

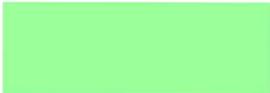


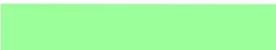
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 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:

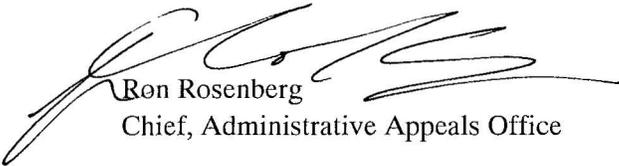
SELF-REPRESENTED

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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner’s appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The appeal will remain 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 former spouse, a United States citizen.

The director denied the petition for failure to establish that the petitioner jointly resided with his former wife and that he entered into marriage with her in good faith. On April 3, 2012, we dismissed the appeal on these same grounds and twice affirmed our decision upon the petitioner’s subsequent filings. With the present motion, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

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

An alien who has divorced a 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 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

...

(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. 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.

...

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

...

(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 Slovenia who entered the United States on June 2, 2004 as a nonimmigrant J-1 exchange visitor. The petitioner married D-S-¹, a U.S. citizen, in Los Angeles, California on January 18, 2008 and they were divorced on June 12, 2009. The petitioner filed the instant Form I-360 on July 17, 2009. The director denied the petition for failure to establish the petitioner's residence and good-faith entry into the marriage with his former wife and we dismissed a subsequent appeal. The petitioner then filed a motion to reopen. We granted the motion and determined that the petitioner married his wife in good faith, but failed to establish joint residence and his good moral character. The matter is now again before us on a motion to reopen and reconsider. The petitioner submitted a brief and additional evidence in support of his motion. The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Accordingly, the motion is granted.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims and the new evidence submitted on motion fail to overcome all the grounds for denial. The appeal will remain dismissed for the following reasons.

Joint Residence

In our August 7, 2013 decision, we determined that the relevant evidence did not establish that the petitioner resided with D-S-. The relevant evidence was discussed in detail in our prior decisions, incorporated here by reference. In summary, there were inconsistencies in the petitioner's timeline of joint residence between his initial affidavit and the brief he filed on motion. The petitioner did not expand upon the nature of the residences he claimed to have lived with D-S- nor did he explain how the two resided together when both had restraining orders against each other. In his prior motion, the petitioner repeated much of his earlier statements and did not probatively describe his marital home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that he resided with D-S- after their marriage. The petitioner's friends, [REDACTED] failed to provide any probative details regarding their knowledge of the petitioner's shared residence. We also found that the documentary evidence submitted on motion failed to establish that the petitioner jointly resided with D-S- after their marriage.

De novo review of the record establishes that the petitioner jointly resided with D-S-. In the brief submitted on the present motion, the petitioner asserts that the dates in his initial affidavit are estimates and he generalized D-S-'s trips to her parents' home and did not discuss all of her manic episodes. He describes in credible, probative detail each of D-S-'s manic episodes and their periods of joint residence and separation during these episodes. The petitioner also explains where he and D-S- resided when they had restraining orders against each other. The petitioner provides a detailed

¹ Name withheld to protect the individual's identity.

explanation for the inconsistencies between his earlier statements. He gives further probative details of his marital residences, shared belongings and residential routines during his period of joint residence with D-S-. The petitioner submits statements from his friends, [REDACTED] and [REDACTED], who probatively describe their personal knowledge of the couple's joint residences. He also submits a statement from [REDACTED] the maintenance person at an apartment building where the petitioner resided with D-S-. Mr. [REDACTED] discussed his interactions with the couple at the apartment building during the summer of 2008. When considered in the totality, the petitioner has now established his joint residence with D-S-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

In our August 7, 2013 decision, we determined that the petitioner failed to establish good moral character because he committed an unlawful act which adversely reflects upon his moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). In the petitioner's letter in response to the director's Request For Evidence of his good moral character, the petitioner did not address his May of 2008 arrest that resulted in his conviction for violating his former wife's protective order against him in May of 2009 and sentencing of 96 days in jail. In his prior motion the petitioner also failed to provide probative details regarding his May 2008 arrest. The supporting letters from the petitioner's friends failed to indicate that any of the individuals were aware of the petitioner's conviction or the circumstances around it and could knowledgeably attest to his good moral character.

On the present motion, the petitioner asserts that he believed that D-S- obtained a restraining order against him based on false statements and he still loved her and wanted to save the marriage. He states that he went on May 23, 2008 to see D-S-'s former boyfriend, [REDACTED], to obtain a declaration and have the restraining order against him vacated. The petitioner contends that D-S- approached him when he was meeting with [REDACTED] and her conduct was part of the abuse in their marriage. The petitioner asserts that the individuals who wrote supporting letters on his behalf were all aware of his arrest and conviction. He contends that he is innocent and was the victim of ineffective assistance of counsel in his criminal proceedings. Inasmuch as the petitioner avers his lack of culpability, 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).

The petitioner's conviction evidences a lack of good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). 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, or was convicted or imprisoned for

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

The record of conviction in this case includes a verdict, which provides that on May 1, 2009 a jury found the petitioner guilty of a violating a protective order under section 273.6(a) of the California Penal Code, as charged in the complaint.² The complaint provides that the petitioner's violation of a protection order involved an incident of domestic violence. A protective order may be issued under the domestic violence protection part of the California Family Code "if an affidavit or, if necessary, an affidavit and any additional information provided to the court . . . shows, to the satisfaction of the court, *reasonable proof of a past act or acts of abuse.*" Cal. Fam. Code Ann. § 6300 (West 2009)(emphasis added).

