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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

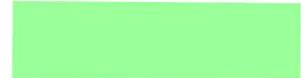


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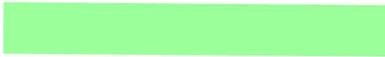


Date: JUL 17 2013

Office: VERMONT SERVICE CENTER File:



IN RE: Petitioner:



PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and affirmed the denial in a subsequent motion to reopen and reconsider. 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition for failure to establish that the petitioner: (1) has a qualifying relationship as the spouse of a lawful permanent resident; (2) is eligible for immigrant classification based on such a relationship; (3) was subjected to battery or extreme cruelty during his marriage; (4) and is a person of good moral character.

On appeal, the petitioner submits a statement and his previously filed evidence.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

An alien who has divorced an abusive United States lawful permanent resident may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse.” Section 204(a)(1)(B)(ii)(II)(aa)(CC)(bbb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II)(aa)(CC)(bbb).

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 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].

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 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)(B)(ii) 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.

\* \* \*

(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.

#### *Pertinent Facts and Procedural History*

The record reflects that the petitioner, a citizen of India, wed K-R- in India on November 2, 1995. He was last admitted to the United States as the spouse of a nonimmigrant temporary worker on March 28, 2007. The petitioner's marriage to K-R- terminated in a divorce on September 17, 2008. The petitioner filed the instant Form I-360 on September 13, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery and extreme cruelty and the petitioner's good moral character. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

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 fails to establish the petitioner's eligibility. The petitioner's claims do not overcome the director's grounds for denial and 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, K-R-, did not subject him to battery or extreme cruelty. In his initial affidavit, the petitioner explained that he first entered the United States in November 2000 with an H-4 visa as the dependent spouse of a temporary worker. The petitioner recounted that after he arrived in the United States, K-R- called him names, went to parties with her colleagues and friends and she did not support him financially. The petitioner also recounted that K-R- physically assaulted him on several occasions. The petitioner stated that in October 2006, K-R- started ignoring him and she then filed a false complaint against him with the police. He stated that he was forced to leave their apartment. The petitioner stated that in January 2007, K-R- disconnected the telephone service. He recounted that when he tried to enter their apartment K-R- hit him and she later returned to the apartment with two sheriffs who told him to leave. The petitioner stated that he thereafter traveled to India for a few months. He recounted that when he returned to the United States he tried to go to the apartment, but K-R- called the police and he was arrested. He stated that he departed the United States for India on October 23, 2008 pursuant to a voluntary departure order. In response to the RFE, the petitioner reiterated that his wife called him names, controlled him financially, ignored and isolated him. He also claimed that K-R- failed to be forthcoming on her financial status during their divorce proceedings and she falsely accused him of abuse.

The petitioner's statements do not indicate that K-R-'s 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). The petitioner's descriptions of the alleged battery consist of brief, one-sentence statements that fail to contain any probative details. Although the petitioner submitted a photograph of himself with a swollen eye, he failed to provide any details of the events that resulted in this injury. The petitioner's assertion that K-R- falsely accused him of abuse is contradicted by his conviction record, which reflects that on May 7, 2007, he pled guilty to domestic assault with bodily harm, and K-R- was the victim of that offense.

The petitioner submitted a letter, dated August 23, 2010, from [REDACTED] a psychiatrist with [REDACTED] in Hyderabad, India. [REDACTED] stated that the petitioner is being treated with medication for post-traumatic stress disorder and major depressive disorder. In an August 26, 2010 psychological evaluation, [REDACTED] conducted psychological testing and diagnosed the petitioner with an elevated range for depression and anxiety. [REDACTED] however, did not state that his diagnosis of the petitioner is related to the alleged abuse, or otherwise discuss the petitioner's marriage to K-R- in his evaluation. The evaluation therefore does not show a causal connection between the alleged abuse and the petitioner's conditions.

The petitioner submitted letters from his friends, [REDACTED] and his cousin, [REDACTED] who reside in India. These individuals reiterated the statements the petitioner provided in his affidavits. Although they attested to witnessing K-R-'s "rude" behavior and her lack of "respect to elders" during the couple's visit to India in 2006, they do not claim to have personal knowledge of any specific incident of alleged abuse. The petitioner also submitted a letter from his friend, [REDACTED] who stated that he came into contact with the petitioner in June or July 2007, after the petitioner's separation from K-R-. [REDACTED] similarly does not have any personal knowledge of the alleged abuse nor does he provide a substantive description of his contemporaneous observations of the effects of the alleged abuse on the petitioner.

The director concluded that the relevant evidence submitted below shows a deteriorating marriage, but that the record did not establish that the petitioner's former wife subjected him to battery or extreme cruelty. On appeal, the petitioner asserts that he suffered from extreme cruelty during his marriage and the director failed to consider his dependent immigration status, his financial status and his poor living conditions. The petitioner further asserts that the director failed to acknowledge that K-R- and her friends and relatives engaged in a conspiracy against him. The petitioner, however, has not established that he was subjected to psychological attacks, degradation and humiliation, or other behavior that is comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has he provided a probative description of the alleged battery. The record reflects that it was the petitioner who pled guilty to domestic assault with bodily harm of K-R- during their marriage. 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)(B)(ii)(I)(bb) of the Act.

