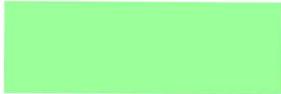


(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **DEC 12 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:

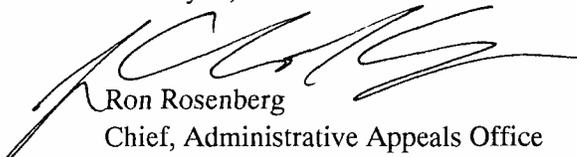
SELF-REPRESENTED

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 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 and that his wife subjected him to battery or extreme cruelty.

Relevant Law and Regulations

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

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:

(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.

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.

* * *

(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. . . . 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 Jamaica who claims to have last entered the United States on January 1, 1984 under unspecified circumstances. The petitioner married and divorced three times in the United States prior to his current marriage to B-G-¹, a U.S. citizen, on April [REDACTED] in New York. The petitioner filed the instant Form I-360 self-petition on May 23, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty, the petitioner's good moral character and that he reconcile discrepancies in his statements. The petitioner timely responded with 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*. Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's wife did not subject him to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. In his first affidavit, the petitioner did not assert that his wife ever battered him or subjected him to extreme cruelty. In his second affidavit, submitted in response to the RFE, the petitioner stated that over the years, B-G- "became abusive," wanted everything to go her way, came home intoxicated after drinking with friends, used profanity in the house and stopped cooking for him. He stated that she once locked him out of the house, was physically aggressive when he finally got in and told him she no longer wanted him. The petitioner recalled that they would argue over petty things and she once would not let him use the car he had bought for them both. He stated that she preferred the company of her friends to his company, would hide her money from him, used unspecified insulting language, and had an extramarital affair. He stated that B-G- moved out of their home in August 2008 and never returned, which is inconsistent with his statement on the Form I-360 that he and B-G- resided together from November 2005 to May 2011.

The petitioner also submitted the affidavits of his brother and two friends. His brother, [REDACTED], stated briefly that the petitioner lived with B-G- in 2006 and, at that time, was abused by her. He recalled that the petitioner would call and complain that B-G- was jealous, humiliated him, and tried to isolate him from his family. Mr. [REDACTED] did not elaborate on these claims or describe any particular incident of alleged abuse. [REDACTED] both stated that the petitioner told them B-G- was jealous, abusive, wanted to control and isolate him from his friends and family, and had

¹ Name withheld to protect the individual's identity. While the petitioner identifies his wife as B-G- on the Form I-360 self-petition, their marriage certificate identifies her as B-H-.

to have everything her way. Neither affiant identified or described any particular incident or provided further probative information of the claimed abuse. The petitioner's affidavits and those of his brother and two friends did not demonstrate below that B-G- battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted a psychological evaluation. [REDACTED] stated that she had a 55-minute session with the petitioner on September 23, 2013. Ms. [REDACTED] relayed claims by the petitioner that B-G- was jealous and would go through his telephone call log, she did not like his siblings and put him down in front of others. These claims were not included in the petitioner's own affidavit. Ms. [REDACTED] added that B-G- pulled a knife on the petitioner in 2006 and 2007, another claim the petitioner did not make in his own affidavit. Ms. [REDACTED] reported that the petitioner has nightmares about his relationship with B-G- and is horrified by the prospect of being removed to Jamaica where he would be separated from his adult children from prior relationships. Ms. [REDACTED] diagnosed the petitioner with major depressive disorder. While we do not question Ms. [REDACTED]'s professional opinion, her assessment conveys the petitioner's statements during a single 55-minute session with her and provides no further probative information regarding the claimed abuse.

In the denial decision, the director identified discrepancies between the petitioner's affidavit and claims he made to Ms. [REDACTED] which diminished his credibility. Nevertheless, the petitioner does not attempt to reconcile the discrepancies or clarify his statements on appeal. On appeal, the petitioner submits a supplemental affidavit in which he states that B-G- "did pull a knife on me in the year of 2009 to 2010." This statement is inconsistent with Ms. [REDACTED]'s assertion that B-G- pulled a knife on the petitioner in 2006 and 2007. In addition to presenting this additional discrepancy, the petitioner's affidavit on appeal provides no further probative information about the claimed abuse.

The petitioner also submits on appeal new affidavits by his brother, Mr. [REDACTED] and Mr. [REDACTED]. The petitioner's brother, Mr. [REDACTED] states that the petitioner complained that B-G- was jealous and controlling and that when the petitioner resided with B-G- in 2009 and 2010, he was in their home when she humiliated and verbally abused the petitioner. This statement is inconsistent with the petitioner's affidavit in which he stated that B-G- moved out of the marital home in August 2008 and never returned. As in his first affidavit, Mr. [REDACTED] provides no probative details of the claimed abuse. Mr. [REDACTED] repeats claims from his first affidavit that the petitioner often complained that B-G- was jealous and humiliated him. He adds that he went to the petitioner's home in 2009 and met B-G- for the first time and she did not like that he was there. This statement is also inconsistent with the petitioner's claim that B-G- moved out of the marital home in August 2008. Similarly, Mr. [REDACTED] states that the petitioner asked him to take his children for a walk in 2009 so they could get out of the house in which B-G- was being verbally abusive. None of the affiants have provided probative information of the claimed abuse on appeal and all discuss incidents occurring at the marital home after the petitioner stated B-G- had abandoned him. A preponderance of the relevant evidence does not demonstrate that the petitioner's wife battered him or his children or threatened him or his children with violence, psychologically or sexually abused him or his children, or otherwise subjected him or his children to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Consequently, the petitioner has not overcome this ground for denial.

