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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAY 27 2009**
EAC 06 038 52171

IN RE: Petitioner: [REDACTED]

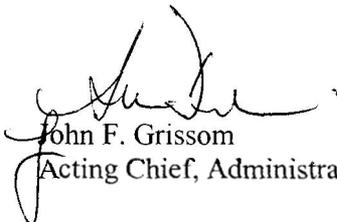
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that he was a person of good moral character.

On appeal, counsel submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii) 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).

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 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 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 . . . 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:

Evidence for a spousal self-petition –

(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.

Pertinent Facts and Procedural History

The petitioner entered the United States on February 24, 2000 as a nonimmigrant visitor (B-2) with authorization to remain in the United States until August 23, 2000. On July 29, 2002, the petitioner married S-V-¹, a U.S. citizen, in Texas. S-V- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The Houston District Office denied the Form I-130 petition and the petitioner's concurrently filed Form I-485, Application to Adjust Status, in August 2004 due to abandonment. The petitioner was later placed in removal proceedings before the Houston Immigration Court where his next hearing is scheduled for September 23, 2009.

On November 16, 2005, the petitioner filed this Form I-360, through prior counsel. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character and documentation regarding the disposition of criminal charges against him. The petitioner submitted additional evidence in response to the RFE, which the director found insufficient to establish the petitioner's good moral character. On November 27, 2006, the director issued a Notice of Intent to

¹ Name withheld to protect individual's identity

Deny (NOID) the petition for failure to demonstrate the petitioner's good moral character. The petitioner did not respond to the NOID and the director denied the petition on February 9, 2007. The petitioner, through present counsel, timely appealed.

On appeal, counsel asserts that the petitioner's "legal woes derive from the venom spat out at him by his U.S. citizen wife" and that the petitioner was acting in self-defense from his wife's abuse during the events that led to his criminal convictions. Counsel's claims and the evidence submitted on appeal do not overcome the ground for denial.

Good Moral Character

The record shows that the petitioner has been convicted of the following offenses:

1. On July 1, 2002, the petitioner was convicted of evading arrest in violation of section 38.04 of the Texas Penal Code:²

- (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting lawfully to arrest or detain him.
- (b) An offense under this section is a Class B misdemeanor

Tex. Penal Code Ann. § 38.04 (West 2002).

The petitioner was convicted of a Class B misdemeanor offense and sentenced to 15 days imprisonment in the county jail.

2. On June 23, 2003, the petitioner was convicted of evading detention in violation of the same section of the Texas Penal Code, which was also a Class B misdemeanor.³ The petitioner was sentenced to two days imprisonment in the county jail and a \$250 fine.
3. On October 9, 2003, the petitioner was convicted of assault in violation of section 22.01 of the Texas Penal Code:⁴

- (a) A person commits an offense if the person:
 - (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
 - (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse;

² Harris County, Texas Criminal Court, [REDACTED]

³ Harris County, Texas Criminal Court, [REDACTED]

⁴ Harris County, Texas Criminal Court, [REDACTED]

- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.
- (b) An offense under Subsection (a)(1) is a Class A misdemeanor . . .
- (c) An offense under Subsection (a)(2) or (3) is a Class C misdemeanor

Tex. Penal Code Ann. § 22.01 (West 2003)

The petitioner was convicted of a Class C misdemeanor and ordered to pay a \$500 fine.

- 4. On March 21, 2006, the petitioner was convicted of displaying a fictitious or counterfeit inspection certificate in violation of section 548.603 of the Texas Vehicle Code:⁵

A person commits an offense if the person:

- (5) displays on a vehicle an inspection certificate that was obtained knowing that the vehicle does not meet all emissions inspection requirements for the vehicle.

Tex. Veh. Code Ann. § 548.603 (West 2006)

The petitioner was sentenced to 10 days imprisonment in the county jail.

Crimes Involving Moral Turpitude

The petitioner has been convicted of three crimes involving moral turpitude which bar a finding of his good moral character pursuant to section 101(f)(3) of the Act. The term “crime involving moral turpitude” is not defined in the Act or the regulations, but has been part of the immigration laws since 1891. *Jordan v. De George*, 341 U.S. 223, 229 (1951) (noting that the term first appeared in the Act of March 3, 1891, 26 Stat. 1084). The Board of Immigration Appeals (BIA) has explained that moral turpitude “refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Matter of Franklin*, 20 I&N Dec 867,868 (BIA 1994), *aff’d*, 72 F.3d 571 (8th Cir. 1995). A crime involving moral turpitude must involve both reprehensible conduct and some degree of scienter, be it specific intent, deliberateness, willfulness or recklessness. *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689 n.1, 706 (A.G. 2008).

When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Id.* at 696; *Matter of L-V-C-*, 22 I&N Dec. 594, 603 (BIA 1999); *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). If there is no realistic probability that the statute of conviction would be applied to conduct that does not involve moral turpitude, then convictions under the statute may

⁵ Harris County, Texas Criminal Court, [REDACTED]

categorically be treated as crimes involving moral turpitude. *Matter of Silva-Trevino*, 24 I&N Dec. at 697. Such a realistic probability exists when there is an actual case in which the criminal statute was applied to conduct that did not involve moral turpitude. *Id.* Where the alien bears the burden of proof to establish eligibility for the benefit sought, the alien also bears the burden of showing that the criminal statute has been applied to conduct that did not involve moral turpitude. *Id.* at 703 n.4.

