



U.S. Citizenship
and Immigration
Services

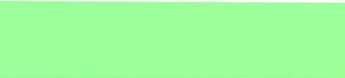
(b)(6)



Date: **AUG 21 2014**

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 THE PETITIONER:

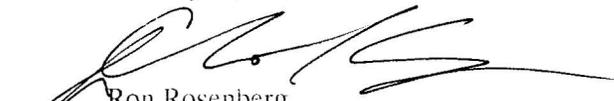


INSTRUCTIONS:

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 director (“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.

The director denied the petition for failure to establish that the petitioner is a person of good moral character. On appeal, counsel submits a brief and other evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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).

In regards to determining a petitioner’s good moral character, section 204(a)(1)(C) of the Act states:

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.

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:

(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.

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:

(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.

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) of the Act. . . 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. . . .

Pertinent Facts and Procedural History

The petitioner, a citizen of Jamaica, last entered the United States on November 22, 2001 as a nonimmigrant visitor. On December 25, 2004, he married L-B-¹, a United States citizen, and they divorced on November 30, 2011. On December 20, 2011, the petitioner married L-D-², a U.S. citizen, in [REDACTED] County, Florida. The petitioner filed the instant Form I-360 on December 14, 2012. The director subsequently issued a Notice of Intent to Deny (NOID) because evidence in the record indicated that the petitioner was not a person of good moral character. The petitioner, through counsel, timely responded with a rebuttal letter and additional evidence which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

The Petitioner's Criminal Record

On January 31, 1999, the petitioner was arrested by the U.S. Marshall Service after failing to declare to U.S. Customs officials the more than \$19,000 in cash he was attempting to carry out of the United States. The petitioner was charged, jailed in Florida for 41 days, sentenced and given credit for time served. While the director did not identify this arrest and conviction in her decision, the petitioner's administrative record shows that during his 2009 removal proceedings, the petitioner was questioned by the Immigration Judge concerning the arrest and his failure to submit related documentation and a final disposition. During that proceeding, the petitioner testified that a family friend gave him some money to take to his wife in Jamaica, the petitioner carried it onto a plane in a duffle bag, did not count it or declare it, and did not realize until after his arrest that there was about \$19,000. The petitioner testified that he spent 41 days in jail waiting for his court date, after which he was convicted, sentenced by a judge and given credit for time served.³

On February 7, 2003, the petitioner was arrested for Sell, Manufacture, Deliver, Possess with Intent to Distribute Cocaine, in violation of Florida Statutes (F.S.) § 893.13(1)(a)1. On February 27, 2003, the charge was *nolle prossed*.

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

³ *Transcript of Removal Proceedings Hearing*, October 15, 2009, pp. 25-30.

On October 14 and 15, 2004, the petitioner was arrested and charged with: (1) Knowing Possession of a Similitude Driver's License, in violation of F.S. § 322.212(1)(B); (2) Giving False Name/ID to Law Enforcement, in violation of F.S. § 901.36(1); and (3) Possession of Cannabis – Over 20 Grams, in violation of F.S. § 893.13(6)(a). On January 3, 2005, the controlled substance charge was not filed. On February 2, 2005, the petitioner was adjudicated guilty and convicted of Knowing Possession of a Similitude Driver's License, in violation of F.S. § 322.212(1)(B); a third degree felony, and Giving False Name/Identification to Law Enforcement, in violation of F.S. § 901.36(1); a first degree misdemeanor, and sentenced to 12 months of probation plus fines and fees.

On September 21, 2005, the petitioner was arrested for Violation of Probation, under F.S. § 948.06, a felony. The petitioner has not submitted a final disposition for the record.

On November 23, 2005, the petitioner was arrested and charged with Retail Theft, in violation of F.S. § 812.015. In conjunction with this arrest, on December 6, 2005, the petitioner was arrested and charged with three Violations of Probation, under F.S. § 948.06, felony offenses. The petitioner admitted the probation violations, was adjudicated guilty, and was sentenced to an additional 2 years of probation. On May 9, 2006, the Retail Theft charge was *nolle prossed* after the petitioner completed what he identified as a pretrial diversion program.⁴

On September 6, 2006, the petitioner was arrested and charged with Domestic Battery, in violation of F.S. § 784.03(1)(a)1. He was held without bond until September 25, 2006 when the State of Florida entered a No File, despite probable cause for arrest. In conjunction with this arrest, the petitioner was charged with a violation of probation. On November 6, 2006, the violation of probation warrant was dismissed and the petitioner remained on probation.

