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



U.S. Citizenship
and Immigration
Services

Date:

AUG 28 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)

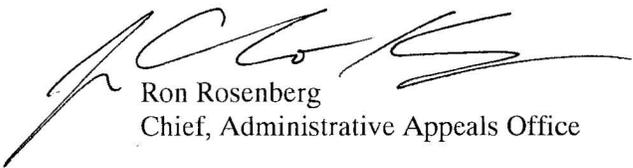
ON BEHALF OF PETITIONER:

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 Acting Director of the 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 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 for failure to establish that the petitioner is a person of good moral character.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 Chapter – 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) . . . 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. . . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico who claims to have entered the United States without inspection in August 1998. The petitioner married D-A-, a U.S. citizen, on March 1, 2002.¹ The petitioner and D-A- divorced on July 2, 2010. The petitioner filed the instant Form I-360 on May 25, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character. The petitioner responded with additional evidence which the director found insufficient, and he denied the petition. The petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The Petitioner's Convictions

The record reflects that the petitioner was convicted of unlawful possession of a false identification card in violation of Illinois Compiled Statutes (ILCS), chapter 15, section 335/14B(b)(1) on [REDACTED]. The petitioner was sentenced to 24 months conditional discharge. On [REDACTED] the petitioner was convicted of domestic battery in violation of 720 ILCS 5/12-3.2(a)(2), and was sentenced to 12 months conditional discharge, and ordered to have no contact with D-A-. The director determined that unlawful possession of a false identification card is a crime involving moral turpitude, which barred a finding of the petitioner's good moral character under section 101(f) of the Act.

On appeal, counsel contends that the petitioner's offense, unlawful possession of a false identification card, is categorically not a crime involving moral turpitude. Counsel states that mere possession of a false document without use or intent to defraud does not involve moral turpitude, citing *Matter of Serena*, 20 I&N Dec. 579 (BIA 1992).

The Petitioner's Crimes Did Not Involve Moral Turpitude

The director erred in concluding that the petitioner's conviction for unlawful possession of a false identification card is a crime involving moral turpitude. To determine whether a crime involves moral turpitude, we first apply a categorical approach to determine whether there is a "realistic probability" that the criminal statute of conviction would be applied to conduct that does not involve moral turpitude. *Sanchez v. Holder*, No. 13-2653 __F.3d__, 2014 WL 3329186 at *4 (7th Cir. Jul. 9, 2014) (citing *Matter of Silva-Trevino*, 24 I&N Dec. 687, 689-90 (A.G. 2008)). If that evaluation does not

¹ Name withheld to protect the individual's identity.

resolve the inquiry because the statute is divisible or covers a wide range of conduct, we examine the record of conviction to determine under which part of a divisible statute the alien was convicted. *Id.*

In this case, the criminal statute under which the petitioner was convicted is divisible as it punishes both the mere possession and the use of fraudulent identification cards.² At the time of his conviction, 15 ILCS 335/14B(b)(1) stated that “[i]t is a violation . . . for any person: To knowingly possess, display, or cause to be displayed any fraudulent identification card[.]” The petitioner’s record of conviction shows that he was charged and convicted of “Poss[ession] Fraudulent ID Card Statute 15 335/14B(b)(1).” The petitioner was not convicted of displaying or otherwise using the fraudulent card. Mere “possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude.” *Matter of Serna*, 20 I&N Dec. 579, 586 (BIA 1992). Compare *Lagunas-Salgado v. Holder*, 584 F.3d 707 (7th Cir. 2009) (moral turpitude inhered in alien’s sale of falsified alien registration documents knowing them to be fraudulent). As 15 ILCS 335/14B(b)(1) proscribes knowing possession without intent to use, the petitioner’s crime did not involve moral turpitude and section 101(f)(3) of the Act does not prohibit a finding of the petitioner’s good moral character. The part of the director’s decision to the contrary is hereby withdrawn.

The petitioner’s conviction of domestic battery in violation of 720 ILCS 5/12-3.2(a)(2) is also not a crime involving moral turpitude. Simple assault or battery, as a general rule, is not deemed to involve moral turpitude for purposes of the immigration laws. *Matter of Fualaau*, 21 I&N Dec. 475,

² 15 ILCS 335/14B states that:

(b) It is a violation of this Section for any person:

1. To knowingly possess, display, or cause to be displayed any fraudulent identification card;
2. To knowingly possess, display or cause to be displayed any fraudulent identification card for the purpose of obtaining any account, credit, credit card or debit card from a bank, financial institution or retail mercantile establishment;
3. To knowingly possess any fraudulent identification card with the intent to commit a theft, deception or credit or debit card fraud in violation of any law of this State or any law of any other jurisdiction;
4. To knowingly possess any fraudulent identification card with the intent to commit any other violation of any law of this State or any law of any other jurisdiction for which a sentence to a term of imprisonment in a penitentiary for one year or more is provided;
5. To knowingly possess any fraudulent identification card while in unauthorized possession of any document, instrument or device capable of defrauding another;
6. To knowingly possess any fraudulent identification card with the intent to use the identification card to acquire any other identification document;
7. To knowingly possess without authority any identification card making implement;
8. To knowingly possess any stolen identification card making implement;
9. To knowingly duplicate, manufacture, sell or transfer any fraudulent identification card;
10. To advertise or distribute any information or materials that promote the selling, giving, or furnishing of a fraudulent identification card.

