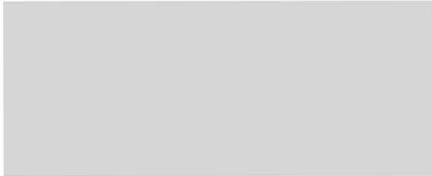




U.S. Citizenship  
and Immigration  
Services

(b)(6)



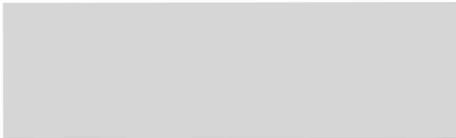
DATE: **AUG 07 2015**

FILE #: [REDACTED]  
PETITION RECEIPT #: [REDACTED]

IN RE: 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:



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](http://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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Vermont Service Center (the director) denied the petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion pursuant to a Stipulation of Dismissal and Order, dated May 29, 2015, entered in Case No. [REDACTED] before the U.S. District Court for the Central District of California (the Stipulation). The motion will be denied.

The petitioner seeks immigrant classification as an alien battered or subjected to extreme cruelty by a United States citizen spouse. *See* Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii).

The director denied the petition on the basis that the petitioner did not establish that he is a person of good moral character. In our appellate decision, we concurred with the director, dismissing the petitioner's appeal on December 10, 2014. As our prior decision is part of the record, we shall repeat only certain facts as necessary here.

#### *Pertinent Facts and Procedural History*

The petitioner, a citizen of Mexico, claims that he first entered the United States in 1995 without being inspected, admitted or paroled by an immigration officer. The petitioner states that he met L-R-<sup>1</sup>, a U.S. citizen, in 1998. The petitioner and L-R-'s first child was born in [REDACTED] in [REDACTED] California, and the couple married in [REDACTED], California on [REDACTED], 2001. The petitioner and L-R- subsequently had two other children.

On [REDACTED] 2009, the petitioner was arrested for inflicting corporal injury on a spouse. On [REDACTED] 2009, the [REDACTED] California Superior Court accepted the petitioner's no contest plea to the reduced charge of battery against a spouse in violation of California Penal Code (CPC) sections 242 and 243(e)(1). The court found a factual basis for the petitioner's plea, sentenced him to 60 days in jail, 36 months of probation and ordered him to pay costs and complete a domestic violence batterer's program. The court also issued a protective order against the petitioner. The petitioner filed the instant Form I-360 self-petition on May 29, 2012. The director issued a Request for Evidence (RFE) of the petitioner's good moral character. The petitioner responded with additional evidence, including the petitioner's October 16, 2012 motion to withdraw his plea, which the director found did not establish eligibility for the benefit sought and the director denied the petition.

The petitioner appealed the director's decision, submitting a brief, and additional evidence. The additional evidence included, but was not limited to, court docket sheets related to the 2009 arrest, conviction, and subsequent court actions showing that the petitioner's motion to withdraw his plea was denied without prejudice on November 9, 2012; copies of affidavits that support the 2012 motion to withdraw the plea; and copies of affidavits previously submitted in support of the Form I-360 self-petition. On December 10, 2014, we dismissed the petitioner's appeal, determining that the petitioner

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

did not commit the acts that led to his conviction under extenuating circumstances<sup>2</sup> and he did not provide dispositions for his April 17, 2012 arrest for possession of a controlled substance.

Pursuant to the Stipulation, we reopened our prior dismissal to afford the petitioner an opportunity to submit evidence that his counsel stated was “newly available.” On June 30, 2015, we received the following evidence from the petitioner’s counsel: a copy of an undated letter apparently from L-M-; electronic mail messages exchanged between L-M- and the petitioner’s counsel; an unsigned letter, dated October 25, 2009 purportedly from L-M-, in which she asks forgiveness from the petitioner’s family; an unsigned letter dated October 16, 2011 purportedly from L-M- to the petitioner in which she asks for his forgiveness; court docket sheets dated February 9, 2014, showing that the petitioner did not re-file a motion to withdraw his plea; a Certification of No Record and a Notice Regarding Recent Correspondence from the Superior Court of California for [REDACTED] as well as documents previously submitted with the Form I-360 self-petition that are labeled by counsel as “Evidence Previously Submitted Demonstrating Fraudulent Charges Against the [Petitioner].”

We have reviewed the record *de novo* and again find that the petitioner has not established his requisite good moral character. We will accordingly deny the motion for the following reasons.

*Relevant Law and Regulations*

A. Abused Spouse Immigrant Petition

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).

B. Good Moral Character

“Good moral character” is defined at section 101(f) of the Act, 8 U.S.C. § 1101(f), which states, in pertinent part, that:

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 –

...

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<sup>2</sup> An abused spouse may be found to have good moral character, despite committing unlawful acts that adversely reflect upon his or her moral character, if the acts were committed under extenuating circumstances. See 8 C.F.R. § 204.2(c)(1)(vii).

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraph (A) [relating to crimes involving moral turpitude] . . . if the offense described therein . . . was committed during such period;

\* \* \*

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 regulations implementing section 204(a)(1)(A)(iii) of the Act are at 8 C.F.R. § 204.2(c), and state, in pertinent part, the following about good moral character determinations in abused spouse immigrant petitions:

(1)(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. . . .

C. Evidentiary Guidelines

The evidentiary guidelines for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are explained 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.

