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U.S. Citizenship
and Immigration
Services

Date: OCT 17 2014

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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,

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

f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, 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 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 because she determined that the petitioner did not establish that his wife subjected him to battery or extreme cruelty during the marriage.

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

Applicable Law

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

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 was born in Mexico and indicated on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that he first entered the United States without inspection on March 23, 1993. He married M-E-, a U.S. citizen, on [REDACTED] County, Oregon.¹ The petitioner filed the Form I-360 self-petition on March 12, 2012. On March 27, 2012, the director issued a Request for Evidence (RFE) of the petitioner's good moral character, and the petitioner timely responded. The director issued a second RFE on April 30, 2013, seeking evidence that, among other things, the petitioner was subjected to battery or extreme cruelty by M-E-. The petitioner responded with additional evidence that the director found insufficient. The director denied the petition, determining that the petitioner had not established that his wife subjected him to battery or extreme cruelty during the marriage.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Battery or Extreme Cruelty

The petitioner initially provided an affidavit in which he stated that "after 2 years of our living together [M-E-] became so cruel to me because she will sometimes tell that without her I cannot get paper in this country." The petitioner asserted that his wife "refused to file paper for me so she could control my life," but that he never called the police because he was afraid that it would affect his immigration status and that he would lose his marriage, his house, and access to his U.S. citizen children, including one who is severely disabled and dependent on the petitioner's income for his medical care. The petitioner explained that although his wife "sometimes tells me that she will call immigration for me so they can deport me...I always tell her I really from my heart love you." He concluded by stating that M-E- "is a very nice person but because I do not have papers she threatens

¹ Name withheld to protect the individual's identity.

me so many times and she even withdraws her petition for me because she wants to get control of my life.” The petitioner included a copy of the withdrawal notice for the Form I-130 petition that his wife had filed.

In response to the April 30, 2013 RFE, the petitioner submitted an affidavit in which he stated that his 8-year old daughter found a bag of marijuana in his stepson’s bedroom but that his wife refused to let him talk to his stepson about the drugs. The petitioner indicated that he was afraid to tell anyone about the incident because he feared that M-E- might call the police and the police would find the drugs in the petitioner’s home. The petitioner asserted that after this incident M-E-’s “tone of voice and body language has been different in our relationship.” The petitioner clarified his previous statement about his wife being “nice,” explaining that while M-E- was nice to him in private, she liked to be in control when they were out with friends. He indicated that M-E- tried to control him for years by delaying the filing of a Form I-130 petition on his behalf until they had been married five years, and then repeatedly suggesting that she would withdraw the petition if he did not obey her requests. For example, the petitioner alleged that his wife said she would withdraw the petition if she saw him looking at other women or heard him talking to them. The petitioner stated that his wife became confrontational when she saw him talking to the girlfriend of his friend and “started calling me all sorts of names and that if I want to continue to live in this country I have to listen to whatever she say and do whatever she told me to do otherwise I will be gone.” He indicated that arguing became part of their relationship. The petitioner statements do not indicate that his wife’s behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also provided letters from friends and family members in response to the RFE, but these individuals did not discuss any specific incidents of abuse or extreme cruelty, or otherwise include probative information establishing that the petitioner’s wife subjected him to physical violence or extreme cruelty.

On appeal, the petitioner asserts that his wife subjected him to extreme cruelty because “she constantly calls me at my work place trying to find out what I am doing, she tries to isolate me from my friends that we go to the gym together and even my co-workers, even the immigration papers she refused me to see them she has absolute control of the paper.” The petitioner also states that his wife tried to listen in on his telephone conversations, and “would get mean again and tell me not to look at other women,” explaining that M-E-’s treatment made him feel worthless.

The petitioner also submits affidavits from several friends who state that the petitioner’s wife was jealous, acted rude to them, seemed angry when she watched him play soccer with his team, never wanted him to socialize with his friends after soccer games, and never initiated conversations with them. [REDACTED] the petitioner’s co-worker, indicates that M-E- frequently called the petitioner at work and left voicemails accusing him “of a variety of things, such as cheating.” [REDACTED] asserted that the petitioner’s wife “would treath [sic] him bad around people try to argue about anything she would act jealouse [sic] with any girls around him.” The petitioner and his friends do not describe any specific incidents of battery or provide more probative details about M-E-’s alleged extreme cruelty.

