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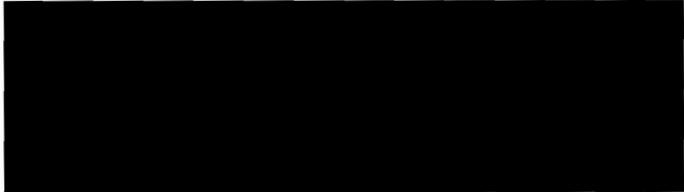
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Office: VERMONT SERVICE CENTER

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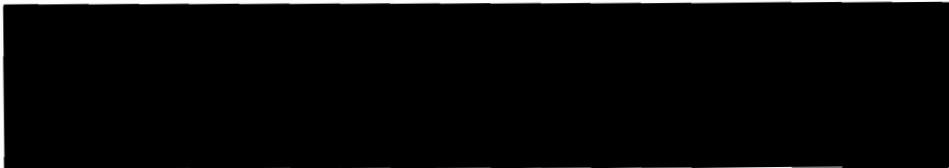
IN RE:

Petitioner:



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:



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.

Maura Deardrick
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The appeal will be sustained, the decision of the director will be withdrawn and the petition will be approved.

The petitioner seeks immigrant classification pursuant to 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.

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 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 of Homeland Security].

In this case, the director initially denied the petition on January 20, 2006, for failure to establish that the petitioner was a person of good moral character due to her criminal conviction. In its June 15, 2006 decision on appeal, the AAO concurred with the director's determination but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on October 16, 2006, which informed the petitioner, through counsel, that she had failed to demonstrate her good moral character. The petitioner submitted further evidence in response to the NOID. The director determined the new evidence did not establish the petitioner's good moral character and denied the petition on December 5, 2007, certifying his decision to the AAO for review.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. Accordingly, we will only address the materials submitted after that decision was issued, which include, but are not limited to:

- Counsel's December 6, 2006 letter;

- The April 17, 2006 court reporter transcript of the hearing on the petitioner's motion to withdraw her guilty plea in her criminal case before the El Paso County, Colorado District Court, Case Number [REDACTED]
The corresponding Amended Information dated April 3, 2006;
- Copy of the case, *People v. Harrington*, 500 P.2d 360 (Colo. 1972); and
- Numerous supporting affidavits from the petitioner's church, friends, acquaintances, fiancé, employer, probation officer and the interpreter for her criminal court proceedings, all of whom attest to the petitioner's good moral character.

As the facts of this case were fully addressed in our prior decision, we will only repeat such facts as necessary here. The record shows that on December 13, 2001, the petitioner pled guilty to and was convicted of menacing, a fifth degree felony, under section 18-3-206 of the Colorado Revised Statutes (CRS) (Case No. [REDACTED]). On April 17, 2006, the petitioner's guilty plea was withdrawn *nunc pro tunc* to February 11, 2002 (the date of her original sentencing) by order of the criminal court. On that same date, the petitioner entered an *Alford* plea to, and was convicted of, second degree criminal trespassing, a fourth-degree felony in violation of CRS section 18-4-503.

In our prior decision, we determined that the petitioner's original menacing conviction was for a crime involving moral turpitude, which barred a finding of her good moral character pursuant to section 101(f)(3) of the Act. We further found that the petitioner had not established that her original conviction was vacated due to a procedural or substantive defect in the underlying criminal proceedings such that her conviction would be negated for immigration purposes. However, the April 17, 2006 court transcript shows that the petitioner's guilty plea was withdrawn on the constitutional ground that she did not knowingly, intelligently or voluntarily waive her rights when she entered her guilty plea. Accordingly, the petitioner no longer remains convicted of menacing for immigration purposes. See *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378 (BIA 2000).

In our prior decision, we also determined that the petitioner had not shown that her subsequent conviction for trespassing was not a crime of moral turpitude. At the time of our prior decision, the record showed only that the petitioner was convicted of second degree criminal trespass under CRS section 18-4-503(2)(b), which defines the crime as trespassing on "agricultural land with the intent to commit a felony thereon." Colo. Rev. Stat. Ann. § 18-4-503(2)(b) (West 2008). The record did not contain evidence of the specific felonious intent of the petitioner's crime. The April 17, 2006 court transcript states that the felony underlying the petitioner's trespassing conviction was eavesdropping in violation of CRS section 18-9-304(1)(a), which prescribes that a person is guilty of eavesdropping if he or she is not visibly present during a conversation or discussion and "[k]nowingly overhears or records such conversation or discussion without the consent of at least one of the principal parties thereto, or attempts to do so[.]" Eavesdropping under this section contains no malicious intent that would render the offense a crime involving moral turpitude. See *Matter of Flores*, 17 I&N Dec. 225, 227 (BIA 1980).

The April 17, 2006 court transcript shows that the petitioner's original guilty plea to menacing was withdrawn based on a constitutional defect in the underlying proceedings. Accordingly, the petitioner's menacing conviction is no longer valid for immigration purposes. The court transcript further shows that the petitioner's subsequent conviction for trespassing with the underlying felonious intent to commit eavesdropping was not a crime involving moral turpitude. The petitioner's trespassing conviction thus does not bar a finding of her good moral character.

In his December 5, 2007 decision, the director noted the submission of the court transcript, but did not discuss the information contained therein. The director simply found that the petitioner's conviction for trespassing "negatively impacts her claims to good moral character," but provided no basis for his determination. As explained in the foregoing discussion, the record shows that the petitioner has not been convicted of a crime involving moral turpitude and section 101(f) of the Act does not bar a finding of her good moral character. The petitioner has complied with the evidentiary requirements to establish good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). The record shows that the petitioner was sentenced to probation, which was satisfactorily terminated. In addition, as previously noted, the record contains numerous attestations to the petitioner's good moral character from officials of the petitioner's church, her friends, acquaintances, fiancé, employer, probation officer and the interpreter for her criminal court proceedings.

The petitioner has demonstrated that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The petitioner is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition will be approved.

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. The petitioner has met that burden.

ORDER: The director's decision of December 5, 2007 is withdrawn. The petition is approved.