*Discussion*A. The Petitioner's Conviction for Spousal Battery

The issue before us is whether the petitioner is a person of good moral character such that he may be granted immigrant status under section 204(a)(1)(A)(iii) of the Act. As we discussed in our prior decision dismissing the appeal, the petitioner's conviction for battering L-R- was not a per-se bar to finding him a person of good moral character because his conviction was not categorically a crime involving moral turpitude (CIMT) and even if it was, it would meet the so-called "petty offense" exception at section 212(a)(2)(A)(ii)(II) of the Act, 8 U.S.C. § 1182(a)(2)(A)(ii)(II). See *AAO Decision*, dated December 10, 2014. We determined that the petitioner lacked good moral character based on the language in the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii).<sup>3</sup> Specifically, we found that the petitioner lacked good moral character because he did not demonstrate that his conviction for battering L-R- was committed under extenuating circumstances. *Id.* at 4-5. We also noted as a negative factor to a finding of good moral character the petitioner's failure to explain or provide disposition documents for an [REDACTED] 2012 arrest for a controlled substance violation. *Id.*

The petitioner's motion evidence consists of various letters and affidavits from L-R-, the petitioner, and the petitioner's friends that state that the petitioner did not, in fact, inflict corporal injury on or batter L-R- and that he only pled guilty to the offense because he needed to remain in the United States to care for his children. The petitioner has not claimed that he committed the unlawful acts that led to his conviction for battering L-R- under extenuating circumstances; instead, he claims that he did not commit the acts that formed the basis of the criminal charges under CPC §§ 242 and 243(e)(1). Although we acknowledge the sympathetic facts that are present in this matter, including the abusive relationship in which the petitioner found himself with L-R-, we cannot look behind the petitioner's 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 record reflects that the petitioner was convicted of battery against his spouse, as a result of which he was ordered to participate in a year-long domestic violence batterer's program and was the subject of a protective order. The criminal court records reveal that the petitioner understood the criminal charges against him, was represented by counsel, and the criminal court found that the plea was based on fact.

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<sup>3</sup> Section 101(f) of the Act provides that "[t]he 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) further prescribes that: "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 . . . ."

Although the regulation at 8 C.F.R. § 204.2(c)(1)(vii) permits us to assess whether a petitioner committed unlawful acts under extenuating circumstances, that is not the case here, where the petitioner is denying ever having committed the acts that led to his conviction for spousal battery. We therefore reaffirm our earlier finding that the petitioner's conviction for spousal battery adversely reflects upon his moral character.

B. The Petitioner's [REDACTED] 2012 Arrest

On February 28, 2013, the director issued an RFE, notifying the petitioner that "it appears you were arrested on [REDACTED] 2012 for Possession of a Controlled Substance." The director noted that the petitioner did not provide an explanation for the arrest or evidence regarding a final disposition of the charge. In response, the petitioner's counsel stated that the director erred in stating that the petitioner had been arrested for a controlled substance violation, and that this arrest "is related only to an old case from [REDACTED], 2009 and the fact that [the petitioner] was an illegal immigrant." The petitioner submitted a May 8, 2013 "Certification of No Record" from the Deputy Clerk of the Superior Court of California, [REDACTED] California in which she stated that she searched records relating to an arrest on [REDACTED] 2012 under the names of "[REDACTED] A.K.A. [REDACTED]" and found no records.

On motion, the petitioner submits another "Certification of No Record" from the Deputy Clerk of the Superior Court of California, [REDACTED] California, dated April 20, 2015, in which she states that she searched records relating to an arrest on [REDACTED] 2012 under the names of "[REDACTED] A.K.A. [REDACTED]" The Deputy Clerk stated in a "Notice Regarding Recent Correspondence," also dated April 20, 2015, that the petitioner's conviction for spousal battery was the only record that she was able to locate under the same names listed on the "Certification of No Record."

According to Service records, on [REDACTED] 2012, the petitioner was arrested by the [REDACTED] California Police Department under the name of [REDACTED] because he was in possession of methamphetamine. We note that the two "Certifications of No Record" that the petitioner has submitted refer to the petitioner as "[REDACTED] A.K.A. [REDACTED]" The Deputy Clerk does not indicate whether she searched the relevant databases under the name "[REDACTED]" We note further that the names, "[REDACTED]" and "[REDACTED]" are two names that the petitioner has used previously on various documents, including a Social Security card, an Employment Authorization Document, and the birth certificates of his children.

In response to the director's February 2013 RFE and in her appellate brief, counsel stated on the petitioner's behalf that the petitioner was never arrested for a controlled substance violation. However, information in Service records belies that assertion. The petitioner, himself, has provided no declaration, affidavit or other evidence to clarify the derogatory information in his administrative record regarding an arrest on April 17, 2012 for possession of a controlled substance, despite being put on notice on two occasions through the director's RFE and in our December 10, 2014 appeal decision that such an arrest occurred. See 8 C.F.R. § 204.2(c)(2)(v) ("Primary evidence of the self-petitioner's good

moral character is the self-petitioner's affidavit.”). Accordingly, the petitioner's arrest for possession of a control substance also adversely reflects upon his good moral character.<sup>4</sup>

*Conclusion*

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). The evidence submitted on motion does not demonstrate that a reversal of our prior decision is warranted because: (1) the petitioner has committed unlawful acts that adversely reflect on his good moral character and he has not demonstrated that he committed the criminal violations under extenuating circumstances; and (2) the petitioner has not addressed his [REDACTED] 2012 arrest for a controlled substance violation. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

**ORDER:** The motion is denied. The December 10, 2014 decision of the Administrative Appeals Office is affirmed and the appeal remains dismissed.

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<sup>4</sup> We note for the record that if the petitioner was convicted of possession of a controlled substance, his conviction would be a per-se bar to a finding of good moral character under section 101(f)(3) of the Act and he would be ineligible for a waiver of the offense under section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C), because his administrative record does not demonstrate that the controlled substance violation was for simple possession of 30 grams or less of marijuana. See *Determinations of Good Moral Character in VAWA-Based Self-Petitions*, Memorandum of William R. Yates, Associate Director of Operations, U.S. Citizenship and Immigration Services (January 19, 2005).