



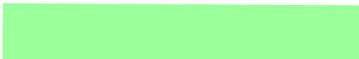
U.S. Citizenship  
and Immigration  
Services

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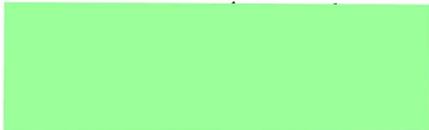
Date: **FEB 14 2013**

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:

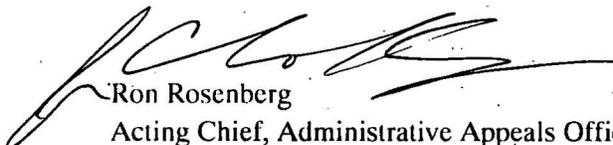


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage and that the petitioner is 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 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 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 . . . 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 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.

\* \* \*

(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. . . . 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 citizen of the Dominican Republic who entered the United States on August 5, 2001 as a fiancée visa holder. The petitioner married a U.S. citizen on April 29, 2002, in New York. U.S. Citizenship and Immigration Services (USCIS) denied the petitioner's application to adjust status (Form I-485), and the petitioner was placed into removal proceedings on April 16, 2008.<sup>1</sup>

The petitioner filed the instant Form I-360 on March 28, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character and his wife's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief. In the brief, counsel claims that USCIS ignored the evidence and that the petitioner has submitted sufficient evidence to establish his eligibility. Counsel also submits a copy of the petitioner's Form EOIR-42B, Application for Cancellation of Removal, that he submitted in removal proceedings and a copy of the petitioner's previously submitted affidavit.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the brief submitted on appeal, fails to establish the petitioner's eligibility. Counsel's contentions on appeal do 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 wife did not subject him to battery or extreme cruelty and the arguments made on appeal fail to overcome this ground for denial. In his affidavit, the petitioner stated that after they moved to New York, his wife insulted and humiliated him. He noted that his wife's brothers threatened him and pushed him around. The petitioner recalled that his wife threatened to get him deported. The petitioner reported that in January 2009, he came home early and caught his wife having an affair with another man. The other man pushed the petitioner, and the petitioner then got into a physical altercation with the man and his wife's brother. They kicked him out of the house. The petitioner failed to provide substantive information regarding any specific incident of battery committed against him by his wife. The petitioner also does not describe behavior by his wife that 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).

In her affidavit, [REDACTED], the petitioner's cousin, stated that the petitioner told her that his wife insulted him, that he found her in bed with another man and that one of the petitioner's wife's brothers

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<sup>1</sup> The petitioner remains in removal proceedings in the New York Immigration Court and his next upcoming hearing is on May 29, 2013.

punched him and threatened him, and they threw him out of the house. [REDACTED] the petitioner's family friend, stated that the petitioner told her that his wife began ignoring him, spending the night out, calling him names and threatening to make him miserable. [REDACTED] also indicated that the petitioner's wife's brothers humiliated him and pushed him around. She recalled that on one occasion the petitioner called her and explained that he had caught his wife having an affair and that her brothers threw him out of the house. Neither of these affidavits discusses any incidents of battery committed or directly instigated by the petitioner's wife, nor do they describe any specific incidents of extreme cruelty in probative detail.

The record also contains a letter from [REDACTED], a mental health counselor, who reported that the petitioner told him that he was in an abusive relationship until the end of 2007. The counselor stated that the petitioner reported that his wife criticized him, threatened to call the police, slammed doors and threw objects. The counselor concluded that the petitioner met the criteria for abandonment, mixed anxiety and depressed mood. While we do not question [REDACTED] expertise as a mental health counselor, his letter does not discuss any specific incidents of abuse nor does he provide any additional probative information regarding battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel contends that "any credible evidence must be accepted by USCIS." Counsel misreads and misinterprets the law. For self-petitioning abused spouses and children, the statute prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

Counsel further contends that the director mischaracterized the abuse as "marital difficulties." While some of the director's comments were unnecessary, we find no error in his ultimate determination. In his affidavit, the petitioner does not describe a single incident of abuse in probative detail and there is no evidence to support that his wife's insults and affair were part of an overall pattern of violence. The brief assertions of the petitioner's friends and relatives regarding his wife's name calling and abandonment do not establish that her behavior constituted extreme cruelty. Similarly, the counselor did not describe any specific examples of any abusive behavior committed by the petitioner's wife. The relevant evidence does not establish that the petitioner's wife battered him or that her behavior involved threats of 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). Accordingly, the petitioner has not established that his 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 find no error in the director's determination that the petitioner did not establish that he is a person of good moral character and the arguments made on appeal fail to overcome this ground for denial. In his affidavit, the petitioner stated that he was recently convicted of disorderly conduct and that he worked hard to maintain employment, pay his taxes, and he a person of good moral character. In his letter, the mental health counselor reported that the petitioner spent 11 months in jail in 2010-2011 after his former girlfriend accused him of threatening her. The petitioner denied having any other legal or criminal problems of any kind. The petitioner submitted certificates of disposition showing he was convicted of disorderly conduct in 2011 and that the drug charges against him were dismissed.

The statute under which the petitioner was convicted, New York Penal Law § 240.20, may involve moral turpitude,<sup>2</sup> and the petitioner has failed to meet his burden of proof to show that his conviction was not for a crime involving moral turpitude. 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 described moral turpitude as "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 Olquin*, 23 I&N Dec. 896; 896 (BIA 2006). 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, we must follow the Attorney General's decision in *Matter of Silva-Trevino*. *Id.* at 687-89. We first examine the statute of conviction. *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). 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.

On appeal, counsel contends that the petitioner's conviction for disorderly conduct "is not even a crime, but a violation," and thus cannot be considered a crime involving moral turpitude, but counsel provides no explanation or legal analysis to support his statement. Counsel has not met his burden of proof to show that the petitioner's conviction did not involve moral turpitude.

Furthermore, even if the petitioner's offense did not involve moral turpitude, 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:

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<sup>2</sup> In limited circumstances, disorderly conduct has been found to be a crime involving moral turpitude. *See, e.g., Rohit v. Holder*, 670 F.3d 1085 (9th Cir. 2012) (soliciting charge); *Hudson v. Esperdy*, 290 F.2d 879 (2d Cir.), *cert. denied*, 368 U.S. 918 (1961) (loitering for lewd purposes); *Matter of Alfonso-Bermudez*, 12 I&N Dec. 225 (BIA 1967) (soliciting charge).

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.

Here, other than stating briefly in his affidavit that he works and pays taxes, the petitioner has not provided any evidence to show he is a person of good moral character. The petitioner has one conviction and a separate arrest, but failed to meaningfully discuss his moral character or the circumstances surrounding his arrests and conviction. In addition, his conviction included a one-year order of protection, and the petitioner completely failed to discuss his 11-month imprisonment that is reported in the psychological evaluation that he provided. Even if the petitioner faces no statutory bar to establishing his good moral character, a consideration of all the relevant evidence demonstrates that the negative factors outweigh the positive aspects of the petitioner's case. The petitioner has failed to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

*Conclusion*

On appeal, the petitioner has failed to overcome the director's determinations that he did not establish the requisite battery or extreme cruelty and 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

**ORDER:** The appeal is dismissed.