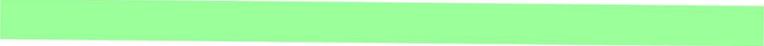




U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **DEC 10 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)

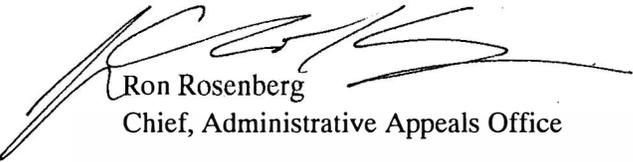
ON BEHALF OF PETITIONER:


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 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 based on the petitioner's failure to establish his good moral character.

On appeal, the petitioner, through counsel, submits a brief and additional 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).

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 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)(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.

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. . . . 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, a citizen of Mexico, claims that he first entered the United States in 1995 without being inspected by an immigration officer. The petitioner states that he met L-R¹, a U.S. citizen, in 1998. The petitioner's administrative record reflects that he was subjected to expedited removal to Mexico on April 29, 2000, and on several subsequent occasions. The petitioner's and L-R-'s first child was born in October [REDACTED] California, and the couple married in [REDACTED] California on March [REDACTED]. L-R- filed an immigrant visa petition for the petitioner, which was approved, but the petitioner's application for adjustment of status was denied. The petitioner and L-R- subsequently had two other children.

On April 6, 2009, the petitioner was arrested for inflicting corporal injury on a spouse. On June 10, 2009, [REDACTED] California Superior Court accepted the petitioner's no contest plea to the reduced charge of battery against a spouse in violation of California Penal Code (CPC) sections 242 and 243(e)(1). The court found a factual basis for the petitioner's plea, sentenced him to 60 days in jail, 36 months of probation and ordered him to pay costs and complete a domestic violence batterer's program. The court also issued a protective order against the petitioner. The petitioner filed the instant Form I-360 self-petition on May 29, 2012. The director issued two Requests for Evidence (RFEs) of good moral character. The petitioner responded with additional evidence, which the director found did not establish eligibility for the benefit sought and denied the petition. The petitioner, through counsel, subsequently appealed the director's decision, submitting a Form 1-290B (Notice of Appeal), a brief, and additional evidence.

¹ Name withheld to protect the individual's identity.

We review these proceedings *de novo*. Upon a full review of the record we find that the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Good Moral Character

The director did not err in finding that the petitioner failed to establish that he is a person of good moral character. In response to the director's first RFE, dated June 12, 2012, the petitioner submitted his California criminal record, which indicated that he was arrested on two occasions: April [REDACTED] for inflicting corporal injury on a spouse, which led to his conviction for battery and on April [REDACTED] for possession of a controlled substance, which was listed as still active, but with no final disposition. The director subsequently issued a second RFE, requesting police reports for all incidents involving the petitioner and his spouse, and documentation regarding his April [REDACTED] arrest, including the arrest report. In a letter submitted in response to the second RFE, counsel asserted that the April [REDACTED] arrest was not for possession of a controlled substance, but rather related to the petitioner's April [REDACTED] arrest. The petitioner submitted a Certification of No Record of the April [REDACTED] arrest from the [REDACTED], California Superior Court, but he did not provide an arrest record from the arresting agency, [REDACTED] California Police Department, nor did he submit an affidavit describing the circumstances surrounding the arrest.

In regard to the incident that led to the April [REDACTED] arrest, the petitioner resubmitted previously submitted documents, including a personal affidavit dated May 12, 2012, in which he briefly stated that he and his wife had an argument the night before, his wife scratched herself up, called the police and had him arrested. The petitioner did not provide probative information regarding the argument or his and L-R's actions on the night of this incident that preceded his arrest. In response to the second RFE, the petitioner also submitted a copy of his motion to the criminal court to withdraw his plea on the grounds that he was not given sufficient notice of the potential immigration consequences of his plea. Attached to the motion is a personal affidavit from the petitioner dated September 16, 2012, in which he asserted that he was the true victim in the incident, but did not state any facts to support his assertion. The petitioner also resubmitted numerous affidavits from family members and friends that generally discussed L-R's treatment of the petitioner; however, none contain probative information regarding the incident that led to the petitioner's April [REDACTED] arrest and subsequent conviction. Although the petitioner claimed that L-R- called the police on at least three occasions, the petitioner did not submit any corresponding police reports.

On appeal, the petitioner submits the court docket for his [REDACTED] offense, which states that the petitioner was initially charged with inflicting corporal injury on a spouse and false imprisonment, but subsequently pled no contest to battery against a spouse. The court sentenced the petitioner to 60 days of jail, 36 months of probation, and 52 weekly sessions of a domestic violence batterers' program, and issued a protective order preventing the petitioner from harassing, threatening, or committing further acts of violence against his spouse. The court docket shows that the petitioner's motion to withdraw his plea was denied on November 9, 2012.

On appeal, counsel asserts that the petitioner was not convicted of a crime involving moral turpitude, and is thus not disqualified from establishing his good moral character. Simple battery against a

spouse without an aggravating dimension such as traumatic corporal injury categorically does not involve moral turpitude. *See In Re. Sanudo*, 23 I&N Dec. 968 (BIA 2006) (conviction for domestic battery under CPC §§ 242, 243(e)(1) is not a crime involving moral turpitude). Even if it involved moral turpitude, the petitioner's conviction would meet the so-called "petty offense" exception at section 212(a)(2)(A)(ii)(II) of the Act as the maximum possible penalty is imprisonment of not more than one year and the petitioner was only sentenced to 60 days in jail. Consequently, the petitioner's conviction is not a per-se bar to a finding of his good moral character under section 101(f)(3) of the Act.

Nonetheless, the petitioner lacks good moral character for other reasons. Section 101(f) of the Act further prescribes: "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 regulation at 8 C.F.R. § 204.2(c)(1)(vii) also provides, in pertinent part:

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 . . . although the acts do not require an automatic finding of lack of good moral character.

Here, the petitioner was convicted of battery against his spouse and the court ordered the petitioner to participate in a year-long domestic violence batterer's program and issued a protective order against him. Neither the petitioner's personal affidavits, nor the third-party affidavits submitted in this matter contain probative information to establish that the petitioner's spouse was the primary aggressor in the incident underlying his conviction. In addition, the petitioner has failed to provide evidence of the disposition of his April [REDACTED] arrest for possession of a controlled substance. Counsel claims the arrest was related to the petitioner's [REDACTED] offense and not for possession of a controlled substance, but the court docket states that on April [REDACTED] the petitioner was taken into custody for a violation of his probation, which was revoked until April [REDACTED]. Counsel submits no evidence on appeal of the disposition of the petitioner's [REDACTED] arrest or any affidavit from the petitioner acknowledging that arrest or providing any additional information about his [REDACTED] conviction. *See* 8 C.F.R. § 204.2(c)(2)(v) ("Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit").

The petitioner has not demonstrated that his conviction was related to battery or extreme cruelty by his wife, or that his offense was committed under other extenuating circumstances. Consequently, the petitioner has committed an unlawful act that adversely reflects upon his moral character. The petitioner has also failed to submit primary evidence of his good moral character as his affidavit does not acknowledge or explain his [REDACTED] arrest or provide detailed information regarding his [REDACTED] conviction. Accordingly, 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

On appeal, the petitioner has not established his good moral character. 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.