



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

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

MATTER OF B-H-Z-

DATE: APR. 6, 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 parent of a United States citizen. *See* Immigration and Nationality Act (the Act) § 204(a)(1)(A)(vii), 8 U.S.C. § 1154(a)(1)(A)(vii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

**I. APPLICABLE LAW**

Section 204(a)(1)(A)(vii) of the Act provides that an alien who is the parent of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she was battered or subjected to extreme cruelty perpetrated by his or her daughter or son. 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 daughter or son, and is a person of good moral character. Section 204(a)(1)(A)(vii)(II)-(IV) of the Act.

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1),<sup>1</sup> 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

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<sup>1</sup> *See* USCIS Policy Memorandum PM-602-0046, *Eligibility to Self-Petition as a Battered or Abused Parent of a U.S. Citizen; Revisions to Adjudicator's Field Manual (AFM) Chapter 21.15 (AFM Update AD 06-32)* 6 (Aug. 30, 2011), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/August/VAWA-Elder-Abuse.pdf> (noting that in adjudicating a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed under section 204(a)(1)(A)(vii) of the Act, apart from some noted exceptions, eligibility and evidentiary issues will be considered as described under 8 C.F.R. §§ 204.2(c)(1),(2) and (e)(1),(2), which otherwise relate to petitions filed by spouses or children of U.S. citizens or lawful permanent residents respectively).

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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.

The evidentiary guidelines for a self-petition 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.

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(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.

## II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner, a citizen of Mexico, claims to have last entered the United States in February 1979, without admission, inspection, or parole. The Petitioner's son, R-G-<sup>2</sup> is a U.S. citizen, who was born on [REDACTED] in California. The Petitioner filed the instant Form I-360 on January 6, 2015, based on her relationship with R-G-. The Director subsequently issued a request for evidence

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

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(RFE) of the Petitioner's good moral character. The Petitioner responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner timely appealed. The Petitioner submits a brief, an updated personal statement, and additional evidence on appeal.

### III. ANALYSIS

We conduct appellate review on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the Petitioner has not overcome the Director's ground for denial. The appeal will be dismissed for the following reasons.

#### A. Good Moral Character

##### 1. A Finding of the Petitioner's Good Moral Character Is Precluded Under Section 101(f)(3) of the Act

The Petitioner has not established her good moral character as required under section 204(a)(1)(A)(vii)(II) of the Act. The record indicates that the Petitioner has been arrested on five occasions, resulting in three convictions, as set forth below:

1. Convicted on [REDACTED] 1986, for petty theft in violation of section 484(a) of the California Penal Code (Cal. Penal Code) and sentenced to 2 years of probation and 30 days imprisonment;<sup>3</sup>
2. Arrested on [REDACTED] 1987, for burglary in violation of Cal. Penal Code § 459 – no disposition;
3. Arrested on [REDACTED] 1993, for infliction of corporal injury to spouse or cohabitant in violation of Cal. Penal Code § 273.5(a) – no disposition;
4. Convicted on [REDACTED] 2001, for petty theft under Cal. Penal Code § 484(a), reduced to an infraction pursuant to Cal. Penal Code § 490.1, and sentenced to \$100 fine; and
5. Convicted on [REDACTED] 2013, for burglary in violation of Cal. Penal Code § 459 and sentenced to three years of formal probation and 13 days imprisonment.

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)(3) of the Act proscribes a finding of good moral character if an individual is a member of one or more of the classes of persons, whether inadmissible or not, described in section 212(a)(2)(A) of the Act, as having been convicted of, or who admits having committed, or who admits committing acts

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<sup>3</sup> The Director's decision listed a separate sixth arrest on [REDACTED] 1986. However, according to the California Criminal History Information the Petitioner provided below, the [REDACTED] 1986, date appears to relate to the court and probation date for the Petitioner's first arrest on [REDACTED] 1986, rather than a separate arrest.

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.

The U.S. Court of Appeals for the Ninth Circuit, in whose jurisdiction this matter falls, has found that a conviction for petty theft under section 484 of the Cal. Penal Code is a crime involving moral turpitude. *See Castillo-Cruz v. Holder*, 581 F.3d 1154, 1159 (9th Cir. 2009) (petty theft under Cal. Penal Code § 484/488 is a crime involving moral turpitude). The Petitioner was convicted of petty theft, albeit reduced from a misdemeanor to an infraction, in 2001. The Director determined that this conviction was a crime involving moral turpitude, but that it fell within the petty offense exception to a finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Pursuant to section 212(a)(2)(A)(ii)(II) of the Act, the petty offense exception to a finding of inadmissibility based on a conviction for a crime involving moral turpitude only applies if: a petitioner has been convicted of only one such crime, the maximum penalty possible for the crime did not exceed imprisonment for one year, and the petitioner was not sentenced to a term of imprisonment in excess of six months. According to the California Criminal History Information report the Petitioner provided, she had a previous conviction for petty theft in 1986. The Petitioner indicates on appeal that she was unable to obtain the records of conviction<sup>4</sup> for any of her arrests from before 2001 and indicates that she is taking “corrective steps to fix” her criminal history record as it appears on the California Criminal History Information record. However, the Petitioner does not contest her 2001 petty theft conviction or any of the other arrests or convictions reported in the criminal history record. Nor does she acknowledge or discuss the circumstances of this arrest and conviction in any of her written statements below or on appeal. The Petitioner bears the burden in establishing her eligibility by a preponderance of the evidence in these proceedings. *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, our review discloses that the Petitioner was convicted on two occasions of petty theft under Cal. Penal Code § 484(a), which constitute crimes involving moral turpitude. She, therefore, has not demonstrated, as is her burden, that she falls under the petty offense exception to a finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Consequently, the Petitioner’s convictions for crimes involving moral turpitude bar a finding of her good moral character under section 101(f)(3) of the Act.

