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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 28 2015**

Office: VERMONT SERVICE CENTER

File: 

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:



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 Acting Director of the 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 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 that the petitioner was a person of good moral character.

### *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.

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) . . . .

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.”

Section 204(a)(1)(C) of the Act further provides:

Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner’s admissibility under section 212(a) or deportability under section 237(a) shall not bar the [Secretary of Homeland Security] from finding the petitioner to be of good moral character under subparagraph (A)(iii) . . . if the [Secretary] finds that the act or conviction was connected to the alien’s having been battered or subjected to extreme cruelty.

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:

*Evidence for a spousal self-petition –*

(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 Mexico who claims to have initially entered the United States without inspection in May 2002.<sup>1</sup> The petitioner married W-I-<sup>2</sup>, a U.S. citizen, on [REDACTED]. The petitioner filed the instant Form I-360 on August 26, 2013. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's good moral character. The petitioner timely responded with additional evidence of letters from his wife, mother-in-law, stepdaughter, and friends, which the director found insufficient and issued a Notice of Intent to Deny (NOID) which again requested evidence of the petitioner's good moral character. The petitioner responded with a letter from himself, two training certificates, and the disposition for his child abuse conviction. The director found the evidence was insufficient to establish the petitioner's good moral character and denied the petition. The petitioner timely appealed.

We review these proceedings *de novo*.

### *Good Moral Character*

On May 18, 2004, the petitioner pled guilty to child abuse in violation of Colorado Revised Statutes (Colo. Rev. Stat.) § 18-6-401(1)(a), and was ordered to serve a deferred sentence of one year of probation, take parenting classes, and pay costs. The director determined that child abuse is a crime involving moral turpitude, which barred a finding of the petitioner's good moral character under section 101(f)(3) of the Act.

The petitioner does not contest that his conviction under Colo. Rev. Stat. § 18-6-401(1)(a)<sup>3</sup> is a crime involving moral turpitude, which bars a finding of his good moral character under section 101(f)(3) of the Act. Instead, on appeal, the petitioner claims that although he was convicted of child abuse he did not commit the crime, but instead "took the blame . . . to avoid [his wife's] wrath." He

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<sup>1</sup> U.S. Citizenship and Immigration Services (USCIS) records indicate that the petitioner also claims to have last entered the United States without inspection on May 1, 2011.

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

<sup>3</sup> Colo. Rev. Stat. § 18-6-401 states, in pertinent part, the following:

(1)(a) A person commits child abuse if such person causes an injury to a child's life or health, or permits a child to be unreasonably placed in a situation that poses a threat of injury to the child's life or health, or engages in a continued pattern of conduct that results in malnourishment, lack of proper medical care, cruel punishment, mistreatment, or an accumulation of injuries that ultimately results in the death of a child or serious bodily injury to a child.

asserts that his wife committed the crime and he was afraid she would subject him to “physical abuse and imminent homelessness if he did not take the blame.” He further asserts that his wife had committed prior acts of child abuse and would have been arrested so she “coerce[d] the petitioner into taking the blame and pleading guilty.”

Although the petitioner declares his lack of culpability for child abuse, 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). However, under section 204(a)(1)(C) of the Act, a conviction for a crime involving moral turpitude will not necessarily preclude a self-petitioner from establishing his or her good moral character if she or he demonstrates that the conviction was connected to the battery or extreme cruelty. In this case, the relevant evidence does not establish the requisite connection.

The police report related to the 2004 incident involving the petitioner’s stepdaughter indicates that when the petitioner’s 8-year old stepdaughter refused to clean her room, the petitioner took a habanero pepper and put it in her mouth, forcing her to eat the pepper as punishment. The petitioner’s stepdaughter indicated that the petitioner grabbed her with force and forced her onto the bed. In supplemental notes, the police officer indicated that there was a “three inch bruise on the right side of her cheek which was reported to have been caused by her moms [sic] husband,” and that she was still experiencing pain two days after the incident.

In his affidavit dated August 21, 2013, the petitioner stated that “[e]verything was good as a couple and we decided to get married . . . and everything continued to be fine until [W-I -] just got upset one day” and accused the petitioner of having a girlfriend. He stated that she hit him and threw him out of their home and upon his return a few hours later she hit his left arm with a pot and cut him. The petitioner indicated that the police arrived and he reported the 2010 incident. The petitioner did not discuss any incident involving his stepdaughter in his initial letter or any other instance of claimed abuse perpetrated by W-I- against him.

In his letter dated March 29, 2014, the petitioner stated that his stepdaughter made accusations against him and W-I-, and that although W-I- was the one who injured his stepdaughter, he took the blame so his wife would not be arrested. The petitioner claimed that if W-I- was arrested she would have been angry and behaved “violently” towards him and thrown him out of their home. He stated that he did not “fight” the charge because he was told that “they will not put it in [his] record.” The petitioner’s explanation that he took the blame for W-I-’s actions does not take into account his stepdaughter’s detailed statement to the police describing the petitioner as the aggressor.

The petitioner has not shown that W-I-’s abuse was a causative or contributing factor to his culpable actions. Consequently, as a matter of discretion, the petitioner has not established by a preponderance of the evidence that his conviction for a CIMT was connected to him having been battered or subjected to extreme cruelty, and is therefore unable able to establish his good moral character through the application of section 204(a)(1)(C) of the Act. Section 101(f)(3) of the Act thus precludes a finding

of the petitioner's good moral character, as required under section 204(a)(1)(A)(iii)(II)(bb) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii).

*Conclusion*

In these proceedings, 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.