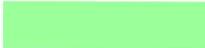
The petitioner asserts that his wife's treatment of him constituted extreme cruelty in accordance with a Ninth Circuit Court of Appeals (Ninth Circuit) decision in which the court determined that Congress distinguished between battery and extreme cruelty, but found that the term "[e]xtreme cruelty simply provides a way to evaluate whether an individual has suffered psychological abuse that constitutes domestic violence." *Hernandez v. Ashcroft*, 345 F.3d. 824, 834 (9th Cir. 2003). The record does not support the petitioner's claims.

First, in compliance with the statute and regulations, the director addressed all the relevant evidence submitted by the petitioner below, accurately assessed its weight and credibility and explained why it did not establish battery or extreme cruelty. See section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i) (mandating the agency's consideration of "any credible evidence relevant to the petition," but reserving the determination of what evidence is credible and its weight to the agency's "sole discretion"). Even if the director had neglected to consider certain relevant evidence, we have reviewed the record de novo and considered the additional statements of the petitioner and his mother submitted on appeal.

Further, the petitioner has not established that the facts constituting extreme cruelty in *Hernandez* are analogous to the actions of the petitioner's wife as described in the record. The plaintiff in *Hernandez* was subjected to years of her abusive spouse's cycle of violence including brutal beatings and stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, and periods of contrition and emotional manipulation to convince the petitioner to return to him after she had sought refuge with a relative in the United States. *Hernandez v. Ashcroft*, 345 F.3d at 829-32, 840-41. The *Hernandez* court determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Id.* at 840.

The record does not establish that the petitioner's wife subjected him to extreme cruelty as that term is defined by the regulation or that her actions are analogous to the extreme cruelty discussed in *Hernandez*. For instance, there is no evidence that the petitioner fled his home out of fear. Instead, the petitioner stated in his affidavit that he remained with his wife until she moved out of their home. In this case, the record does not demonstrate that the petitioner's wife's verbal insults, behavior, and demands were similarly part of any overall pattern of violence or otherwise constituted extreme cruelty under the regulation.

After a careful review of all of the relevant evidence, including the petitioner's brief submitted on appeal, the petitioner has not established that M-E- subjected him to battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi). The record shows that the petitioner's wife yelled at him in front of friends, did not immediately file a Form I-130 petition on his behalf after their marriage, ultimately withdrew the petition, asked the petitioner not to confront her son about her son's possession of marijuana, and asked that the petitioner not speak to or look at other women. However, the record does not establish that the petitioner's wife ever battered him or that her behavior included other actual or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.



Good Moral Character

As an additional matter, the petitioner has not established his good moral character.² Primary evidence of a self-petitioner’s good moral character is his or her affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the petitioner’s residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v).

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 petitioner did not initially provide the required evidence of his good moral character. In the March 27, 2012 RFE, the director asked the petitioner to submit an affidavit support by the required police clearances or records from each place he had resided for at least six months during the three-year period prior to filing the Form I-360 self-petition. In addition, the director specifically requested the following:

If your police clearance letter or your own statement indicates that you have been arrested or charged with any crime, please submit the following:

- 1. Copies of the arrest report(s);

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a de novo basis).

2. Copies of court documents showing the final disposition of the charge(s); and
3. Relevant excerpts of law for that jurisdiction showing the maximum possible penalty for each charge.

In response to the RFE, the petitioner submitted an affidavit in which he stated "I have not committed an act that may reflect upon my moral character, since I met [my wife] I told myself and let her know that I would like us to spend the rest of our life together" [sic]. The petitioner submitted his computerized criminal history record from the state of Oregon. It reflects the following criminal record as of April 5, 2012:

