

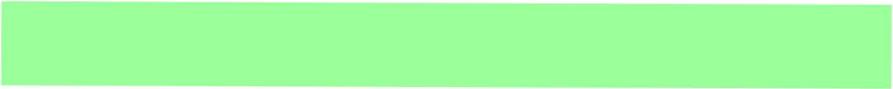


U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **AUG 25 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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)

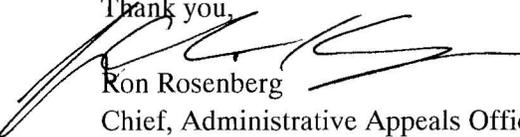
ON BEHALF OF PETITIONER:

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 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.

The director denied the petition for failure to establish the petitioner’s good moral character. On appeal, the petitioner submits additional evidence.

*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).

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 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 explained further 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 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.

Section 101(f) of the Act, 8 U.S.C. §1101(f), states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

\* \* \*

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act[.]

\* \* \*

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 evidentiary standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

\* \* \*

(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.

*Pertinent Facts and Procedural History*

The petitioner was born in Senegal and entered the United States on February 12, 2001, as a B-2 nonimmigrant visitor. On June 12, 2003, the Chicago Asylum Office referred the petitioner's Form I-589, Application for Asylum and for Withholding of Removal, to the Executive Office for Immigration Review and served the petitioner with a Notice to Appear for removal proceedings. On October 24, 2006, the immigration judge denied the petitioner's applications for asylum, withholding of removal, and relief under the Convention Against Torture, and ordered the petitioner removed to Mauritania and in the alternate to Senegal. The Board of Immigration Appeals (BIA) affirmed the immigration judge's decision and denied the petitioner's subsequent motion to reopen and reconsider on June 18, 2009. On September 5, 2013, the BIA dismissed a second motion from the petitioner, noting he had committed identity fraud and was from Senegal rather than Mauritania.

The petitioner married his spouse, a U.S. citizen, on April 30, 2010. He filed the instant Form I-360 self-petition on August 21, 2012. The director issued a request for evidence (RFE) that the petitioner is a person of good moral character. The director found the petitioner's response insufficient and issued a notice of intent to deny the petition (NOID) because the petitioner had provided false testimony to obtain an immigration benefit and therefore did not possess good moral character. The petitioner timely responded with a personal affidavit and other evidence, which the director determined did not establish that the petitioner has good moral character, and the director denied the petition. The petitioner filed a timely appeal.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal shows that the petitioner gave false testimony for the purpose of obtaining a benefit under the Act, which prevents a finding of his good moral character pursuant to section 101(f)(6) of the Act.

*False Testimony*

The record shows that the petitioner included false written statements on his asylum application and gave false testimony when interviewed under oath by an asylum officer on April 1, 2003. At his asylum interview, the petitioner stated that he was a native and citizen of Mauritania whose family was arrested by white soldiers because they were Soninke and Muslim. He asserted that he and his family were deported from Mauritania in 1990 after four days of detention in a military camp at Diaguily, Mauritania. He asserted that he was beat up several times while detained in the camp in Mauritania, and submitted a copy of his Mauritanian National Identity Card as evidence of his nationality. He signed the Form I-589 asylum application at the asylum interview, attesting to the truth of the application's contents and signing under oath to tell the truth during his interview.

During subsequent removal proceedings in which the petitioner sought to renew his asylum application before an immigration judge, the petitioner testified under oath on October 24, 2006, that he was born in Mauritania, detained and beaten with his family by “white Moors,” and deported to Senegal. He provided specific details about his family in Mauritania, and again discussed the abuse he and his family received from soldiers in Mauritania. The immigration judge denied the petitioner’s applications for asylum and withholding of removal and ordered the petitioner removed to Mauritania and in the alternate to Senegal. In his decision, the immigration judge discussed three specific discrepancies in the petitioner’s testimony which conflicted with other documentation in the record, including the petitioner’s own prior testimony and statements on his Form I-589 asylum application. The immigration judge also referenced a forensic document examiner’s report suggesting that the petitioner’s Mauritanian National Identity Card may not be genuine. The BIA affirmed the immigration judge’s decision, and denied a subsequent motion to reopen on June 18, 2009.

On August 21, 2012, the petitioner filed the Form I-360 self-petition. On the form, he claimed to have been born in Mauritania, and he provided a copy of his daughter’s 2009 birth certificate showing that he was born in Mauritania. However, he also provided a copy of his Senegalese passport and U.S. visa, which is stamped to show he entered the United States as a B-2 nonimmigrant visitor from Senegal on February 12, 2001, under a different name.

On June 3, 2013, the petitioner filed a second motion to reconsider with the BIA and a brief in which he stated he was from Senegal and first entered the United States on or about February 28, 2001; however, he provided the BIA a copy of his Form I-360 self-petition and his daughter’s birth certificate, both of which continue to reflect his claim that he is from Mauritania. The Department of Homeland Security provided the BIA with a copy of the petitioner’s Senegalese passport and U.S. visa. The BIA dismissed the petitioner’s motion on September 5, 2013, citing to the petitioner’s admission that he was from Senegal, and the Senegalese passport and U.S. visa as evidence of fraud in the asylum application. Based on this same information, the director in these proceedings determined that the petitioner provided false testimony before the immigration judge regarding his asylum application, and issued the NOID.

