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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



B4

DATE: **FEB 28 2012** 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The 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 on the basis of his determination that the petitioner had failed to establish his good moral character. On appeal, counsel submits a brief reasserting the petitioner’s eligibility.

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, the following:

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, the following:

- (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 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, the following:

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. 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.

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

(f) For the purposes of this Act—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

* * *

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether the offense, or offenses, for which he has been confined were committed within or without such period. . . .

* * *

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 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), states, in pertinent part, the following:

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 inadmissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding petitioner to be of good moral character under subparagraph (A)(iii) . . . if the [Secretary of Homeland Security] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who entered the United States, without inspection, on July 14, 2006. He entered into a common law marriage with [REDACTED] a citizen of the United States, on November 23, 2006 in Colorado.² The petitioner filed the instant Form I-360 on July 21, 2008. The director issued a subsequent notice of intent to deny (NOID) the petition to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the NOID, the director denied the petition on April 4, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Good Moral Character

On March 4, 2008, the petitioner was convicted of violating section 18-5.5-102(1)(a) of the Colorado Revised Statutes, Computer Crime – Unauthorized Access. He was sentenced to, and

¹ Name withheld to protect individual's identity.

² The State of Colorado recognizes common law marriages. *See Colo. Rev. Stat. § 14-2-109.5* (2011).

served, 180 days of confinement in a penal institution.³ Accordingly, section 101(f)(7) of the Act prevents a finding of his good moral character.

In his August 26, 2010 NOID, the director informed the petitioner that although his period of confinement prevented a finding of his good moral character, he could overcome that bar by establishing that the conviction was connected to the battery or extreme cruelty to which he was subjected by ██████ during their marriage. The director found the petitioner's response to the NOID insufficient, and in his April 4, 2011 decision denying the petition, stated that because the petitioner had failed to establish his conviction was connected to ██████ alleged abuse, section 101(f)(7) of the Act prevented a finding of his good moral character.

While the director's ultimate finding that section 101(f)(7) of the Act prevents a finding of the petitioner's good moral character was correct, the director's statement that the petitioner could overcome section 101(f)(7) of the Act by demonstrating a connection between the conviction and any battery or extreme cruelty to which he was subjected by ██████ during their marriage was not. Although section 204(a)(1)(C) of the Act provides a mechanism by which certain bars to a finding of good moral character under section 101(f) of the Act can be overcome by demonstrating such a connection, that mechanism is only available when the act or conviction "is waivable with respect to the petitioner for purposes of a determination of the petitioner's inadmissibility under section 212(a) or deportability under section 237(a)" of the Act. Sections 212(a) and 237(a) of the Act contain no waiver for the "acts or convictions" addressed in section 101(f)(7) of the Act (confinement to a penal institution for an aggregate period of one hundred and eighty days or more). Accordingly, section 204(a)(1)(C) of the Act does not apply in this case and affords the petitioner no relief, and whether the petitioner's conviction was connected to any battery or extreme cruelty perpetrated by ██████ during their marriage is not relevant to the question of whether he possesses the requisite good moral character. Consequently, counsel's assertions regarding the connection between the abuse and the petitioner's conviction do not overcome the statutory bar to a finding of good moral character contained at section 101(f)(7) of the Act.

Finally, the record contains additional evidence relevant to our consideration of whether the petitioner possesses the requisite good moral character. He was convicted of violating three provisions of the Denver Municipal Code in 1999: (1) section 38-89 – Disturbing the Peace; (2) section 38-93 – Assault; and (3) section 38-117(c) – Flourishing a Weapon. The court imposed a 180-day conditional suspended sentence.⁴ In 2008, he was convicted of violating section 18-5-105 of the Colorado Revised Statutes, Criminal Possession of a Forged Instrument. The court imposed a two-year period of probation.⁵ The petitioner stated in his September 27, 2010 letter that his actions leading to the 1999 convictions were related to a physical assault perpetrated against him by his first wife, and

³ The petitioner was granted credit for 180 days of confinement he had already served. Sentence Order, *People v. Sandoval-Santiago*, 2005CR003755, Arapahoe County, Colorado District Court (Mar. 4, 2008).

⁴ Denver County, Colorado Court Record, 99GS288511 (Jul. 28, 1999).

⁵ Jury Verdict Form, *People v. Sandoval-Santiago*, 06CR2780, Arapahoe County, Colorado District Court (June 12, 2008); Adult Record of Court Proceedings, *People v. Sandoval-Santiago*, 06CR2780 (August 18, 2008).

claimed in his June 24, 2008 letter that the conviction for criminal possession of a forged instrument resulted from a false claim by [REDACTED] that he had stolen license plates from the car dealership where he worked, and that while searching the couple's residence the police discovered a counterfeit "green card." However, the petitioner's brief statements fail to demonstrate that these additional convictions do not reflect adversely upon his moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

The petitioner has not established that he is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

As the petitioner was confined to a penal institution for a period of 180 days as the result of his 2008 conviction for a computer crime, section 101(f)(7) of the Act prevents a finding of his good moral character, and section 204(a)(1)(C) of the Act affords him no relief. The petitioner's four other criminal convictions also demonstrate a lack of good moral character under 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 failed to overcome the director's ground for denial and he is 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). He has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.