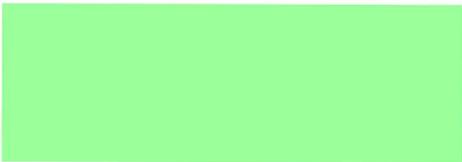




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 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 (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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. The AAO dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion to reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 June 3, 2013, the AAO dismissed the petitioner’s appeal. On motion, 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 an abusive 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, 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].

In regards to determining a petitioner’s good moral character, section 101(f) of the Act, 8 U.S.C. 1101(f), states in pertinent parts:

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 1182(a)(2) of this title and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana), 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"

For self-petitioning abused spouses, section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), provides the following exception:

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 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 under subparagraph (A)(iii), A(iv), (B)(ii), or (B)(iii) if the [Secretary] finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

The regulation at 8 C.F.R. § 204.2(c)(1)(vii), further explicates the good moral character requirement and states, in pertinent part, the following:

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

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provisions of section 101(f) of the Act and the standards of the average citizen in the community.

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Venezuela who married a U.S. citizen on December 13, 2007 in Florida. They were divorced on July 16, 2010. He filed the instant Form I-360 on March 25, 2011, which is now before the AAO on a motion to reconsider its prior decision dismissing the appeal. The motion is granted.

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 decision to dismiss the appeal will be affirmed for the following reasons.

Good Moral Character

The record reflects that on or about March 25, 2008, the petitioner was convicted in the Miami, Florida of cocaine possession in violation of section 893.13(6)(a) of the Florida Statutes.

In its June 3, 2013 decision, the AAO determined that the petitioner's offense precluded a finding of good moral character pursuant to section 101(f)(3) of the Act because the petitioner was convicted of a crime involving a violation of a controlled substance law, which is a ground of inadmissibility under section 212(a)(2)(A)(i)(II) of the Act. The AAO further determined that the petitioner is ineligible for a determination of his good moral character despite his conviction pursuant to section 204(a)(1)(C) of the Act because his inadmissibility is not waivable. The AAO noted that even if the petitioner's offense was waivable, he had not shown that the conviction was connected to having been battered or subjected to extreme cruelty. The AAO explained that 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') inquiry into the petitioner's moral character because section 204(a)(1)(A)(iii) of the Act does not prescribe a time period during which a self-petitioner's good moral character must be established. The AAO concluded that the record failed to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

On motion, counsel asserts that pursuant to 8 C.F.R. § 204.2(c)(2)(v), the period for assessing good moral character is the three years preceding the filing of the petition. Counsel contends that the three-year period for determining good moral character is similarly evidenced by the statute for special rule cancellation of removal for battered spouses or children under section 240A(b)(2)(A) of the Act, 8 U.S.C. § 1229b(b)(2)(A). Counsel states that the AAO failed to apply the plain language of the statute and ignored the temporal restrictions intended by Congress. Counsel further asserts that the AAO incorrectly relied upon the interim regulations.

De novo review of the record fails to reveal any error in the AAO's prior decision. Contrary to counsel's claim, the AAO did not erroneously rely on an interim regulation. Although the statutory provisions for self-petitioning abused spouses have been amended several times since the publication of the interim rule at 8 C.F.R. § 204.2(c), a final rule has not yet been promulgated. Moreover, none of the statutory amendments have changed the temporal scope of the good moral character requirement for self-petitioning abused spouses.

Counsel is also misguided in his assertion that the AAO failed to apply the plain language of statute and ignored temporal restrictions for the scope of inquiry into good moral character. Special rule cancellation of removal for a battered spouse or child requires an alien to establish that he or she has been a person of good moral character for not less than three years immediately preceding the date of application. Section 240A(b)(2)(A)(iii) of the Act, 8 U.S.C. § 1229b(b)(2)(A)(iii). Congress did not create a similar temporal limitation for a self-petitioner's good moral character under section 204(a)(1)(A)(iii)(II)(bb) of the Act, which requires that a self-petitioner "is a person of good moral

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character,” but, unlike section 240A(b)(2)(A)(iii) of the Act, does not specify the period for which this requirement must be established.

In this case, the petitioner filed his Form I-360 on March 25, 2011, which was the third anniversary of his conviction date. The record reflects that the petitioner was sentenced on March 25, 2008 to one-year of probation, a period that is well within three years of filing his Form I-360. The petitioner has not submitted evidence that he successfully completed probation and has rehabilitated. The petitioner submitted a laboratory report dated May 18, 2012, which indicated he tested negative for cocaine and metabolites, but he did not discuss his moral character in his affidavit, as required by 8 C.F.R. § 204.2(c)(2)(v). Consequently, the petitioner’s controlled substance offense precludes a finding of his good moral character pursuant to section 101(f)(3) of the Act and he has failed to meet the requirement of subsection 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On motion, the petitioner has not established 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 and the appeal remains dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is granted. The AAO’s decision, dated June 3, 2013, is affirmed.