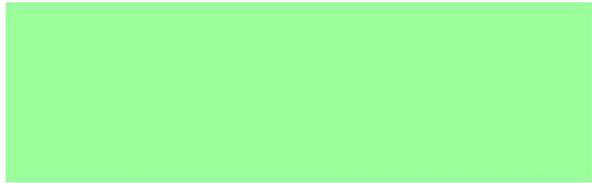




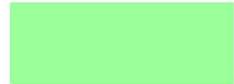
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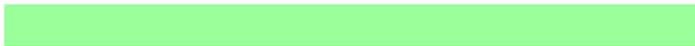


Date: SEP 23 2013

Office: VERMONT SERVICE CENTER File:

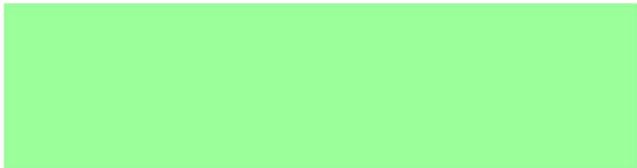


IN RE: Petitioner:



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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“the director”) 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 for failure to establish that he was subjected to battery or extreme cruelty by his former wife, a U.S. citizen, during their marriage, and that he is a person of good moral character.

On appeal, the petitioner, through counsel, submits a brief.

Relevant Law and Regulations

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 further 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 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)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-

petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

(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. 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. 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.

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:

(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.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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.

Facts and Procedural History

The petitioner is a national of Palestine who entered the United States on January 24, 2008 as a nonimmigrant visitor. He married E-F-¹, a U.S. citizen, on August 27, 2008 in New Orleans, Louisiana and the two were divorced on May 17, 2012. The petitioner filed the instant Form I-360 on July 5, 2011. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on this ground and also determined that the petitioner failed to establish his good moral character. The petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former wife did not subject him to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's declarations, letters from family and friends, and a psychological evaluation from [REDACTED] Licensed Clinical Social Worker and Board-Approved Clinical Supervisor (LCSW-BACS). In her evaluation, [REDACTED] stated that when the petitioner was arrested in January of 2011 for the sale of a banned substance, E-F-'s disinterest in helping him added to their marital problems and that the petitioner "has experienced depressed mood and feelings and thoughts of hopelessness." [REDACTED] opined that the petitioner was the victim of a marital relationship that was deceptive and "emotionally abusive because of the disregard shown for his wellbeing." She concluded that he suffered from Adjustment Disorder with Depressed Mood. While we do not question [REDACTED] professional expertise, her assessment conveyed a

¹ Name withheld to protect the individual's identity.

summarization of the petitioner's statements during her interview with him and did not provide any probative details regarding any battery or extreme cruelty inflicted by E-F- upon the petitioner.

Nonetheless, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In his first declaration, the petitioner stated that E-F- entered the store where he worked and demanded money. He stated that when he couldn't give her any, she screamed at him and struck him. The petitioner stated that after E-F- returned to their home, E-F-'s teenage son came and screamed at him. The petitioner did not further describe this incident in probative detail nor did he provide substantive information about any other specific acts of abuse. The petitioner also recounted that E-F- constantly asked him for more money and that he later found out that she had been using the money to gamble at the casino. In his second declaration submitted in response to the RFE, the petitioner repeated his earlier statements and added that he separated from E-F- after she came to the store with his clothes and threw them in the dumpster. He did not describe this incident further. The petitioner also briefly mentioned in his divorce petition that he was threatened and physically assaulted by E-F-. However, the divorce decree does not reflect that the divorce was granted on these grounds. The petitioner's brief statements failed to demonstrate that his former wife ever battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

Although the petitioner's uncle and employer, [REDACTED] stated that he witnessed the alleged abuse at his store, he only briefly conveyed the petitioner's statements regarding E-F-'s behavior and did not add any probative details about any behavior that would constitute battery or extreme cruelty. The petitioner's friends, [REDACTED] and [REDACTED] stated that they saw E-F- push the petitioner but also did not further describe this incident or provide probative information regarding any other specific incidents of abuse. The petitioner's friend, [REDACTED] stated that he observed E-F-'s son enter the store and try to fight the petitioner. He did not further provide any probative details regarding this incident or any other specific incidents of abuse. In addition, none of the individuals provided any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner.

On appeal, counsel asserts that the director erred in determining that the petitioner failed to establish that he was subjected to extreme cruelty by his former wife but counsel fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner's wife constituted battery or extreme cruelty. Counsel incorrectly argues that the petitioner provided "persuasive evidence" of an overall pattern of violence that rose to the level of extreme cruelty. However, the relevant evidence, including the statements from the petitioner, did not provide sufficient probative information regarding the claimed abuse. Accordingly, the petitioner has not established that his former wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

We further find no error in the director's determination that the petitioner lacks good moral character. The petitioner was arrested on February 20, 2009 and charged with the unlawful sale of alcohol to a minor in violation of section 4-62A of the Slidell Code of Ordinances. The petitioner pled guilty and paid a fine. The petitioner was again arrested on January 11, 2011 and charged with the unlawful sale of a controlled substance. As evidence of his good moral character, the petitioner submitted the Slidell Police Department Law Incident Tables for both arrests, the court disposition for his February 20, 2009 arrest and evidence that he paid his fine for his 2009 conviction.

As stated by 8 C.F.R. § 204.2(c)(1)(vii), 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. Section 101(f) of the Act lists specific conditions which will bar a finding of good moral character, including being described within the criminal-related grounds at section 212(a)(2)(A) of the Act. Section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3). Section 101(f) of the Act further prescribes: "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 101(f) of the Act, 8 U.S.C. § 1101(f). The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that "[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." In neither of the petitioner's declarations submitted below did he explain the circumstances surrounding his arrests nor did he attest to his good moral character. The petitioner also did not submit any letters from family or friends who attested to his good moral character.

On appeal, counsel asserts that the petitioner's 2009 conviction does not pose a bar to a finding of his good moral character. He further states that the petitioner pled not guilty to the 2011 charge and that as the case is still pending, it is not a bar to a finding of the petitioner's good moral character. While the present record contains no conviction or other disposition of the petitioner's 2011 charge, either a conviction or admission of violating a law relating to a controlled substance is a condition under section 212(a)(2)(A)(i)(II) of the Act that falls within the bar to finding good moral character at section 101(f)(3) of the Act. Counsel fails to submit any court records related to the 2011 charge of the unlawful sale of a controlled substance to support his claim that the petitioner pled not guilty and the criminal proceedings remain pending. In addition, the petitioner submitted no affidavit addressing his moral character and explaining the circumstances surrounding his 2009 conviction and 2011 charge. Consequently the petitioner failed to submit the primary evidence of his good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v) and his criminal record adversely reflects upon his moral character pursuant to the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner has thus failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. He has not demonstrated that he was subjected to battery or extreme cruelty by his former wife during their marriage and has not

established his good moral character. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.