477 (BIA 1996). This general rule does not apply where an assault or battery necessarily involved some aggravating dimension, such as the use of a deadly weapon or serious bodily harm. *See, e.g., Nguyen v. Reno*, 211 F.3d 692 (1st Cir. 2000), *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988), *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967), *Matter of S-*, 5 I&N Dec. 668 (BIA 1954). The petitioner's conviction was for making "physical contact of an insulting or provoking nature with any family or household member." See 720 ILCS 5/12-3.2(a)(2). In this case, the statute under which the petitioner was convicted does not involve the infliction of bodily injury or an aggravating dimension, and consequently does not involve moral turpitude.

The Petitioner Lacks Good Moral Character for Other Reasons

Although the petitioner's convictions did not involve moral turpitude, the record shows that the petitioner lacks good moral character for other reasons. Unless a self-petitioner establishes extenuating circumstances, he or she will be found to lack good moral character if he or she committed unlawful acts that adversely reflect upon his or her moral character, or was convicted for such acts, although the acts do not require an automatic finding of lack of good moral character. 8 C.F.R. § 204.2(c)(1)(vii). Primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). The petitioner initially submitted an undated statement in which he briefly discussed his domestic battery conviction. The petitioner explained that in 2006 D-A- was angry with him because he refused to give her money. He stated that she called the police and falsely accused him of hitting her, and that he was arrested because his limited English made it difficult to understand what was happening. He stated that someone at the jail told him that if he pled guilty to domestic battery he would be released from jail. He stated that even though he was innocent, he pled guilty to domestic battery. The petitioner contended that his spouse was always the aggressor during their arguments, and he submitted police records reflecting that D-A- was arrested for domestic battery against the petitioner on July 7, 2009 and August 23, 2009. The petitioner also submitted a personal statement, dated April 16, 2012, in which he stated that in 2010 he lived with a woman, [REDACTED] and that their relationship ended in April 2010 because [REDACTED] was jealous and controlling. He stated that out of retaliation [REDACTED] filed for a protective order against him and that his attempt to explain to the judge that he had no contact with [REDACTED] since their relationship ended was not successful. The petitioner stated also that in 2001 the police searched his car and confiscated false documents in his car that belonged to his friend, and despite his innocence he was convicted of possessing false identification documents.

Although the petitioner declares his lack of culpability for domestic battery and possessing a false identification document, we cannot look behind his conviction to reassess his guilt or innocence. *See Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien's guilt or innocence); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1974) (same). In addition, the petitioner's brief statements are insufficient to establish that either of his convictions was committed under extenuating circumstances.

The petitioner initially submitted letters from his friends, [REDACTED] and [REDACTED]. The letters stated that the petitioner is a good father and is responsible and well-

respected in the community, but the authors do not indicate that they know of the petitioner's criminal past or the protective order issued against him and consequently do not demonstrate that they can knowledgeably attest to his good moral character, as the regulation requires of supporting affidavits. *See* 8 C.F.R. § 204.2(c)(v) (including consideration of "affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.")

On appeal, counsel contends that the petitioner's convictions do not render the petitioner ineligible because the convictions occurred more than three years prior to the filing of this petition. The statute does not state a period in 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). The regulation requires evidence of the petitioner's good moral character during the three years preceding the filing of the petition, but the regulation does not limit the temporal scope of U.S. Citizenship and Immigration Services' (USCIS') inquiry into the petitioner's character. *See* 8 C.F.R. § 204.2(c)(2)(v). As noted by counsel, 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. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). In this case, the record contained evidence of the petitioner's conviction in 2006 and the petitioner's acknowledgment of the protective order against him, providing sufficient reason to believe that the self-petitioner lacked good moral character.

The director determined that the petitioner lacked good moral character, in part, because of the protective order issued against him. On appeal, counsel asserts that a civil protective order, without violation of the civil protective order, is not a criminal offense. Counsel states that the director erred in requesting evidence of the civil protective order against the petitioner because an emergency protective order can be obtained without any proof of abuse. However, USCIS must consider all credible evidence relevant to the petition, and the determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act; 8 C.F.R. 204.2(c)(2)(i). On appeal, the petitioner again has not submitted the protective order records or explained his inability to obtain them.

On appeal, the petitioner submits additional letters from five friends, neighbors and acquaintances. Although the letters describe the petitioner as a good father and attest to his good character, the authors do not indicate any awareness of the petitioner's criminal record or the protective order issued against him. The petitioner also submits a document from [REDACTED] a circuit clerk with the [REDACTED] Circuit Clerk's Office, to show that the petitioner's other offenses relate to an expired driver license in March 2000 and April 2000; operation of an uninsured motor vehicle in April 2000 and May 2003; and driving without a license in December 2004 and May 2003. The petitioner also submits his tax records for 2009 to 2012.

The relevant evidence in the record shows that the petitioner committed unlawful acts which adversely reflect upon his character and fall below the standards of the average citizen in the community. The petitioner was convicted of domestic battery and possessing a fraudulent identification card and he admits that a protective order was granted against him by a former girlfriend. The petitioner's acquaintances, friends and neighbors commend the petitioner's

character, but they do not indicate any awareness of the petitioner's criminal history and the protective order against him, and therefore cannot knowledgeably attest to his good moral character, as the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires of supporting affidavits. The petitioner's own brief assertions regarding his two convictions are insufficient to show that either offense was committed under extenuating circumstances. Consequently, the petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *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.

ORDER: The appeal is dismissed.