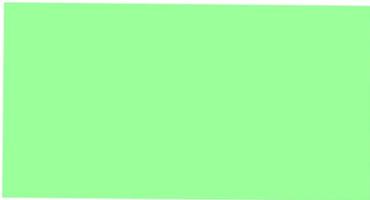


(b)(6)

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

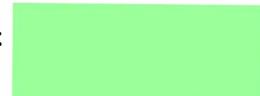


U.S. Citizenship
and Immigration
Services

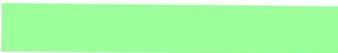


Date: FEB 19 2015

Office: VERMONT SERVICE CENTER File:

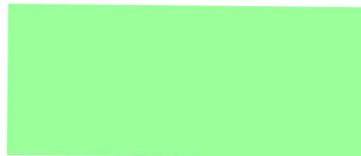


IN RE: Self-Petitioner:



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.

Thank you,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The Acting Vermont Service Center director (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 a United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that he has a qualifying spousal relationship with a U.S. citizen and corresponding eligibility for immigrant classification, and good moral character.

On appeal, the petitioner reasserts his eligibility and submits additional evidence. We issued a request for additional evidence on October 23, 2014, and the petitioner has timely responded.

Applicable Law

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 states, in pertinent part:

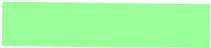
In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight 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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section



201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 further explained 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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 was born in Mexico and entered the United States without inspection on April 20, 2005. He married his second spouse, S-L-, a U.S. citizen, on [REDACTED] in [REDACTED] Illinois.¹ The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on December 12, 2012. The director denied the petition, finding that because the petitioner was not divorced from his first wife at the time he married S-L-, the petitioner had not established that he shared a qualifying spousal relationship with S-L- and corresponding eligibility for immigrant classification. The director also determined that the petitioner had not established that he has good moral character. The petitioner filed a timely appeal. On October 23, 2014, we requested additional evidence to establish the petitioner's good moral character, and he has timely responded.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, shows that the petitioner has overcome the director's grounds for denial for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner initially provided a personal statement dated January 16, 2010, that focused primarily on the abuse to which S-L- subjected him before and during their marriage. He also provided a cover letter indicating that he thought he was officially divorced from his first wife in Mexico when he married S-L-. He explained that as soon as he found out that he had not been divorced, he filed for and obtained a Judgment of Dissolution of Marriage dated [REDACTED]

The director denied the petition for failure to establish that the petitioner had a qualifying spousal relationship with S-L-, a U.S. citizen, and corresponding eligibility for immigrant classification, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. Specifically, the director found

¹ Name withheld to protect the individual's identity.

that the petitioner's divorce from his first wife was not final until [REDACTED] therefore, the evidence below did not demonstrate that the petitioner was free to marry S-L- on [REDACTED]. The director concluded that because the record did not contain satisfactory evidence that the petitioner was free to marry S-L-, the petitioner did not establish by a preponderance of the evidence that he had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based on that relationship under section 201(b)(2)(A)(i) of the Act.

Primary evidence of a qualifying relationship with a U.S. citizen spouse includes a marriage certificate issued by civil authorities, and proof of the legal termination of any prior marriages of the self-petitioner. 8 C.F.R. § 204.2(c)(2)(ii). A marriage must be valid under the laws of the jurisdiction of the place where the marriage is celebrated. *Matter of Adamo*, 13 I&N Dec. 26 (BIA 1968). Similarly, a divorce must be valid under the laws of the jurisdiction granting the divorce. *Matter of Hann*, 18 I&N Dec. 196 (BIA 1982). In visa petition proceedings, an annulment or invalidation of a prior marriage from inception can have retroactive effect where there is no intent to evade immigration laws. *Matter of Astorga*, 17 I&N Dec. 1, 5 (BIA 1979).

On appeal, the petitioner maintains that although bigamy is prohibited in Illinois, in certain circumstances parties to a prohibited marriage are considered lawfully married as of the date they remove the impediment to the lawful marriage. Specifically, he cites to Act 750 of the Illinois Compiled Statutes subsection 5/212(b), which provides that:

Parties to a marriage prohibited under subsection (a) of this Section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

750 ILCS 5/212(b) (2014).

The petitioner also provides a copy of a decision finding that a bigamous marriage in Illinois is legalized simply through operation of section 212(b) of the Illinois Marriage and Dissolution of Marriage Act. *In re Marriage of May*, 286 Ill. App. 3d 1060 (1997). The petitioner explains that he thought he was divorced from his first wife when he married S-L-. He asserts that as soon as he realized his first marriage had not resulted in final divorce, he obtained the [REDACTED] judgment of Dissolution of Marriage. As a result, the petitioner asserted that his marriage to S-L- became valid in Illinois as of the date of his [REDACTED] divorce from his first wife, because he and S-L- continued to reside together after that date.

On appeal, the petitioner has established by a preponderance of the evidence that he was divorced from his first spouse and properly married to S-L- as of [REDACTED] under the relevant Illinois statute. Accordingly, the petitioner has established that he has a qualifying spousal relationship with S-L-, a U.S. citizen, and is eligible for immediate relative classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Good Moral Character

The petitioner initially submitted a statement in which he asserted that on July 30, 2008, he was falsely accused of theft from the store at which he was employed and was fired. He stated in his cover letter that his “only significant criminal history is for DUI [driving under the influence.]” The petitioner included a one-page printout from the [REDACTED] dated October 7, 2012, showing that a search for the name [REDACTED] showed no records on file.

On appeal, the petitioner initially resubmitted previously provided documents and suggested that he had already satisfied the evidentiary requirements to establish good moral character for purposes of this immigrant classification.

On October 23, 2014, we notified the petitioner that although he had asserted that he had a single criminal offense on his record for DUI, the record relating to his Form I-485, Application to Register Permanent Residence or Adjust Status, revealed that he was arrested on June [REDACTED] by the [REDACTED] Police Department and charged with retail theft. We also noted that the petitioner’s initial affidavit referred to a workplace incident where he asserted that he was falsely accused of trying to steal property from his work on July [REDACTED] a date that is different from the retail theft arrest on June [REDACTED]

Accordingly, we requested the petitioner to provide a new affidavit addressing all of his arrests, and following information:

1. Copies of the arrest reports; and
2. Copies of court documents showing the final disposition of the charges.

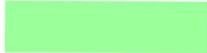
In response, the petitioner submits an affidavit explaining that his only arrest for retail theft was on June [REDACTED] and that he had erroneously recalled the date as July [REDACTED]. He also provides police records and court documents showing that his arrest for driving under the influence was not prosecuted and that on July [REDACTED] his single arrest for theft was stricken with leave to reinstate. Accordingly, the petitioner has submitted sufficient evidence to establish that he has good moral character for purposes of this immigrant classification.

Conclusion

On appeal, the petitioner has overcome the director’s grounds for denial and he is consequently eligible 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. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has met that burden.

(b)(6)



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NON-PRECEDENT DECISION

Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.