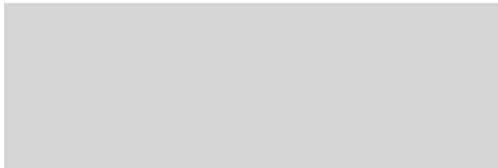




U.S. Citizenship
and Immigration
Services

(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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition. 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 his United States citizen spouse.

The director denied the self-petition because the record did not establish that the petitioner was a person of good moral character. The director also found that the petitioner's spousal abuse conviction was a crime of violence, and the petitioner was thus barred from receiving benefits under the Act.¹

On appeal, 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).

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 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

¹ The spousal abuse statute under which the petitioner was convicted has been found to constitute a crime of violence in other immigration contexts but such classification is not a bar to relief under the facts of this case.

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 states, in pertinent part, 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." Section 204(a)(1)(C) of the Act 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 regulation at 8 C.F.R. § 204.2(c)(1)(vii) prescribes that:

(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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Mexico, claims to have last entered the United States in 2002 without inspection, admission or parole. The petitioner married R-S-,² a U.S. citizen, on [REDACTED] in [REDACTED] California. He filed the instant self-petition on August 13, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good moral character. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish eligibility. The director denied the petition and the petitioner timely appealed.

On appeal, we determined that the director had not considered whether the petitioner's conviction was connected to the abuse to which he was subjected by his U.S. citizen wife. We, therefore, provided the petitioner an opportunity to submit evidence of extenuating or mitigating circumstances connected to the abuse and issued a Notice of Intent to Dismiss the appeal (NOID). The petitioner responded with a brief and additional evidence.

We review these proceedings *de novo*. A full review of the record does not establish the petitioner's eligibility. The petitioner's claims and additional evidence on appeal do not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Good Moral Character

The record shows that on [REDACTED] the petitioner was convicted of willful infliction of corporal injury on his wife in violation of California Penal Code (CPC) section 273.5(a). See CALIFORNIA PENAL CODE § 273.5(a)(2003) ("spouse abuse").³ The court determined the offense to be a misdemeanor, suspended sentence and granted probation for three years. The petitioner was ordered to serve 16 days in county jail and other conditions of probation.

² Name withheld to protect the individual's identity.

³ CPC § 273.5(a) states, in part, that any person who willfully inflicts corporal injury resulting in a traumatic condition upon his/her spouse, is guilty of a felony.

Section 101(f)(3) of the Act

Section 101(f)(3) of the Act precludes a finding of good moral character for an alien convicted of a crime involving moral turpitude (CIMT), other than a purely political offense. Here, the petitioner was convicted under California Penal Code § 273.5(a), which states in part that:

(a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that fine and imprisonment.

(b) Subdivision (a) shall apply if the victim is or was one or more of the following:

(1) The offender's spouse or former spouse.

See, CALIFORNIA PENAL CODE § 273.5(a)(2003).

The crime to which the petitioner pled guilty is a CIMT. See *Matter of Tran*, 21 I&N Dec. 291 (BIA 1996) (infliction of bodily injury upon a person with whom one has a close familial relationship is an act of depravity which is contrary to accepted moral standards); see also *Grageda v. INS*, 12 F.3d 919 (9th Cir. 1993) (conviction under CPC § 273.5(a) for infliction of corporal injury upon a spouse is categorically a CIMT) (modified on other grounds).

The director found that the petitioner's conviction under CPC § 273.5(a) was a CIMT, but because the conviction fell outside of the three-year period preceding the filing of the petition, it did not bar relief. The director's failure to examine the petitioner's character outside of the three years preceding the filing of his self-petition is erroneous and will be withdrawn. Here, the petitioner's conviction for a CIMT revealed that he may not have been a person of good moral character in the past, and we are obligated by statute to review whether the petitioner is barred from eligibility under the provisions of Section 101(f)(3) of the Act, which precludes a finding of good moral character for an alien who has been convicted of a CIMT.

Although section 101(f)(3) of the Act bars a finding of good moral character for an alien convicted of a CIMT, subsection 212(a)(2)(A)(ii)(II) of the Act excludes from that definition any alien convicted of a crime for which the maximum term of imprisonment did not exceed one year and the alien was not sentenced to a term of imprisonment exceeding six months. 8 U.S.C. § 1182(a)(2)(A)(ii)(II).⁴ In this case, the petitioner's CIMT meets the petty offense exception and section 101(f)(3) does not bar his eligibility for the benefit because the maximum penalty for a

⁴ This provision is commonly referred to as the petty offense exception. In order to be eligible for the exception, the alien may not have been convicted of a prior CIMT.

misdemeanor offense under CPC § 273.5(a) is one year,⁵ he was not sentenced to a term of imprisonment exceeding six months, and he was convicted of a single crime of moral turpitude.

Section 101(f)

The director found that the petitioner lacked good moral character under the last paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii) which provide that a person may lack good moral character although he is not found to have violated one of the enumerated classes. The petitioner has not overcome this finding on appeal.

