



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **SEP 25 2013**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

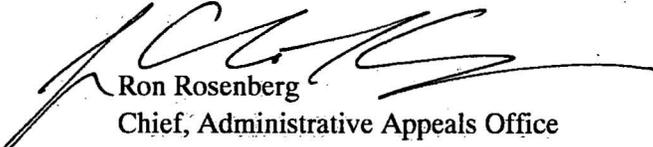
ON BEHALF OF PETITIONER:

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 Vermont Service Center, (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a second appeal. The appeal will be treated as a motion to reopen and granted. The appeal will remain dismissed and the petition will remain denied.

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 on the basis of his determination that the petitioner had failed to establish that he is a person of good moral character. On October 22, 2012, the AAO dismissed the appeal on this ground and further determined beyond the director’s decision that the petitioner failed to establish that his former wife, a U.S. citizen, subjected him to battery or extreme cruelty during their marriage.

On motion, the petitioner, through counsel submits 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).

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, 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:

(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.

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

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 –

\* \* \*

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraph[] (A) . . . of section 212(a)(2). . . .

\* \* \*

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 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.

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(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 petitioner, a citizen of India, married S-A<sup>1</sup>, a citizen of the United States, on February 3, 2001 and the two were divorced on January 27, 2010. The petitioner filed the instant Form I-360 on August 9, 2010. The director denied the petitioner for failure to establish that he is a person of good moral character subsequently affirmed his previous decision upon the petitioner's motion to reopen and

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<sup>1</sup> Name withheld to protect the individual's identity.

reconsider. The petitioner, through counsel, timely appealed and the AAO dismissed the appeal on October 22, 2012. The petitioner timely filed a motion to reopen.

The motion will be granted. Counsel asserts that the petitioner is a person of good moral character and submits an additional affidavit from the petitioner, notarized letters from his friends, and evidence that he successfully completed probation from a September 9, 2010 arrest.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, as supplemented on motion, fails to establish the petitioner's eligibility. The appeal will remain dismissed for the following reasons.

#### *Good Moral Character*

Below, the petitioner failed to submit the primary evidence of his good moral character required by the regulation at 8 C.F.R. § 204.2(c)(2)(v) and his criminal record adversely reflected upon his moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The record documents the petitioner's criminal history as follows:

- 1) On August 4, 2005, the petitioner was arrested and charged with sexual assault in the second degree in violation of section 2C:14-2c(4) and endanger welfare of children in the third degree in violation of section 2C:24-4 of the New Jersey Code of Criminal Justice. The petitioner requested and was admitted into New Jersey's Pre-Trial Intervention (PTI) Program for a term of 36 months. The petitioner successfully completed the program and the charges were dismissed on July 29, 2010.
- 2) On September 16, 2009, the petitioner was arrested and charged with sexual assault in the second degree in violation of section 2C:14-2c(4) and endanger welfare of children in the second degree in violation of section 2C:24-4 of the New Jersey Code of Criminal Justice. The petitioner pled not guilty to these charges. In a negotiated plea agreement between the prosecutor and the petitioner, the original charges were dismissed and the petitioner pled guilty to the lesser charge of harassment in violation of section 2C:33-4b of the New Jersey Code of Criminal Justice. On September 9, 2010, the court ordered the petitioner to have no contact with the victim and sentenced him to one year of probation conditioned on his completion of a psychological evaluation, a "TASC Evaluation" and compliance with all recommendations there from, random drug testing and his obtainment of employment.

In our prior decision on October 22, 2012, the AAO determined that the petitioner's disposition of his 2005 offense did not result in a conviction under 101(a)(98)(A) and his 2010 conviction fell within the petty offense exception to a crime involving moral turpitude (CIMT), but the record nonetheless established that he lacked good moral character for other reasons. In his two affidavits submitted below, the petitioner did not discuss his good moral character or explain any extenuating circumstances of his arrests. He also failed to submit evidence that he successfully completed probation for his harassment conviction in 2010.

The AAO's prior decision is incorporated here and accordingly, we will only address the new evidence submitted on this motion. On motion, the petitioner submits a third personal affidavit, notarized letters from friends, and evidence that he successfully completed probation for his 2010 conviction. In his affidavit, the petitioner states that he was arrested in 2005 because he was in the company of two other men who were involved in "some illegal activities." He states that he did not have any money to hire an attorney to fight these charges so he accepted the offer to enroll in New Jersey's Pre-Trial Intervention (PTI) Program. The petitioner then states that the two criminal arrests were "unfortunate" and have psychologically affected his life. He states that regarding the 2010 conviction, S-A- used her daughter to bring baseless charges against him and that again, unable to afford an attorney, he accepted a lesser charge of harassment. The petitioner does not further explain the circumstances surrounding either of his arrests.

On motion, the petitioner also submits three notarized letters from friends who previously provided letters below. The petitioner's friends, [REDACTED] indicate that they are aware of the petitioner's arrests and the circumstances surrounding them, but they do not describe or discuss those circumstances. While the petitioner's friends briefly attest to his good moral character, they do not substantively explain the basis of their knowledge. Additionally, although the petitioner submits evidence that he successfully completed probation and complied with the other court-ordered conditions of his sentence, he has submitted no evidence that his harassment conviction occurred under extenuating circumstances. The record still indicates that the petitioner committed an unlawful act which adversely reflects upon his moral character. Pursuant to section 101(f) of the Act and 8 C.F.R. §204.2(c)(1)(vii), the petitioner has failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

#### *Battery or Extreme Cruelty*

In its October 22, 2012 decision on appeal, the AAO determined that beyond the decision of the director, the record failed to establish the requisite abuse. The AAO discussed the deficiencies of the record with regards to the petitioner's claims of battery or extreme cruelty and this decision is incorporated here. Accordingly, we will only address the new evidence submitted on this motion. On motion, the petitioner submits a third affidavit in which he states that he "will not repeat the abuses" he suffered at the hands of S-A-. He nonetheless reiterates that S-A- threatened him with deportation and fabricated a police complaint against him, but does not add probative details about any specific incidents of abuse. The petitioner states that during his long marriage with S-A-, "there were several occasions in which [he] was mentally and psychologically abused" but that he did not anticipate filing the Form I-360 and therefore did not document every incident of abuse. While such documentary evidence is not required, the petitioner's affidavit on motion fails to establish his claim. The evidence submitted on motion does not add any substantive information regarding the claimed abuse and fails to demonstrate that the petitioner's former wife subjected him to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

As the petitioner failed to establish the requisite battery or extreme cruelty, he has also not demonstrated 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 U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

*Conclusion*

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not established that he was subjected to battery or extreme cruelty by S-A- during their marriage or that he is a person of good moral character. The appeal will remain dismissed and the petition will remain denied.

**ORDER:** The motion to reopen is granted. The October 22, 2012 decision of the Administrative Appeals Office is affirmed and the petition remains denied.