability under section 237(a) shall not bar the [Secretary] 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.

The evidentiary guidelines under section 204(a)(1)(B)(ii) of the Act are further explained 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.

The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). A petitioner may submit any evidence for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

*Matter of M-R-M-*

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Mexico, who claims to have initially entered the United States without inspection, admission, or parole in 1995. She married A-V-<sup>2</sup> a U.S. lawful permanent resident, on [REDACTED] 2001, in Georgia. The Petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and the Director subsequently issued two requests for evidence (RFEs) seeking, in part, additional information about the Petitioner's criminal history. The Petitioner timely responded with additional evidence, which the Director found insufficient to establish her eligibility. The Director denied the Form I-360 and the Petitioner timely appealed.

## III. ANALYSIS

Primary evidence of a petitioner's good moral character is his or her affidavit, accompanied by local police clearances or state-issued criminal background checks from each of the petitioner's residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v). The Petitioner addressed her moral character in an affidavit, explaining the events that led to her arrests and subsequent convictions. She also submitted a state-issued background check from Georgia, which reflected that in the [REDACTED] Georgia, the Petitioner was convicted of the following criminal offenses:

- 1) Simple battery, in violation of Ga. Code Ann., section 16-5-23, a misdemeanor, on [REDACTED] 2000, for which she was sentenced to eleven months' probation, confinement of one day, and a \$200 fine.
- 2) Prostitution, in violation of Ga. Code Ann., section 16-6-9, a misdemeanor, on [REDACTED] 2009, for which she was sentenced to 12 months' imprisonment, a fine of \$750, court costs and community service.
- 3) One count of simple battery in violation of Ga. Code Ann., section 16-5-23, a misdemeanor, on [REDACTED] 2014, for which she was sentenced to six months in prison.

The record reflects that the Petitioner was confined, as a result of her 2014 conviction, to six months of confinement to a penal institution, and thus she is barred from a finding of good moral character under section 101(f)(7). Section 101(f)(7) of the Act bars a finding of good moral character of a person who, during the three-year period preceding the filing of a Form I-360, has been confined, as a result of conviction, to a penal institution for 180 days or more. The Petitioner explains that her boyfriend was trying to smother her, so she bit his hand, and because she did not want to get him in trouble, she did not tell the police that she was acting in self-defense.<sup>3</sup> To the extent that the Petitioner asserts that she is innocent with regard to her conviction, the criminal court found that

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

<sup>3</sup> The record of proceedings does not contain the arrest report, the accusatory instrument or the conviction and sentencing documents.

there was a factual basis for the conviction and we cannot look behind her conviction to reassess her guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien's guilt or innocence).

The Petitioner argues on appeal that she was not confined as a result of conviction, because she strategically chose to serve time in county jail waiting for trial, rather than pay bond only to be released to the custody of U.S. Immigration & Customs Enforcement. She states that at the conclusion of the criminal proceedings, the court sentenced her to the six months already served; accordingly, the Petitioner contends that she was not confined as a result of conviction. The Petitioner does not cite authority in support of her assertion. The Board of Immigration Appeals (the Board) has held that pre-trial detention counts toward the period of confinement. *See Matter of Valdovinos*, 18 I&N Dec. 343 (BIA 1982); *see also Garcia-Mendoza v. Holder*, 753 F.3d 1165, 1169-71 (10th Cir. 2014) (section 101(f)(7) of the Act refers to an actual period of confinement, deferring to the Board's determination that pretrial confinement credited as time served counts toward the 180-day period of section 101(f)(7) of the Act); *see also* Ga. Code Ann. section 17-10-11 (requiring that pretrial confinement be credited as time served). Accordingly, the fact that the Petitioner was detained prior to trial does not mean that she was not confined as a result of conviction.

The Petitioner's criminal record indicates that she was sentenced to six months' confinement as a result of her 2014 conviction for simple battery. As the conviction was within the three-year filing period preceding the filing of the Form I-360, the conviction may not be waived under section 101(f)(7) of the Act. The Petitioner contends that her current aggressive tendencies result, in part, from the abuse by A-V-, and that we should waive the conviction as a matter of discretion, because it was connected to the abuse. However, confinement as a result of conviction to a period of 180 days or more is not a ground of inadmissibility or deportability, and as such, the Petitioner may not be excused under the provisions of Section 204(a)(1)(C) of the Act for a conviction connected to the abuse.

The Petitioner also argues that because the Petitioner's criminal conviction for prostitution was connected to her abuse by A-V-, it should be excused as a matter of discretion under section 204(a)(1)(C) of the Act. The cited section allows United States Citizenship and Immigration Services (USCIS) to determine that a petitioner is a person of good moral character, despite a conviction, if the crime is waivable for purposes of determining admissibility under section 212(a) of the Act, or deportability under 237(a) of the Act, and the crime was connected to a petitioner's having been battered or subjected to extreme cruelty. We do not consider whether the CIMT is waivable because, although a CIMT is waivable under section 204(a)(1)(C) of the Act, the Petitioner's 2014 six-month confinement as a result of conviction is not, and the petition must be denied. Consequently, in this decision we do not reach the issue of whether or not the prostitution conviction also constituted a CIMT and was connected to her spouse's abuse.

The record establishes that the Petitioner's 2000 battery conviction was based on a physical altercation with her abusing spouse, and was connected to the abuse. We have not considered her 2000 conviction when considering whether the Petitioner is a person of good moral character.

The Director also determined that the Petitioner was not a person of good moral character under section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The Petitioner's convictions for simple battery and misdemeanor prostitution demonstrate conduct that falls below the average citizen in the community, and she has committed unlawful acts which adversely reflect upon her moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Consequently, the Petitioner has not established her good moral character as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act, and she is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

#### IV. CONCLUSION

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-R-M-*, ID# 16517 (AAO June 2, 2016)