On July 26, 2011, the petitioner was arrested and charged on three counts for: (1) Marijuana Possession – Not More Than 20 Grams, in violation of F.S. § 893.13(6)(b); (2) Driving While License Suspended 2nd Offense, in violation of F.S. § 322.34(2)(b); and (3) Driving with Expired License for More Than 6 Months, in violation of F.S. § 322.03(5), all misdemeanors. The petitioner was also given traffic citations for No Proof of Insurance, in violation of F.S. § 316.646(1); and Tag Expired Less Than 6 Months, in violation of F.S. § 320.07(3)(a). On November 2, 2011, the misdemeanor charges were *nolle prossed* following the petitioner's completion of a Pre-Trial Intervention (PTI) program.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states, in pertinent part: "Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. ... The Service will consider

⁴ The record shows that during his 2009 removal proceedings, the petitioner was questioned by the Immigration Judge concerning this offense. During that proceeding, the petitioner testified that he was sentenced by a judge to take a class, pay a fee, and then present a completion certificate to the court. The petitioner and his then-counsel identified the sentence as a pre-trial diversion program. *Transcript of Removal Proceedings Hearing*, October 15, 2009, pp. 56-61.

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.” The petitioner has submitted two personal affidavits. In his initial affidavit, the petitioner did not address his arrest and conviction history. In response to the NOID, the petitioner provided accounts for some, but not all, of his arrests. He did not address his January 31, 1999 arrest and subsequent conviction for failing to declare more than \$19,000 cash in his possession when leaving the United States, nor did he submit a final disposition for the offense or explain his attempts to obtain one.

The petitioner stated that when he was younger and naïve, he trusted people he believed were friends and was thus arrested twice for crimes he did not commit. Concerning his February 2003 arrest, the petitioner explained that after driving a girl he had recently met at a party to a store, they picked up another individual and were suddenly surrounded by police who found cocaine in his car. The petitioner stated that he did not know the drugs were in his car, the girl took full responsibility, and the charges against him were dropped. Regarding his October 2004 arrest, the petitioner stated that someone he met in ██████████ County picked him up in a rental car and they were driving to meet friends in ██████████ when police pulled them over, searched the car, and found marijuana in the trunk. The petitioner stated that he did not know there was marijuana in the car and the charges against him were eventually dropped. He explained that he presented a counterfeit driver's license to police on that occasion and now realizes it was a stupid thing to do. Concerning his September 21, 2005 arrest, the petitioner stated that he violated his probation by driving on a suspended license, but indicated that his actions were justified because he had to drive to work to live.

The petitioner did not, in either of his affidavits, address his November 23, 2005 arrest and subsequent conviction for Retail Theft.⁵ The petitioner also did not, in either of his affidavits, address his September 6, 2006 arrest and subsequent 20-day incarceration for the Domestic Battery of his then spouse, L-B-⁶

Concerning his July 26, 2011 arrest, the petitioner stated that he was charged with driving violations and possession of marijuana under 20 grams and that all of the charges were dropped. He did not admit, as he did in his removal proceedings, that the charges were “dropped” only after he completed a

⁵ The record shows that during his 2009 removal proceedings, the petitioner was questioned by the Immigration Judge concerning this offense. During that proceeding, the petitioner testified that it was “an honest mistake” when he placed earrings in his pocket at Macy's and attempted to leave the store. *Transcript of Removal Proceedings Hearing*, October 15, 2009, pp. 56-57.

⁶ The record shows that during his 2009 removal proceedings, the petitioner was questioned by the Immigration Judge concerning this offense. During that proceeding, the petitioner testified that he was arguing with L-B-, each grabbed “the baby” from the other, he walked upstairs, she followed: “and it was basically just to ease her off and to ease her off, I guess my hand or, you know, hit her on the lip and she got a little scratch on her lip. That was it.” *Transcript of Removal Proceedings Hearing*, October 15, 2009, pp. 40-41. When asked to clarify, the petitioner stated: “So all I did just to, you know, ease her off and when I did that, I guess her lip got busted.” *Id.* at 42.

pre-trial diversion program. At the end of his affidavit, the petitioner concluded that he is not a perfect person but he is a good person, has good moral character, has learned a lot through the years and apologizes for the trouble he caused. While the petitioner expressed a general apology, he has failed to account in his personal affidavits for a number of serious criminal acts, arrests, and convictions, and his lack of candor belies his claim of good moral character.

