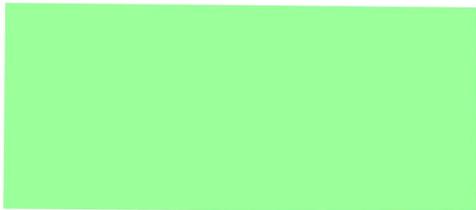
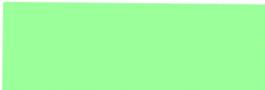


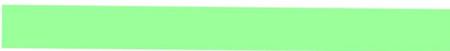
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U.S. Citizenship  
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Services

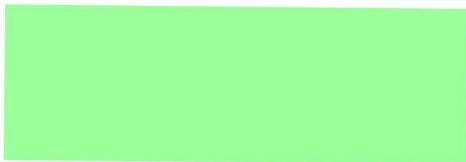


DATE: **DEC 23 2014** Office: VERMONT SERVICE CENTER FILE: 

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center acting director, (the director), denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the applicant's appeal. The matter is now before us after a service motion to reopen. The appeal will be 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 for failure to establish the petitioner's good moral character.

On appeal, the petitioner submits a brief and additional evidence.

*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:

(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.

\* \* \*

(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 claimed he entered the United States on April 10, 1992, without inspection, admission, or parole.<sup>1</sup> The petitioner married M-D-<sup>2</sup>, a U.S. citizen, in ██████████ County, Texas on November ██████████. The petitioner filed the instant Form I-360 self-petition on November 14, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character to which the petitioner timely responded. The director found the additional evidence insufficient, denied the petition, and the petitioner appealed.

<sup>1</sup> The petitioner was placed into removal proceedings on March 16, 2010, and has his next hearing before the Denver Immigration Court on October 28, 2015.

<sup>2</sup> Name withheld to protect the individual's identity.

We review these proceedings *de novo*. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

*Good Moral Character*

The director determined that the petitioner's arrest history and convictions for multiple crimes adversely reflected upon the petitioner's moral character. The petitioner's criminal record shows that he was convicted of the following offenses:

- 1) Failure to identify to a Peace Officer with a Warrant, in violation of section 38.02 of the Texas Penal Code (TPC), in July of [REDACTED]. The petitioner submitted court documents showing that he was sentenced to 45 days of imprisonment.
- 2) Driving While Intoxicated (DWI), in violation of section 49.04 of the TPC, on December [REDACTED] 3. The petitioner submitted court documents showing that he was sentenced to four days of imprisonment and fined 50 dollars.
- 3) Criminal Mischief, in violation of section 18-4-501, subsections (1) and (4)(f), of the Colorado Statutes, on December [REDACTED]. The petitioner submitted court documents showing that he was sentenced to two years of probation which was scheduled to terminate on December [REDACTED].

The record also shows that the petitioner was arrested and may have convictions for: driving while license invalid in [REDACTED], Texas in 1997; giving false information during an investigation in [REDACTED] County, Colorado in 2000; assault causing bodily injury in [REDACTED] Texas in November [REDACTED]; and fugitive from another jurisdiction/ and no insurance in August of [REDACTED].

Section 101(f) of the Act prescribes, 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." 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.

Further, primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). In his first statement submitted initially, the petitioner did not acknowledge his convictions or otherwise address his moral character. In his declaration in response to the RFE, the petitioner apologized for his illegal entry and the offenses that he committed. He stated that he has

<sup>3</sup> The actual date of the DWI was February [REDACTED].

<sup>4</sup> The director's decision erroneously states the arrest date for the assault offense as October [REDACTED] and did not state a jurisdiction. USCIS records show that the petitioner was arrested in violation of TPC 22.01(a)(1) misdemeanor- Class A offense on November [REDACTED], Texas.

rehabilitated himself and stopped drinking. He recounted that in 2012, he was involved in an automobile accident with his brother that resulted in their arrest for robbery even though the petitioner had a bill of sale. The petitioner then recounted that when he told the police that his brother was not involved in the presumed theft, he was unaware that the state patrol had found a controlled substance in the trailer. The petitioner stated that he later pled to possession of marijuana, theft driving under restraint, careless driving, and criminal mischief although he was in fact only convicted of criminal mischief. The petitioner's brief description of the events surrounding his most recent offense fails to establish that he has taken any responsibility for his actions. Other than to declare his compliance with his probationary requirements, the petitioner has not provided any probative details regarding how he has rehabilitated such that his good moral character could be established despite his convictions.

On appeal, the petitioner asserts that his convictions, including any of the possible convictions for which he was unable to obtain dispositions for, do not fall under any enumerated bar to a finding of good moral character under section 101(f) of the Act. The petitioner further asserts that in the event he was in fact convicted of assault in [REDACTED] a simple assault may qualify for the petty offense exception pursuant to section 212(a)(2)(A)(ii) of the Act. We cannot determine whether or not the petitioner's [REDACTED] arrest led to a conviction of a crime involving moral turpitude because the petitioner did not submit a complete record of conviction for his [REDACTED] offense. However, we do not reach whether the petitioner's conviction is crime involving moral turpitude since he is otherwise ineligible for a finding of good moral character.

In this case, the present record shows that even if the petitioner has established that he was not convicted of crimes involving moral turpitude, he lacks good moral character given the length of his criminal record, conviction for criminal mischief after this self-petition was filed, and lack of evidence of the successful termination of his two-year probation. The petitioner's declaration submitted on appeal repeats his earlier statements and does not add substantive information regarding his convictions or otherwise demonstrate his rehabilitation. Likewise, the letters of support from the petitioner's friends submitted below and on appeal are brief and do not discuss their knowledge of his convictions and rehabilitation. The petitioner has also failed to demonstrate that any of his convictions were related to his wife's battery or extreme cruelty or that his offenses were committed under other extenuating circumstances. The record thus still shows that the petitioner was convicted of unlawful acts which adversely reflect upon his moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Accordingly, the petitioner has not established his 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 to establish his eligibility for the immigration benefit sought. See Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

**ORDER:** Upon service motion to reopen, the appeal is dismissed and the petition remains denied.