In the petitioner's initial affidavit, he stated that he married R-S- when he was [redacted] years old, and she was 29 and pregnant with their first child. The petitioner described an abusive relationship with R-S- and stated that two years into the marriage, shortly after the birth of their twin daughters, he left because he could no longer tolerate the abuse. He indicated that after an unsuccessful attempt to recover his belongings from his wife's home, he called the sheriff to help him gain access, and when the sheriff arrived, R-S- falsely accused him of rape, spouse abuse, false imprisonment and burglary. The petitioner explained that in order to avoid a long detention pending resolution of the criminal charges, he pled *nolo contendere* to the spouse abuse charge.⁶

In support of his good moral character, the petitioner submitted police clearances, income tax transcripts indicating his payment of taxes in 2010, 2011, and 2012, and a copy of his high school equivalency diploma obtained in 2010 in the United States. The petitioner submitted letters from his fiancée, mother, father, fiancée's sister, friends and coworkers. His mother and father stated that R-S- falsified the petitioner's birth certificate in order to marry him when he was under 18 years old, and had him falsely arrested by lying to the sheriff. The petitioner's fiancée described her love for the petitioner and his good nature. Personal letters attest to the petitioner's strong ethical values, compassion, kindness, generosity and good moral character. On appeal, the petitioner submits a second affidavit reiterating that he never hurt R-S-, and additional personal letters from others attesting to his good moral character.

The petitioner asserts in response to our NOID that he was subjected to a pattern of psychological, physical and sexual abuse from R-S- and that she had total control of his life. He states that although R-S- accused him of rape, false imprisonment, burglary and spouse abuse, all charges were dismissed except the misdemeanor spouse abuse charge to which he pled *nolo contendere*. He avers that because he pled *nolo contendere* to a misdemeanor, the underlying facts supporting the spouse abuse conviction have no legal effect under CPC § 1016, which

⁵ CPC § 273.5(a) is a "wobbler" statute, under which a criminal defendant may be charged and convicted of either a misdemeanor punishable by imprisonment in a county jail for not more than one year, or a felony punishable by imprisonment in a state prison for two to four years. See, *Matter of Antonio Perez Ramirez*, (25 I&N Dec. 203) (BIA 2010).

⁶ A plea of *nolo contendere* is a conviction for immigration purposes under section 101(a)(48)(A) of the Act.

provides:

The court shall ascertain whether the defendant completely understands that a plea of nolo contendere shall be considered the same as a plea of guilty and that, upon a plea of nolo contendere, the court shall find the defendant guilty. The legal effect of such a plea, to a crime punishable as a felony, shall be the same as that of a guilty plea for all purposes. In cases other than those punishable as felonies, the plea and any admissions required by the court during any inquiry it makes as to the voluntariness of, and factual basis for, the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

CPC § 1016 is not applicable to the instant proceedings. CPC § 1016 refers to a civil suit, not to a petition for federal immigration benefits. The civil suit must be “based upon or growing out of the act upon which the criminal prosecution is based.” The petitioner’s self-petition is not based upon and does not arise from the petitioner’s plea in this case. Thus, the petitioner may not challenge the legal efficacy of the criminal court’s finding that there was a factual basis for his spouse abuse conviction.⁷

In response to our NOID, the petitioner reasserts his innocence with regard to his conviction for inflicting corporal injury on his spouse. He submits statements from his mother and sister describing the pattern of abuse and maintains that his domestic violence conviction is connected to the abuse, in that R-S-’s false accusations against him were part of the same pattern of conduct the director determined to constitute battery or extreme cruelty. We have considered the petitioner’s assertions. However, the criminal court found that there was a factual basis for the conviction and 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 1996)(same). The petitioner’s spouse abuse conviction demonstrates conduct that falls below the average citizen in the community,⁸ and the petitioner has not articulated extenuating or mitigating circumstances connecting his conviction to any abuse to which he was subjected by his wife during the marriage.

The petitioner has committed an unlawful act which adversely reflects upon his moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R.

⁷ In response to our NOID, the petitioner submitted a copy of the criminal court proceedings in which he admitted to a factual basis for a misdemeanor violation of CPC § 273.5(a).

⁸ The statute under which the petitioner was convicted requires the intentional and direct use of enough force to cause a wound or injury to the victim. *See Matter of Antonio Perez Ramirez*, 25 I&N Dec. at page 207. As noted by the director, this statute has been determined to categorically constitute a crime of violence in other immigration contexts. *See United States v. Laurico-Yeneo*, 590 F.3d 818, 821 (9th Cir. 2010). *See also Carrillo v. Holder*, 781 F.3d 1155 (9th Cir. 2015) (the elimination of domestic violence under CPC § 273.2(a) is a compelling state interest).

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§ 204.2(c)(1)(vii). The evidence therefore, does not demonstrate his good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not established that he is a person of 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. See Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met his burden.

ORDER: The appeal is dismissed.