#### *Qualifying Relationship and Corresponding Eligibility for Immigrant Classification*

The petitioner has also failed to demonstrate a qualifying relationship with his former wife because he failed to establish the requisite battery or extreme cruelty. The record shows that the petitioner and K-R- were divorced on September 17, 2008 before this petition was filed on September 13, 2010. As the petitioner has failed to establish the requisite battery or extreme cruelty, he has thus failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a lawful permanent resident and his corresponding eligibility for immigrant classification, pursuant to subsections 204(a)(1)(B)(ii)(II)(aa),(cc) of the Act.

#### *Good Moral Character*

As evidence of his good moral character, the petitioner submitted: an August 23, 2010 police verification report of no arrest record from the [REDACTED] in India; a January 19, 2001 certificate of good standing from the [REDACTED], India; a certificate of practice and character from the [REDACTED] and a September 3, 2010 criminal history record of no arrest from the [REDACTED] in Memphis, Tennessee. However, the record shows that on May 7, 2007, the petitioner pled guilty to and was convicted in the General Sessions Criminal Court of [REDACTED] of "domestic assault - bodily harm" in violation of section 39-13-111 of the Tennessee Code. The petitioner was sentenced to a term of seven months imprisonment, with six months and eleven days of the sentence suspended. He was placed on supervised probation for a period of six months and eleven days under the following terms and conditions: he has no contact with the victim of the offense, K-R-; he performs 20 hours of community service; he pay fines; and he complete designated programs.

Section 101(f)(3) of the Act, 8 U.S.C. § 1101(f)(3), prescribes that no person shall be found to have good moral character if he or she is, in pertinent part, "a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 212(a)(2)." Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), pertains to any alien convicted of,

or who admits having committed, or who admits committing acts which constitute the essential elements of “a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General set forth a framework for determining whether a conviction is a crime involving moral turpitude where the language of a criminal statute encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708. If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709.

As a general rule, simple assault or battery is not deemed to involve moral turpitude for purposes of the immigration laws. *Matter of Fualaau*, 21 I&N Dec. 475, 477 (BIA 1996). This general rule does not apply, however, where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon or the infliction of serious injury on persons whom society views as deserving of special protection, such as children, domestic partners or peace officers. *See, e.g., Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988)(An aggravated assault against a peace officer, which results in bodily harm to the victim and which involves knowledge by the offender that his force is directed to an officer who is performing an official duty, constitutes a crime involving moral turpitude.).

The record reflects that the applicant’s conviction for domestic battery involved aggravating dimensions. At the time of the petitioner’s conviction for domestic assault with bodily harm, section 39-13-111 of the Tennessee Code provided, in pertinent part, “A person commits domestic assault who commits an assault as defined in § 39-13-101 against a person who is that person’s family or household member.” Tenn. Code Ann. § 39-13-111 (West 2007). The underlying offense, assault, was defined, in pertinent part, as: “Intentionally, knowingly or recklessly caus[ing] bodily injury to another.” Tenn. Code Ann. § 39-13-101 (West 2007). The conviction record reflects that the petitioner pled guilty to having committed the “use or attempted use of physical force” on his spouse, K-R-. The complaint provides that on January 8, 2007, the petitioner grabbed K-R- by the throat and started choking her. He then picked her up by the head, threw her down, pushed her in the closet, punched her, slapped her and bent her fingers back. The petitioner also dragged K-R- around her residence and made threats to commit suicide if she refused to be with him. *Affidavit of*

*Complaint*, dated March 30, 2007. Given these facts, the record reflects that the petitioner has been convicted of a crime involving more turpitude under section 212(a)(2)(A)(i)(I) of the Act.

On appeal, the petitioner asserts that “it was [K-R-] who was the primary perpetrator and the petitioner was only acting in his defense.” The petitioner further asserts that he was victim of ineffective assistance of counsel and the “trial court failed to advise the petitioner of the possible immigration consequences of his guilty plea as required by law.” The petitioner submitted a copy of his petition for post-conviction relief, but he indicated in his initial statement that he withdrew the petition. The petitioner has not shown that his conviction for “domestic assault - bodily harm” has been vacated. Although the petitioner maintains his innocence, he remains convicted of a crime involving moral turpitude and we cannot go behind the criminal proceedings to reassess his guilt or innocence. See *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citing *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974)).

In regard to the petitioner’s ineffective assistance of counsel claim, he has not demonstrated that he met the criteria set out in *Matter of Lozada*, which requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel’s ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff’d*, 857 F.2d 10 (1st Cir. 1988).

Section 204(a)(1)(C) of the Act provides that an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner’s admissibility under section 212(a) or deportability under section 237(a) shall not bar the Secretary of Homeland Security from finding the petitioner to be of good moral character if the Secretary finds that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty. Although the petitioner’s conviction for a crime involving moral turpitude is waivable under section 212(h) of the Act, 8 U.S.C. § 1182(h), the record does not show that his conviction was connected to his former wife’s battery and extreme cruelty. As discussed, the record reflects that it was the petitioner who battered his former wife and he pled guilty to the offense. He has also not provided probative evidence to establish that his former wife ever subjected him to battery or extreme cruelty during their marriage.

Based on the foregoing, the petitioner’s conviction for domestic assault is a crime involving moral turpitude that bars a finding of his good moral character pursuant to section 101(f)(3) of the Act. The petitioner has therefore failed to establish his good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has failed to establish that he: (1) has a qualifying relationship as the spouse of a lawful permanent resident; (2) is eligible for immigrant classification based on such a relationship; (3) was subjected to battery or extreme cruelty during his marriage; (4) and is a person of good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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.