



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **APR 15 2015** 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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center acting director (the director) denied the immigrant visa petition. 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner was a person of good moral character under section 101(f)(7) of the Act. The petitioner filed a motion to reopen, which the director granted. On motion, the director agreed that section 101(f)(7) of the Act did not apply to the petitioner; however, the director found that the petitioner nonetheless failed to establish his good moral character on other grounds.

On appeal, the petitioner submits a brief.

*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 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, a citizen of Mexico, represents that he entered the United States without inspection, admission, or parole in 1999. The petitioner married R-A-<sup>1</sup>, a U.S. citizen, on [REDACTED] 2003, in [REDACTED] Washington, approximately two years after the birth of the couple's son. On [REDACTED] 2009, the petitioner was arrested for domestic violence related fourth degree assault on R-A- in violation of section 10.16.010 of the [REDACTED] Municipal Code. R-A- reported that the incident leading to the police report occurred on [REDACTED] 2008. A bench warrant was subsequently issued and served for the petitioner's arrest. On [REDACTED] 2009, the petitioner pled guilty, and the court sentenced him to 364 days of suspended jail time, a \$5,000 fine (\$4,700 of which was suspended), other fines and fees of \$593.00, two years of probation, victim awareness education,

<sup>1</sup> Name withheld to protect the individual's identity.

domestic violence treatment, and a no contact order valid until August 27, 2011. The petitioner complied with all portions of his sentence, and the case was closed on November 22, 2011. The petitioner asserts that he and R-A- separated on the date of his arrest.

The petitioner filed the instant Form I-360 self-petition on April 8, 2013. The director issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character. The petitioner responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought. The director denied the petition, erroneously finding that the petitioner failed to establish his good moral character under section 101(f)(7) of the Act as an individual who has been confined to a penal institution for more than 180 days. The petitioner timely filed a motion to reconsider, which the director granted. In her decision on motion, the director again denied the petition, acknowledging that section 101(f)(7) did not apply to the petitioner, but finding that he nonetheless failed to demonstrate his good moral character due to his conviction for fourth degree assault. The petitioner timely appealed.

On appeal, the petitioner submits a brief, in which he asserts that the director did not give him proper notice of the ground for denial, and that he has submitted sufficient evidence to demonstrate his good moral character in spite of the conviction.

We review these proceedings *de novo*. A full review of the record, as supplemented on appeal, does not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

#### *Good Moral Character*

In his initial affidavit, dated April 4, 2013, the petitioner recounted that on [REDACTED] 2008, R-A- obtained a no contact order based on her report to police that he had hit her and sent her a threatening text message. The petitioner stated that he was unaware of the no contact order until he was arrested on [REDACTED] 2009. The petitioner indicated that he ultimately pled guilty to the charge because he was missing too much work for court appearances. The petitioner described R-A-'s abuse, but also indicated that he broke a glass tabletop with his hand and punched a dent in a wall after their arguments. He also stated that he cut himself with a broken glass bottle during an argument on purpose so that R-A- would not throw him out of the house. The petitioner submitted several letters from friends and neighbors attesting to his good moral character; however, only two of these individuals knew him during the time when he was arrested and convicted. None of the letters attested to knowledge of the petitioner's conviction. In response to the RFE, the petitioner submitted a progress report, dated September, 8, 2010, indicating that he completed his court ordered one-year domestic violence treatment program. The petitioner also submitted a personal affidavit, but did not further address his assault conviction.

On motion, the petitioner provided a printout of the [REDACTED] Municipal Court docket for his assault conviction. The docket indicates that the petitioner made several court appearances during 2009, but ultimately pled guilty on [REDACTED] 2009, approximately two weeks before the scheduled jury trial.

In her decision on motion, the director considered the petitioner's domestic violence assault conviction, and found that the petitioner failed to establish his good moral character. On appeal, the petitioner asserts that the director failed to provide notice that his domestic violence conviction would be weighed against him, and thus failed to provide him with an opportunity to respond. Although the petitioner requests an opportunity to respond to the director's decision, he does not submit any additional evidence to establish his good moral character on appeal.

The petitioner is required to demonstrate his good moral character for eligibility under section 204(a)(1)(A)(iii) of the Act. INA § 204(a)(1)(A)(iii)(II)(bb). The offenses that preclude a petitioner from establishing good moral character are delineated at section 101(f) of the Act. Section 101(f) of the Act also provides for discretion, stating in pertinent part, that "[t]he fact that any person is not within any of the [enumerated] classes shall not preclude a finding that for other reasons such a person is or was not of good moral character." In exercising discretion under this section, USCIS is guided by the regulation at 8 C.F.R. § 204.2(c)(1)(7), which states:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he . . . 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 petitioner asserts in these proceedings that he did not assault his spouse, and pled guilty to domestic violence assault out of expediency. Despite the petitioner's assertions of innocence, however, we may not go behind a record of conviction and find that the petitioner did not commit the crime to which he pled guilty. Rather, we consider the totality of the relevant evidence to determine if the petitioner has established extenuating circumstances with respect to his conviction. The petitioner submitted a personal affidavit with a brief description of the day upon which R-A made a police report indicating that the petitioner hit her and sent her a threatening text message. The petitioner also related in the same affidavit that he committed acts of aggression, such as breaking a table and denting a wall, during moments of anger. Although on appeal, the petitioner asserts that he previously submitted witness statements regarding his arrest for domestic violence assault, the record contains no such statements from witnesses. The petitioner has not indicated that there were any other individuals present at the time the incident occurred.

In support of his good moral character, the petitioner submitted evidence that he completed his domestic violence treatment program, which states that the petitioner "shows motivation to change his behavior and [is] learning new skills to deal [with] his belief issues, [which] he learned from his mother and grandfather." The petitioner also submitted an affidavit from his aunt, dated November 13, 2013, indicating that she was aware of R-A's report that the petitioner hit her, and that she does not believe it because the petitioner is not a violent person. However, in his personal affidavit, the petitioner recounted acting with violence on several occasions after arguments with R-A. The petitioner's descriptions of his own violent behavior, in addition to the domestic violence treatment program report, undermine the petitioner's aunt's assertions that the petitioner could not have committed the assault on his spouse to which he pled guilty. Further, none of the

letters attesting to the petitioner's good moral character reference the petitioner's conviction, and are thus of limited probative value.

The petitioner was convicted of domestic violence related fourth degree assault against his spouse, which adversely reflects on his good moral character. When viewed in the aggregate, the relevant evidence does not demonstrate extenuating circumstances with respect to the petitioner's conviction. Accordingly, the director did not err in finding that petitioner has failed to establish his good moral character, as required under section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has not overcome the director's ground for denial. 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. 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 be dismissed, and the petition will remain denied.

**ORDER:** The appeal is dismissed.