The petitioner submitted affidavits from a number of friends and associates. He initially submitted affidavits from: [REDACTED], a friend; L-B-, his former spouse; and [REDACTED], his girlfriend. The affiants all focused on their observations of the petitioner's relationship with L-D, and none addressed his criminal record or stated that they have any personal knowledge of it. This does not indicate that the affiants can knowledgeably attest to the petitioner's good moral character as described in the regulation. In addition, while L-B- stated that L-D- was once arrested for attacking the petitioner, she did not acknowledge that on September 6, 2006 while she was still married to him, the petitioner was arrested for battering her. In response to the NOID, the petitioner submitted brief affidavits from seven friends and business associates, and a supplemental affidavit from [REDACTED].

Most affiants spoke of the petitioner's professionalism in providing them with auto detailing services, and all to his general integrity and dependability. Ms. [REDACTED] added that she and the petitioner now have a child together. None of the affiants indicated that they have any knowledge of the petitioner's criminal record and consequently have not demonstrated that they can knowledgeably attest to the petitioner's good moral character as described in 8 C.F.R. § 204.2(c)(2).

On appeal, counsel asserts that the petitioner's "only conviction for any crime and violation of probation other than traffic related offenses occurred in 2005." However, in his removal proceedings, the petitioner testified to his 1999 offense, conviction and sentence to time served. *See Mejia Rodriguez v. DHS*, 629 F.3d 1223, 1228 (11th Cir. 2011) (under federal law, "time served" in Florida qualifies as a sentence and can establish a judgment of guilt constituting a conviction under section 101(a)(48) of the Act). Counsel does not acknowledge that conviction in these proceedings. The petitioner was also sentenced on December 6, 2005 to two additional years of probation for three felony violations of probation. Accordingly, for immigration purposes, the petitioner has at least three criminal convictions between 1999 and 2011.

Counsel further contends that the petitioner has not committed a crime that falls under section 101(f) of the Act and would bar a finding of his good moral character. However, a self-petitioner will also be found to lack good moral character if he committed unlawful acts that adversely reflect upon his 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 under section 101(f) of the Act. 8 C.F.R. § 204.2(c)(1)(vii). Section 101(f) provides, 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."

Counsel also claims that as the inquiry into good moral character focuses on the three years immediately preceding the filing of the Form I-360 petition, USCIS should be focusing on the period from December 2009 to December 2012. 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. In this case, the petitioner has a history of arrests and criminal dispositions from 1999 to July 2011, which was less than two years before this petition was filed and provided the director with reasonable cause to examine the entire record of the petitioner's criminal history. See *Self-Petitioning for Certain Battered or Abused Spouses and Children*, 61 Fed. Reg. 13061, 13066 (Interim Rule Mar. 26, 1996) (USCIS 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).

The record shows that the petitioner has been arrested at least seven times between 1999 and 2011, including for felony violations of probation, and has at least three convictions. While the petitioner generally apologized for some of his conduct, he has not acknowledged or taken responsibility in his affidavits for a number of serious incidents including those for which he was charged with domestic battery of his former spouse, retail theft, and attempting to remove more than \$19,000 from the United States without declaring it. The petitioner blamed two of his arrests on the bad character of others. In his testimony before an immigration judge, he excused his theft of jewelry as "an honest mistake," said of his battering of his former spouse, "I guess her lip got busted," and of the large sum of money he was carrying out of the country that he did not know how much was in the bag. The petitioner's statements and those of his friends and associates fail to establish that any of his offenses were committed under extenuating circumstances. The petitioner's lengthy history of encounters with law enforcement spanning more than a decade, his lack of candor related thereto, and his failure to establish extenuating circumstances or demonstrate remorse or rehabilitation for his three convictions all indicate a lack of good moral character.

Conclusion

On appeal, the petitioner has failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act and he is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.