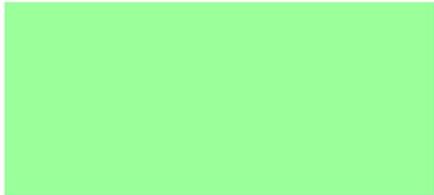


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090



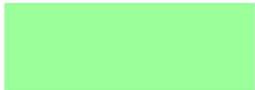
U.S. Citizenship
and Immigration
Services

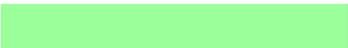
(b)(6)



Date: JUN 03 2013

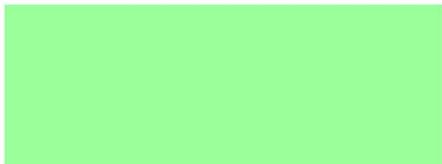
Office: VERMONT SERVICE CENTER

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 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.

On November 16, 2012, the director denied the petition based on his determination that the petitioner's conviction for a drug offense barred a finding of his good moral character.

On appeal, counsel submits a brief.

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). An alien who has divorced a United States citizen 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 United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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

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:

(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. 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 –

* * *

(3) 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) [8 U.S.C. § 1182(a)(2)] and subparagraph (C) thereof of such section (except as such paragraph relates to simple possession of thirty grams or less of marijuana), if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during 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. . . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A) of the Act, includes, “any alien convicted of . . . a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance. . . .”

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.

* * *

(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 Venezuela who married his former spouse, a U.S. citizen, on December 13, 2007, in Florida. The petitioner filed the instant Form I-360 on March 25, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character. 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 based on his determination that the petitioner had been convicted of cocaine possession and was not a person of good moral character. Counsel filed a timely appeal.

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. Counsel's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Good Moral Character

The record reflects that on or about March 25, 2008, the petitioner was convicted in the [REDACTED] of cocaine possession in violation of section 893.13(6A) of the Florida Penal Code.¹

On appeal, counsel asserts that because the conviction did not occur in the three years preceding the filing of the Form I-360, it should not be a determinative factor in establishing the petitioner's good moral character, and that the petitioner's conviction was related to the extreme cruelty and abuse he was subjected to at the hands of his former spouse.

The implementing regulations at 8 C.F.R. § 204.2(c)(1)(vii) provide that 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. The petitioner was convicted of possession of cocaine. Cocaine is a controlled dangerous substance under the Controlled Substances Act (CSA). This offense precludes a finding of good moral character because the petitioner has been convicted of a crime involving a violation of a controlled substance law,

¹ [REDACTED]

as described at section 212(a)(2)A(i)(II) of the Act.

On appeal, counsel contends that the petitioner's conviction does not render him ineligible because it occurred more than three years prior to the filing of this petition. However, the statute does not state a time period during which the self-petitioner must demonstrate his or her good moral character. *See* Section 204(a)(1)(A)(iii)(II)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(bb). While the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires evidence of the petitioner's good moral character during the three years preceding the filing of the petition, the regulation does not limit the temporal scope of U.S. Citizenship and Immigration Services (USCIS)'s inquiry into the petitioner's character. As counsel himself acknowledged in his brief, the agency may investigate the self-petitioner's character beyond the three-year period 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, although counsel contends that there was no reason for USCIS to believe the petitioner was not of good moral character, the petitioner's 2008 conviction for possession of a controlled dangerous substance serves as reason for USCIS to examine the petitioner's moral character beyond the three years preceding the filing of the Form I-360.

Counsel further asserts that the petitioner's conviction was connected to his wife's abuse because the cocaine the petitioner possessed belonged to his ex-wife. A self-petitioner may only be found to have good moral character despite an act or conviction that would otherwise bar such a finding under section 101(f) of the Act if: 1) the alien's act or conviction is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) USCIS determines that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C). The petitioner's crime is not waivable under section 212(h) of the Act, as it involved cocaine possession, not marijuana. In his brief, counsel does not present any discussion or legal argument regarding whether the petitioner's conviction is a waivable offense.²

Furthermore, even if the petitioner's offense were waivable, he has not shown that the conviction was connected to having been battered or subjected to extreme cruelty. The record contains inconsistencies regarding the events surrounding the petitioner's arrest. In his affidavit, dated September 9, 2011, the petitioner stated that when the police searched him, they found the petitioner's ex-wife's bag of cocaine in her handbag that the petitioner was holding for her. The petitioner also asserted that the man his ex-wife was kissing punched him and that the police arrived while he was protecting himself from this aggression. However, the Complaint/Arrest Affidavit states that the cocaine was found in the petitioner's left front pocket and that after the petitioner and the man were escorted outside of the bar, the petitioner picked up a rock and threw it at the other man. These inconsistencies fail to demonstrate that his conviction was connected to his former wife's battery or extreme cruelty. The present record

² On the Form I-290B, Notice of Appeal, counsel briefly mentions that a drug conviction "can be waived under cancellation of removal." Counsel has not provided any legal analysis to support this statement, and cancellation of removal is not a waiver "for the purposes of determining admissibility or deportability under section 212(a) or 237(a) of the Act."

Page 6

thus fails to establish the petitioner's 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 overcome the director's determination that he is not 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 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.