The petitioner submitted below multiple briefs, letters and affidavits describing the various protective orders that he and D-S- obtained against each other.³ In the petitioner's November 25, 2012 declaration submitted with the prior motion, he referenced his contact with D-S- and asserted, "why would I then continuously jeopardize stay in United States by engaging in conduct (communicating with former wife) making myself deportable?" On the present motion, the petitioner asserts that when he previously referred to his May 23, 2008 conduct of "willing and knowingly" violating section 273.6(a) of the California Penal Code, he was discussing a specific legal term from the statute, but was not admitting his guilt or stating that the verdict was correct. However, as previously discussed, we cannot go behind the petitioner's conviction. The petitioner has not submitted evidence to show that the conviction has been vacated.

In the declaration submitted on the present motion, the petitioner asserts that he did not in the instance of his May 2008 arrest make contact with D-S-, but that D-S- called the police and falsely reported that he harassed her and followed her.⁴ The petitioner submits a declaration

² At the time of the petitioner's conviction for a violation of section 273.6(a) of the California Penal Code, the statute provided, in pertinent part:

(a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

Cal. Penal Code Ann. § 273.6(a) (West 2009).

³ The petitioner was ordered removed for violating a protection order under section 237(a)(2)(E)(ii) of the Act. The petitioner's appeal of the Immigration Judge's decision was dismissed by the Board of Immigration Appeals (BIA) on November 7, 2011. On April 17, 2014 the U.S. Ninth Circuit Court of Appeals remanded the case to the BIA.

⁴ The petitioner also asserts that his criminal defense attorney did not advise him of the immigration consequences of a conviction under section 273.6 of the California Penal Code. Without evidence that the petitioner had his conviction vacated due to procedural or substantive

from [REDACTED] D-S-'s former boyfriend, who states that on May 23, 2008, the petitioner met with him to seek his assistance and they were both unaware that D-S- would arrive at their meeting location. The petitioner also submits a copy of a restraining order he received against [REDACTED] on October 27, 2008. The petitioner provides additional letters from his friends, [REDACTED] as well as the bishop of his church, [REDACTED] who attest to their knowledge of the petitioner's conviction and his good moral character.

De novo review of the record fails to establish the petitioner's good moral character despite his conviction. The relevant evidence does not demonstrate that his arrest was under extenuating circumstances or related to D-S-'s battery or extreme cruelty. The petitioner submitted records from the criminal proceeding, which reflect that [REDACTED] and an officer with the San Diego Police Department were witnesses for the State of California in the criminal prosecution against him. The prosecuting attorney provided in her statement of facts that on May 23, 2008, the petitioner came to the house where D-S- was staying and approached D-S- and [REDACTED] and began speaking with them. This statement of facts contradicts the petitioner's assertion that D-S- approached him on the date of his arrest.

Moreover, the petitioner's own admission in his previous declaration to continuously contacting D-S-, despite the protective orders against him, is further evidence that the petitioner intentionally engaged in a violation of law, behavior falling below the standards of the average citizen in the community. The letters of support from the petitioner's friends and his church do not outweigh the lack of good moral character shown by the petitioner's conviction. The letters the petitioner previously submitted did not indicate the authors' awareness of the petitioner's conviction or the underlying circumstances and consequently did not show that they could knowledgeably attest to his good moral character. On the present motion, the petitioner's friends assert their knowledge of the petitioner's conviction and reiterate their belief in his good moral character nonetheless by affirming their support of the petitioner's description of the underlying events. The bishop of the petitioner's church states that the petitioner is a clerk for his ward, a position that requires honesty and good character. The bishop notes that the petitioner is trying to overturn his conviction, but the petitioner submits no evidence on appeal that his conviction has been vacated.

In addition, U.S. Citizenship and Immigration Services (USCIS) and public records show that the petitioner was arrested and charged with another criminal offense prosecuted before the Superior Court of California, San Diego County in 2012 while this appeal was pending. Throughout these proceedings, the petitioner has continued to assert his good moral character, but he has never discussed or even acknowledged his 2012 arrest and the ultimate disposition of the additional criminal charge(s).

defects in the criminal proceedings, he retains a conviction under section 101(a)(48)(A) of the Act for immigration purposes. *See Pickering v. Gonzales*, 465 F.3d 263, 266 (6th Cir. 2006) (affirming this interpretation of conviction at section 101(a)(48)(A) of the Act, as stated by the Board of Immigration Appeals in *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), while vacating that decision on other grounds).

In summary, the record shows that D-S- was granted a protective order against the petitioner based on his past abuse of her. *See* Cal. Fam. Code Ann. § 6300 (West 2009) (stating that a protective order is granted upon a showing of “reasonable proof of a past act or acts of abuse.”). The petitioner was convicted of intentionally and knowingly violating that protective order under section 273.6(a) of the California Penal Code. The petitioner’s conviction shows that he committed an unlawful act which adversely reflects upon his moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner has also not acknowledged his 2012 arrest while these proceedings were pending and he has not provided any evidence of the disposition of the resultant criminal charge(s). He has consequently failed to demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

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). On appeal the petitioner has established his joint residence with his former spouse, but he has not demonstrated that he is a person of good moral character. Consequently, the appeal will remain dismissed and the petition will remain denied.

ORDER: The motion is granted. The August 7, 2013 decision of the Administrative Appeals Office is affirmed as modified above and the petition remains denied.