In response to the subsequent NOID, the petitioner submitted his September 26, 2013 affidavit in which he confirmed that he was from Senegal, and asserted that a friend from Mauritania had incorrectly filled out his asylum application for him and provided him with a Mauritanian identification card. The petitioner stated that during proceedings before the immigration judge, he “went along with the information on [his] asylum application by lying” because he did not want to get his friend in trouble. He apologized “for misleading the Immigration Judge by lying,” asserted that he works hard to support his child, and begged for “pardon and forgiveness as [he] never meant to cause any harm or to disrespect the immigration law.” The petitioner did not explain why he continued to provide false information about his identity in unrelated contexts, such as falsely stating on his 2012 Form I-360 self-petition that he was born in Mauritania and listing his country of birth as Mauritania on his daughter’s 2009 birth certificate.

Also in response to the NOID, the petitioner provided an affidavit from a friend who confirmed that the petitioner is from Senegal and continued to maintain his false claims to be from Mauritania because he did not want to get anyone in trouble.

On appeal, the petitioner asserts that if he can establish hardship to his U.S. citizen child, then all “allegations of fraud is [sic] overcome,” and cites to an unpublished AAO decision. The petitioner does not provide a copy of the decision or evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Even if the unpublished decision was relevant to this case, the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, but unpublished decisions are not similarly binding.

False testimony under section 101(f)(6) of the Act is limited to oral statements made under oath with the subjective intent of obtaining immigration benefits. *Kungys v. United States*, 485 U.S. 759, 780 (1988). See also *Matter of Haniatakis*, 376 F.2d 728, 730 (3d Cir. 1967) (finding false testimony is a “mandatory” bar to establishing good moral character for purposes of naturalization). In this case, the petitioner’s misrepresentations to the asylum officer and to the immigration judge were material to his application for asylum. His asylum claim was based on his allegations of having been persecuted with his family in Mauritania, beaten by soldiers in Mauritania, and deported to Senegal. Accordingly, his false testimony about his identity and nationality was made to obtain asylum and relief from removal under the Act. See *Bufalino. V. Holland*, 277 F.2d 270, 276 (3rd Cir. 1960) (an alien provided false testimony under section 101(f)(6) of the Act when he purposely misrepresented his birth place, birth date, and absences from the United States in deportation proceedings). The petitioner’s misrepresentations of his name, identity, and place of birth during the asylum interview and in removal proceedings constitute false testimony under section 101(f)(6) of the Act. *Id.* See also *Ramos v. INS*, 246 F.3d 1264, 1265-66 (9th Cir. 2001) (finding that an applicant for suspension of removal lacked good moral character based on his false statement to an asylum officer).

#### *Good Moral Character*

Because the petitioner gave false testimony to obtain asylum in the United States, section 101(f)(6) of the Act bars a finding of his good moral character and the record lacks evidence of any extenuating circumstances that would permit a finding of his good moral character despite his false testimony.

Primary evidence of a self-petitioner’s good moral character is the self-petitioner’s affidavit, which should be supported by local police clearances or state-issued criminal background checks. 8 C.F.R. § 204.2(c)(v). The petitioner did not initially provide an affidavit with his Form I-360 petition or in response to a specific RFE for the affidavit and police clearances. Instead, in response to the RFE, he submitted an incomplete criminal background check from the Pennsylvania State Police. Although he provided search results for a name check based on five aliases, a copy of his Senegalese passport shows he has a sixth name which he did not provide to the Pennsylvania State Police for the criminal background check. Because the background check did not include this additional name, its evidentiary weight is diminished.

In response to the NOID, the petitioner provided additional evidence of his good moral character, such as evidence of custody proceedings, and a letter confirming that he has paid for his daughter's child care, but the director found this information insufficient to establish the petitioner's good moral character.

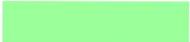
On appeal, the petitioner submits additional evidence relating to the abuse he suffered, and to the child custody proceedings. He also provides a psychological evaluation in which the therapist states that the petitioner lost custody of his daughter in May 2013, but has "been trying to apply to gain back custody" and "wants to obtain citizenship in the United States so he can fight for custody of his daughter."

The petitioner further asserts on appeal that his "positive factors outweighs his one negative factor," that the fraud he committed was "in excess of 10 years ago" and was not material to his claim of abuse or the instant petition. He cites two Ninth Circuit Court of Appeals cases involving discretionary waivers of deportation, but these are inapplicable to the present case. Although the regulation at 8 C.F.R. § 204.2(c)(2)(v) states that a self-petitioner should submit police clearances or state criminal background checks from every place of residence during the three years preceding the filing of the petition, the regulation and the statute do not bar an investigation of the self-petitioner's character beyond those three years when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). In this case, the petitioner continued to maintain his false identity outside of the context of his removal proceedings by asserting on the 2012 Form I-360 self-petition that he was born in Mauritania, and providing a copy of his daughter's 2009 birth certificate which also reflected that he was born in Mauritania. The petitioner did not recant or admit to being from Senegal until his second motion before the BIA in 2013.

The regulation states that extenuating circumstances may be taken into account if a self-petitioner has not been convicted of an offense or offenses but admits the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. 8 C.F.R. § 204.2(c)(1)(vi). Although the record does not indicate that the petitioner has been convicted of any crime based on his misrepresentations and false testimony concerning his assumed identity, the petitioner does not discuss, and the record does not indicate, any extenuating circumstances surrounding his misrepresentation. In his affidavit, the petitioner stated that he provided false testimony before the asylum officer in 2004 and the immigration judge in 2006 because he did not want to get a friend in trouble; however, we note that he continued to make independent misrepresentations about his nationality on the 2012 Form I-360 and on his daughter's birth certificate, both of which were outside of the asylum claim and related removal proceedings. The petitioner has not established extenuating circumstances accounting for his false testimony. Consequently, the petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

### *Conclusion*

On appeal, the petitioner has not demonstrated that he is a person of good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.



In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.