The Petitioner briefly mentions *Lopez-Valencia v. Lynch*, 798 F.3d 863 (9th Cir. 2015), on appeal, to contend that because her 2001 petty theft conviction was an infraction, rather than a misdemeanor conviction, it did not constitute a crime involving moral turpitude. The Petitioner’s reliance on *Lopez-Valencia* is misplaced, as that case relates to whether petty theft under California law constituted an aggravated felony and did not address whether such a conviction, when reduced to an infraction, still remained a crime involving moral turpitude. Additionally, the Petitioner contends that the majority of the arrests and convictions reported on her criminal history report are outside the statutory period for purposes of good moral character. While the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires evidence of a petitioner’s good moral character during the three years preceding the filing of the petition, the

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<sup>4</sup> The Petitioner does not discuss any steps she has taken to address the Director’s finding that the court criminal records search the Petitioner submitted does not appear to have been conducted under the various aliases and dates of birth associated with her.

regulation does not limit the temporal scope of U.S. Citizenship and Immigration Services (USCIS)' inquiry into a petitioner's moral character, because section 204(a)(1)(A)(vii) of the Act does not prescribe a time period during which a petitioner's good moral character must be established. Although the statutory provisions relating to a Form I-360 filed pursuant to section 204(a)(1)(A)(iii),(iv), and (vii) of the Act have been amended several times since the publication of the interim rule at 8 C.F.R. § 204.2(c), a final rule has not yet been promulgated, and none of the statutory amendments have changed the temporal scope of the good moral character requirement.

Lastly, the Petitioner appears to refer to section 204(a)(1)(C) of the Act to assert that her convictions did not bar a finding of her good moral character because they are waivable and were connected to the battery or extreme cruelty her U.S. citizen son committed against her.<sup>5</sup> However, the record does not establish the Petitioner's eligibility for a discretionary determination of her good moral character because she has not demonstrated a causal connection between her criminal convictions and her son's battery and extreme cruelty against her. The Petitioner, in her written statements, stated that she was the victim of abuse by her former partner and her son's father and that she continued to face abuse at the hands of her son. However, apart from indicating generally that she acted in self-defense in her 1993 arrest when her partner beat her, she did not specifically address or discuss in any probative detail any of her arrests and convictions. Although the Petitioner asserts that her son abused her, she did not explain how such abuse by her son led to or caused her criminal conduct. Thus, the Petitioner has not established a connection between her criminal convictions and her son's battery or extreme cruelty such that those convictions would not bar a finding of her good moral character pursuant to section 204(a)(1)(C) of the Act.

## 2. Petitioner Lacks Good Moral Character under Section 101(f) of the Act and the Regulation

The record also demonstrates that the Petitioner lacks good moral character under the final 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

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<sup>5</sup> Section 204(a)(1)(C) of the Act, which was not specifically amended to apply to petitions by abused parents of U.S. citizens under section 204(a)(1)(A)(vii) of the Act, provides as follows:

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.

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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. . . .

As discussed, the Petitioner was convicted of petty theft twice in 1986 and again in 2001. She was also convicted of burglary in [REDACTED] 2013, for which she was sentenced to three years of probation and 13 days of imprisonment. The Petitioner's period of probation for her 2013 conviction will not terminate until approximately [REDACTED] 2016, and the most recent record of conviction the Petitioner submitted in 2015 confirms that she remains on probation. The record indicates that the second defendant in the 2013 criminal case was one of the Petitioner's adult sons. In addition, the Petitioner does not address this or specifically discuss any of her arrests and convictions or her underlying criminal conduct.

On appeal, the Petitioner contends that she merits a finding of good moral character because she was a victim of abuse for much of her life, beginning with her mother and continuing into adulthood with her partners and now her adult son. She asserts in general terms that the majority of the times she was arrested, she engaged in criminal conduct to obtain necessities that were unavailable to her due to her abusive relationship with her partner. The Petitioner states that she is now married to someone who is not abusive, has several U.S. citizen children and grandchildren, attends church, and is remorseful about the errors she made in the past. In addition, she states that she suffers from asthma, diabetes, and arthritis for which she receives treatment in the United States and that she has no one in Mexico if she were forced to return there. However, as noted, apart from generally asserting that her arrests were tied to the abuse she suffered, the Petitioner does not provide any substantive information about, or a clear timeline of, her criminal history and the underlying circumstances of her arrests and convictions. The Petitioner also submitted, below and on appeal, several letters from her children, relatives, pastor, and friends in support of her good moral character. However, none of the letters reference or indicate any awareness of the Petitioner's criminal history. In addition, the Petitioner does not assert and has not shown that she completed her three year period of probation for her 2013 burglary conviction, which does not terminate until [REDACTED] 2016.

Upon review of the record in totality, the Petitioner's multiple convictions, including her recent 2013 burglary conviction, and her continuing probation, evidence behavior that falls below the standards of the average citizen in the community. She is therefore unable to establish her good moral character under the final paragraph of section 101(f) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The Petitioner has therefore not demonstrated her good moral character as required by section 204(a)(1)(A)(vii)(II) of the Act.

#### IV. CONCLUSION

On appeal, the Petitioner has not overcome the Director's ground for denial as she has not established that she is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(vii) of the Act.

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In these 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. at 128. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-H-Z-*, ID# 16238 (AAO Apr. 6, 2016)