The petitioner's convictions for evading arrest and detention categorically involve moral turpitude because the elements of the offense include both the "reprehensible conduct" of fleeing from a peace officer attempting to lawfully arrest or detain the person and the specific intent to do so with the knowledge that the pursuer is a peace officer attempting a lawful arrest or detention. *See Matter of Silva-Trevino*, 24 I&N Dec. at 689 n.1, 706; *Matter of Louissaint*, 24 I&N Dec. 754, 758-59 (BIA 2009) (applying the analytical framework of *Matter of Silva-Trevino* to find that a state offense categorically involves moral turpitude).

The petitioner's assault conviction was secured under a divisible statute and the petitioner's criminal records do not specify under which subsection he was convicted. However, because he was convicted of a Class C misdemeanor, his offense must have violated either subsection (a)(2) or (a)(3) of the Texas assault statute. Tex. Penal Code Ann. § 22.01(c) (West 2003). The statutory language of subsection (a)(3) encompasses both conduct that involves moral turpitude and conduct that does not. We cannot conclude, however, that the petitioner's assault conviction did not involve moral turpitude because the petitioner has not met his burden of proof as set out in *Matter of Silva-Trevino*. The petitioner has not shown that there is a "realistic probability" that section 22.01 of the Texas Penal Code would be applied to conduct that did not involve moral turpitude by citing an actual case where the criminal statute was so applied. *Matter of Silva-Trevino*, 24 I&N Dec. at 697, 703-04 n.4.

The petitioner's offenses could ostensibly fall within the so-called petty offense exception to classification as crimes involving moral turpitude at section 212(a)(2)(A)(ii)(II) of the Act because the maximum term of imprisonment for a Class B or C misdemeanor in Texas does not exceed six months. Tex. Penal Code Ann. §§ 12.22, 12.23 (West 2003). However, the petty offense exception does not apply when an alien, such as the petitioner, has been convicted of two or more crimes involving moral turpitude. *Matter of Jurado*, 24 I&N Dec. 29, 34-35 (BIA 2007).

On appeal, counsel contends that the petitioner's convictions are all connected to his former wife's abuse and do not bar a finding of his good moral character. The record does not fully support counsel's claim. A self-petitioner may be found to have good moral character despite an act or conviction that would otherwise bar such a finding under section 101(f) of the Act if: 1) the alien's act or conviction is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) U.S. Citizenship and Immigration Services (USCIS) determines that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). Although inadmissibility due to a conviction for a crime involving moral turpitude is waivable for self-petitioners under section 212(h)(1)(C) of the Act,

the petitioner has not demonstrated a connection between all of his convictions and his wife's battery or extreme cruelty.

The petitioner credibly described how his assault conviction arose from an incident when his wife hit him with a rolling pin and her son kicked him causing multiple injuries. The petitioner's account of this incident is supported by copies of photographs of the petitioner's injuries and statements of his friends, [REDACTED] and [REDACTED] and [REDACTED].

However, the petitioner has not described any connection between his wife's abuse and his other three convictions. The petitioner's first conviction for evading arrest arose from the petitioner's actions on June 27, 2002, over a month before the petitioner married his wife. The petitioner stated that his wife's abuse did not begin until February 2003, after the petitioner's wife's son began living with them. The petitioner's second offense of evading detention occurred on January 8, 2003, which was also before the petitioner reported that his wife became abusive. The petitioner does not discuss or even acknowledge his two convictions for evading arrest and detention. Hence, the record does not support counsel's claim that these offenses were connected to the battery or extreme cruelty of the petitioner's wife.

The petitioner's convictions for crimes involving moral turpitude bar a finding of his good moral character pursuant to section 101(f)(3) of the Act. Consequently, the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Unlawful Acts that Adversely Reflect Upon the Petitioner's Moral Character

Even if the petitioner's convictions did not fall within any of the enumerated provisions of section 101(f) of the Act, the record still shows that he lacks good moral character. Section 101(f) of the Act states, in pertinent part, "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." 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 . . . 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.

Although the petitioner established extenuating circumstances surrounding his assault conviction, he has not demonstrated that his remaining three convictions arose from similar circumstances. As previously discussed, the petitioner did not acknowledge his two convictions for evading arrest and detention and the record contains no indication that those offenses were connected to the battery or extreme cruelty of the petitioner's wife. The petitioner has also not acknowledged his conviction for displaying a fictitious or counterfeit inspection certificate, which occurred in March 2006, while this petition was pending and over a year after the petitioner stated that he separated from his wife.

Although the petitioner's 2006 offense does not categorically involve moral turpitude and would not, in isolation, adversely reflect upon his moral character, the conviction is the petitioner's fourth criminal offense and reflects an ongoing disrespect for the law and lack of rehabilitation.

The petitioner submitted letters from his pastor and the coordinator of a community center where he attended computer training courses. Both individuals attest to the petitioner's good conduct, but neither discusses his criminal record. The petitioner also submitted evidence that he had attended English as a Second Language classes and obtained a Houston vendor's license. However, this evidence and the support letters do not outweigh the petitioner's criminal record and his failure to acknowledge, express remorse for, and explain the circumstances surrounding his offenses of evading arrest and detention and displaying a fictitious or counterfeit inspection certificate.

Accordingly, the record shows that the petitioner has committed unlawful acts that adversely reflect upon his moral character and that he lacks good moral character pursuant to section 101(f) of the Act. The petitioner consequently has not demonstrated his good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act, for this additional reason.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.