The Petitioner's Criminal Record

On October [REDACTED] the U.S. District Court, Northern District of New York convicted the petitioner, pursuant to his guilty plea, of Illegal Entry, in violation of 8 U.S.C. § 1325, for having attempted to enter the United States by presenting the U.S. birth certificate of another individual. The court sentenced the petitioner to two months in jail, a \$100 fine, and two years of unsupervised probation. (Docket Number [REDACTED]). He was subsequently removed from the United States on October [REDACTED].

On January [REDACTED] the petitioner was charged in New York with Criminal Possession of a Controlled Substance in the third and fifth degrees; and Bribery of a Public Servant in the third degree. On May [REDACTED] the petitioner pled guilty and the [REDACTED] County, Superior Court of New York convicted him of Bribery of a Public Servant in the third degree, in violation of New York Penal Law (NYPL) section 200.00, a Class D felony. On July 17, 1997, the court sentenced the petitioner to five years of probation. (Case Number [REDACTED]). The director incorrectly determined that the petitioner was convicted of all charges, however, the petitioner's Certificate of Disposition from the court and his Criminal Disposition Information from the New York State Unified Court System show that he was convicted only of bribery of a public servant, and that the other charges of possession of controlled substances were dismissed as "covered by the pled-to charge." The director's contrary determination is hereby withdrawn.

On June [REDACTED] the petitioner was charged in New York with Patronizing a Prostitute in the fourth degree. On June [REDACTED] the [REDACTED] County, New York City Criminal Court convicted the petitioner, pursuant to his guilty plea, of Disorderly Conduct, in violation of NYPL section 240.20. The court sentenced him to a \$100 fine and granted a conditional discharge of the conviction after one year. (Docket Number [REDACTED]).

Good Moral Character

Section 101(f)(3) of the Act bars a finding of an alien's good moral character if the alien was convicted of a crime involving moral turpitude. 8 U.S.C. §§ 1101(f)(3), 1182(a)(2)(A)(i)(I). *See also* 8 C.F.R. § 204.2(c)(1)(vii) (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). The petitioner does not contest and the record shows that his conviction for bribery of a public servant under NYPL § 200.00 was a crime involving moral turpitude, which bars a finding of his good moral character under section 101(f)(3) of the Act.

The New York bribery statute states: "A person is guilty of bribery in the third degree when he confers or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced. Bribery in the third degree is a class D felony." NY PENAL LAW § 200.00 (West 1997). The maximum sentence of imprisonment for a Class D felony in New York is seven years. NY PENAL LAW § 70.00(2)(d) (West 1997).

To determine whether a crime involves moral turpitude, we apply a categorical approach and examine the statute of conviction to determine if “the minimum conduct criminalized by the statute” would involve moral turpitude. *Efstathiadis v. Holder*, 752 F.3d 591, 595 (7th Cir. 2014) (quoting *Moncrieffe v. Holder*, 133 S.Ct. 1678,1684 (U.S. 2013)). In general, moral turpitude inheres in the mental state required for conviction under the statute, combined with the corresponding culpable act. *Id.* at 597-98. In this case, third degree bribery under NYPL § 200.00 categorically involves moral turpitude because it requires an offender to confer, offer or agree to confer a benefit upon a public servant with knowledge (“upon an agreement or understanding”) that some official act of the public servant will be influenced as a result. Similar bribery offenses have long been held to involve moral turpitude. *See Sollazzo v. Esperdy*, 285 F.2d 341, 343 (2d Cir. 1961) (Bribery of athletes involves moral turpitude because “it is morally base to corrupt another in his duty or loyalty. Where the people have declared particular aspects of such reprehensible conduct to be a crime . . . there can be no doubt that the crime involves moral turpitude.”); *Okabe v. I.N.S.*, 671 F.2d 863, 865 (5th Cir. 1982) (Conviction for offering a bribe under 18 U.S.C. § 201(b)(3) “is a crime involving moral turpitude, for a corrupt mind is an essential element of the offense.”). In this case, the petitioner was convicted of a crime involving moral turpitude which bars a finding of his good moral character under section 101(f)(3) of the Act.

The petitioner also failed to submit primary evidence of his good moral character, which is the self-petitioner’s affidavit supported by local police clearances or state criminal background checks for every residence over six months during the three years preceding the filing of the petition. 8 C.F.R. § 204.2(c)(2)(v). The petitioner did not submit a sufficient local police clearance or a state-issued criminal background check from his place of residence, New York, New York, during the three years preceding the filing of his Form I-360. The petitioner’s Criminal Disposition Information from the New York State Unified Court System lists only his 1997 offense and was based on a search of his date of birth and only one version of his name. The record shows that the petitioner has used three other aliases. The petitioner submitted the certificate of disposition for his 2007 conviction for disorderly conduct in New York City, but no police clearance from that jurisdiction.

In his initial statement submitted below, the petitioner briefly described the circumstances surrounding his three convictions, but asserted his first offense “was not [his] fault,” that he was “wrongfully arrested” for his second crime and that he is a person of good moral character who had the misfortune of being “in the wrong place at the wrong time.”

In his affidavit on appeal, the petitioner states that all the criminal charges on his record happened many years ago, he is “no longer a criminal” and everyone deserves a second chance. He adds that he serves his community, assists the elderly, is actively involved in his church and local politics, and cares for his family and friends. In their affidavits, Rev. [REDACTED] the petitioner’s brother and friends speak fondly of him. However, none of the affiants indicate that they are aware of the petitioner’s criminal history and can knowledgably attest to his good moral character.

The petitioner was convicted of a crime involving moral turpitude, which bars a finding of his good moral character under section 101(f)(3) of the Act and he failed to submit primary evidence of such character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). Consequently, the petitioner has not established his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to demonstrate that he or his children were subjected to battery or extreme cruelty by his wife and 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.

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.

ORDER: The appeal is dismissed.