1. On January 10, 1996, the petitioner was arrested by the [redacted] Oregon police department for Failure to Appear on a charge of Second Degree Theft, a misdemeanor under the Oregon Revised Statutes (OR. REV. STAT. § 162.195). On January 23, 1996, he was convicted of Theft in the Third Degree, a misdemeanor (OR. REV. STAT § 164.043). The state transcript indicates that the petitioner was sentenced to one year of probation and a fine of \$150.00.
2. On June 5, 1996, the petitioner was arrested by the [redacted] Oregon police department, and charged with Theft in the Third Degree (OR. REV. STAT. § 164.043). On June 17, 1996, he was convicted in the [redacted] Oregon, District Court of Probation Violation (OR. REV. STAT § 137.550). The transcript indicates that his prior probation was continued and he was fined \$200.00.
3. On March 24, 2007, the petitioner was arrested by the [redacted] Oregon police department and charged with contempt of court - violation of a restraining order (OR. REV. STAT § 033.045). It appears that no complaint was filed. The record does not indicate the outcome of this arrest.

The petitioner failed to provide the requested arrest records and court documents showing the charging documents for his arrests and the final disposition of the charges. On that basis alone, the petition may not be approved. 8 C.F.R. § 103.2(b)(14). Although the petitioner provided a transcript of his arrests it provides only a summary of the charges and dispositions and is not equivalent to the requested arrest reports and court documents showing the underlying charging documents and disposition of his offenses. It lacks sufficient information to allow USCIS to conclude that the petitioner has established that he has good moral character. For example, the transcript shows that he was convicted of Theft in the Third Degree on January 23, 1996. Theft is a crime involving moral turpitude. *See United States v. Esparza-Ponce*, 193 F.3d 1133 (9th Cir. 1999). The transcript also shows the petitioner's January 1996 arrest based upon his Failure to Appear on a prior charge of Second Degree Theft; however, the transcript contains no information about the underlying arrest and charge of Second Degree Theft. Although the petitioner might be eligible for the petty offense exception under section 212(a)(2)(A)(ii) of the Act if he has no other crimes involving moral turpitude, without the underlying charging documents and court records showing the nature and underlying offenses that led to the petitioner's June 5, 1996 theft arrest, it is not possible to determine whether this second theft offense was a crime involving moral turpitude. Even if he was not ultimately convicted of the second theft offense in June 1996, he still could be found to have committed two crimes involving moral turpitude and therefore fall within the classes of persons described in section 212(a)(2)(A)(i) of the Act and be ineligible for the petty offense

exception at section 212(a)(2)(A)(ii) of the Act. *See Matter of S-R-*, 7 I&N Dec. 495, 499 (BIA 1957) (the test for the petty offense exception for the commission of a single crime involving moral turpitude is not whether an individual was convicted of or admits having committed the offense, but whether he or she has in fact committed a crime involving moral turpitude); *c.f. Paredes-Urrestarazu v. U.S. I.N.S.*, 36 F.3d 801 (9th Cir. 1994) (depending on the underlying conduct, the existence of an arrest even without conviction may reveal an alien's "bad character or undesirability as a permanent resident" and is therefore relevant in performing the analysis required by section 212(c)" of the Act).

In this case, we cannot make a proper determination as to whether all of the offenses the petitioner committed, was arrested for, or convicted of qualify as crimes involving moral turpitude because the petitioner has not provided the requested arrest records and the records of conviction. However, even without this documentation the petitioner has failed to establish his good moral character for other reasons. The petitioner does not discuss his convictions in his affidavits and we cannot determine whether any of his offenses were committed under extenuating circumstances. Unless a self-petitioner establishes extenuating circumstances, he or she will be found to lack good moral character if he or she committed or was convicted of 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. 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). Although the petitioner submitted an affidavit, he does not discuss his offenses and in fact asserts that he has not been convicted of an act that reflects on his moral character.

The relevant evidence in the record shows that the petitioner was convicted of one or more unlawful acts which adversely reflect upon his character and fall below the standards of the average citizen in the community; however, because the petitioner has failed to submit specific evidence in response to an RFE, the agency is unable to find that he has good moral character. 8 C.F.R. § 103.2(b)(14). Further, the petitioner did not discuss his arrests and convictions and therefore has not demonstrated any extenuating circumstances. Consequently, regardless of whether his arrests and convictions were crimes involving moral turpitude, 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 demonstrated M-E- subjected him to battery or extreme cruelty during the marriage, and that he has good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.