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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: APR 0 8 2015

IN RE: 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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

for 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. The petitioner filed three subsequent motions, one of which we rejected, and two of which we considered on their merits, each time affirming our decision to dismiss the appeal. In support of his latest motion, the petitioner 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).

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:

> (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.
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> . . .
>
> (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 California on and they were divorced on The petitioner filed the instant Form I-360 self-petition 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

[1] Name withheld to protect the individual's identity.

joint residence and his good moral character. The petitioner filed another motion with additional evidence. We granted that motion and found that the petitioner's new evidence demonstrated that he resided with his former spouse; however, he did not establish 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. A full review of the record, including the new evidence submitted on motion, does not overcome the final remaining basis for denial of the petition. The appeal will remain dismissed for the following reasons.

Good Moral Character

In our August 7, 2013, decision, we determined that the petitioner's May 2009 conviction for violating a protective order, as described in section 273.6(a) of the California Penal Code, evidenced a lack of good 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). We affirmed this determination in our July 28, 2014, decision, finding the petitioner's assertions of innocence and ineffective assistance of counsel were insufficient to establish extenuating circumstances that would allow him to demonstrate his good moral character despite his conviction. In addition, we noted that we cannot look behind the petitioner's conviction to reassess his guilt or innocence and that he also failed to discuss his 2012 conviction. We hereby incorporate by reference both of these prior decisions.

In support of the instant motion, the petitioner reasserts his innocence regarding his 2009 conviction and submits the transcript of his May 2009 jury trial during which he was convicted of violating D-S-'s protective order against him. The transcript establishes the circumstances surrounding the petitioner's arrest and demonstrates that after departing D-S-'s boyfriend's residence, and driving by D-S- while she reported the petitioner's violation of the protective order to police, the petitioner then returned to the street where he knew D-S- to be standing and stopped his vehicle to speak with D-S-. This action resulted in his arrest for violating D-S-'s restraining order. A review of the transcript does not establish the existence of extenuating circumstances that forced the petitioner to violate the restraining order.

In his brief on motion, the petitioner states that the judge who initially issued the restraining order that underlies petitioner's conviction subsequently vacated the order because it was based on "false claims" of the petitioner's prior abuse. However, the evidence of record does not support the petitioner's assertions. As evidence in support of an earlier filing, signed by the petitioner on May 10, 2011, the petitioner submitted a copy of D-S-'s Request to Vacate Restraining Order, filed on August 11, 2008.[2] In the document, D-S- requests that the restraining order be lifted because the

[2] When adjudicating VAWA petitions, we typically do not consider any statements of an abusive spouse. However, in the instant matter, the petitioner submitted this documentation in support of his claim, and in so doing, requested that it be considered. The document thus forms part of the administrative record, and we reference it here as relevant evidence submitted by the petitioner.

couple had reconciled. There is no evidence in the administrative record to show that the judge vacated the restraining order because it was issued based on false statements.

In support of the instant motion, the petitioner also submits evidence related to his 2012 conviction for violating section 653m(a) of the California Penal Code, which prohibits "[t]elephone calls or contact by electronic communication with intent to annoy." In a personal affidavit dated August 20, 2014, the petitioner stated that he did not previously address his 2012 conviction in these proceedings because he was subsequently detained by U.S. Immigration and Customs Enforcement (ICE) and thus believed that USCIS was aware of the conviction. The petitioner recounted that during a manic episode, D-S- again accused him of violating a protective order. The petitioner was arrested and given a bond of $240,000, due to the number of charged violations, which he was unable to pay. After two months in jail, the petitioner agreed to plea to one count of violating section 653m(a) of the California Penal Code for using obscenity during a phone call. The petitioner states that the other charges were dropped because the only order D-S- had against him was a "no negative contact" order. The petitioner's record contains a copy of the order. The petitioner admits that he left a voicemail for D-S- telling her, "Go to hell! Stop calling me." The petitioner states that he left this message during one of D-S-'s manic episodes, and he was not sure of the date. In light of the circumstances surrounding the petitioner's 2012 conviction for violating section 653m(a) of the California Penal Code, we find that the 2012 conviction does not adversely reflect on the petitioner's moral character.

Nonetheless, *de novo* review of the record, as supplemented on motion, does not establish the petitioner's good moral character. As explained in our prior decisions, the petitioner's May 2009 conviction for violating a protective order, as described in section 273.6(a) of the California Penal Code, adversely reflects on 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 documentation submitted on motion does not establish extenuating circumstances with respect to the 2009 conviction. The petitioner has thus 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). Here, that burden has not been met. The appeal will remain dismissed.

ORDER: The motion is granted. The August 7, 2013, and July 28, 2014, decisions of the Administrative Appeals Office, modified as described above, are affirmed. The appeal remains dismissed and the petition remains denied.