



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

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

MATTER OF L-R-D-S-

DATE: SEPT. 21, 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 U.S. citizen. *See* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Petitioner is a citizen of the Brazil, who last entered the United States as a B-2 nonimmigrant visitor. The Petitioner married A-L-,¹ a U.S. citizen and filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (VAWA petition). The Director, Vermont Service Center, denied the petition, concluding that the Petitioner had not established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a brief, asserting that she has established that she is a person of good moral character.

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

I. APPLICABLE LAW

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).

¹ Initials are used in this decision to protect the identities of the individuals.

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 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:

(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.

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).

II. 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). In support of her

Matter of L-R-D-S-

claim of good moral character, the Petitioner submitted the following documents: a clearance letter from the Kentucky police department; CourtNet Criminal History records, which reflect that the Petitioner was twice convicted of operating a moped without a license; certified copies of the disposition of her criminal arrests; copy of indictment; a letter from the Petitioner's pastor, [REDACTED] a letter from [REDACTED] President of the [REDACTED] confirming the Petitioner volunteered at the 2015 [REDACTED] and a letter from [REDACTED] Owner/CEO of the [REDACTED] confirming that the Petitioner volunteered at the [REDACTED]

The record reflects that on [REDACTED] 2014, in the Western District of Kentucky, [REDACTED] at [REDACTED] the Petitioner was charged with the following criminal offenses in violation of Title 18, United States Code, § 113(a)(6) pursuant to 18 U.S.C. § 13(a):

- 1) Assault Resulting in Serious Bodily Injury; and
- 2) Unlawful Restraint with Intent to Inflict Bodily Injury and to Terrorize.

The record reflects that the above charges were reduced to two counts of simple assault, pursuant to 18 U.S.C. § 113(a)(4). The Petitioner pled guilty to two counts of simple assault within maritime and territorial jurisdiction. According to 18 U.S.C.A § 113 (a)(4)(a), "Whoever, within the special maritime and territorial jurisdiction of the United States, is guilty of an assault shall be punished as follows (4) Assault by striking, beating, or wounding, by a fine under this title or imprisonment for not more than one year, or both." The Petitioner was sentenced to nine months of imprisonment for each count of simple assault to be served consecutively for a total term of 18 months imprisonment, with one year of supervised release to follow. The Petitioner was scheduled to begin her sentence on [REDACTED] 2016, at the [REDACTED]

The Petitioner addressed her moral character in an affidavit, explaining the events that led to her arrest and subsequent conviction. The Petitioner stated that A-L- was controlling, abusive, and unfaithful. The Petitioner indicated that during their marriage, A-L- had an affair with a fellow soldier at the military base where he was stationed. The Petitioner recounted that she met with her spouse's mistress, N-,² to confront her about the affair. The Petitioner stated that she, thinking that N- motioned to strike her, punched N- in the face, breaking her nose. The Petitioner recounted how she again punched N- on her nose later that night. The Petitioner was arrested early the next morning and released that same day. Two months later, after a further investigation of the incident, the Federal Bureau of Investigation (FBI) arrested her.

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 Petitioner's acts fall under this catch-all provision of section 101(f) of the Act. The Petitioner was convicted of two federal assault crimes for which she is currently in

² Name withheld to protect the individual's identity.

prison and following her release, she must still complete a year of probation that is likely to be completed only by the end of 2018 at the earliest.

The regulation at 8 C.F.R. section 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 account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. . . .

On appeal, the Petitioner asserts that she is a person of good moral character and that her simple assault convictions do not preclude a good moral character finding under section 101(f) of the Act because they are not crimes involving moral turpitude (CIMT), nor are they aggravated felonies. She further asserts that even if her convictions did qualify as CIMTs, they would nevertheless be waivable because they were connected to the abuse. However, the Director's determination that the Petitioner lacks good moral character is not based on whether the Petitioner was convicted of a CIMT or an aggravated felony, but is instead based upon the catch-all provision of the last paragraph of section 101(f) of the Act. We therefore, do not need to make a determination regarding the applicability of waivers in this case because the record reflects that the Petitioner committed unlawful acts, which adversely reflects upon her moral character.

The Petitioner asserts that her criminal behavior is attributable to post-traumatic stress disorder (PTSD) and trauma arising from the abuse that she endured during her childhood and during her marriage. The Petitioner also claims that there is a causal connection between A-L-'s abusive behavior towards her and her criminal behavior. She stated that he once kicked a phone out of her hand and on another occasion, he grabbed her by the arm and pushed her against the wall. However, according to the Petitioner's own admission, these incidents occurred after she committed the criminal offenses. The Petitioner has not established, nor does the record contain evidence of any connection between the Petitioner's convictions and her spouse's battery or extreme cruelty, that would permit a finding of her good moral character despite her offenses under section 204(a)(1)(C) of the Act.

The Petitioner states that she regrets her bad decisions and has accepted responsibility for her actions. However, she has not shown rehabilitation and remorse. In her personal statement, the Petitioner attributes her criminal behavior solely to her spouse and does not show remorse for her actions. The letter of support from the Petitioner's pastor does not discuss the Petitioner's convictions and rehabilitation and is insufficient evidence of the Petitioner's rehabilitation. Additionally, although undergoing a psychological evaluation and completing parenting and anger management classes may provide some evidence of rehabilitation, the Petitioner is currently incarcerated and has not yet commenced her probationary period. Therefore, the Petitioner is unable

to submit evidence that she has successfully completed probation and complied with the other court - ordered conditions of her sentence. Consequently, the Petitioner is unable to establish her rehabilitation and good moral character.

The Petitioner's recent convictions and incarceration demonstrate conduct that falls below the standards of the average citizen in the community and adversely reflects on her good 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). Accordingly, the Petitioner has not demonstrated her good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

III. 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. section 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of L-R-D-S-*, ID# 113946 (AAO Sept. 21, 2016)