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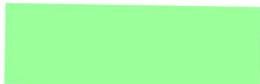


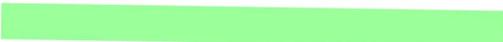
U.S. Citizenship
and Immigration
Services



Date: **JAN 07 2015**

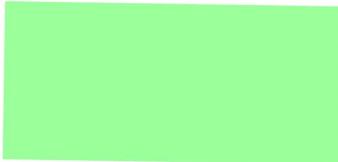
Office: VERMONT SERVICE CENTER

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, 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 former U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner is a person of good moral character. On appeal, the petitioner submits a brief and copies of his criminal records.

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.

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

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.

* * *

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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 Tajikistan who entered the United States on June 17, 2005 as a nonimmigrant student. The petitioner married S-K-, a U.S. citizen, on May [REDACTED], Nebraska.¹ Their marriage terminated in a divorce on August [REDACTED].

The petitioner filed the instant Form I-360 on August 11, 2011. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good moral character. The petitioner responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

¹ Name withheld to protect the individual's identity.

We conduct appellate review on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's arguments and the evidence submitted on appeal fail to overcome the director's ground for denial. The appeal will be dismissed for the following reason.

Good Moral Character

A. Petitioner's Criminal Convictions

The record reflects that the petitioner was convicted in the Court of ██████ County, Nebraska of disorderly conduct on April ██████ in violation of section 20-42 of the Municipal Code of ██████. He was sentenced to 12 months of probation and 30 days in jail. His probation was stipulated upon certain conditions, including the payment of fines, a chemical dependency evaluation, the completion of a Batterers Intervention Program, and the completion of 24 hours of community service.

On November ██████ the petitioner was convicted in the Court of ██████ County, Nebraska of assault and battery in violation of section 20-61 of the Municipal Code of ██████. He was sentenced to 12 months of probation under certain conditions including, the payment of fines, the completion of a Batterers Intervention Program, abstention from alcohol and controlled substances, submission to drug and alcohol testing, and no contact with S-K-.

B. Crime Involving Moral Turpitude

The director determined that the petitioner's convictions bar a finding of good moral character under section 101(f)(3) of the Act. Section 101(f)(3) of the Act prescribes, in pertinent part, that no person shall be found to have good moral character if he or she is a member of one or more of the classes of persons, whether inadmissible or not, described in subparagraph (A) of section 212(a)(2) of the Act.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
- (ii) Exception.--Clause (i)(I) shall not apply to an alien who committed only one crime if- . . .
 - (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months

(regardless of the extent to which the sentence was ultimately executed).

At the time of his conviction for disorderly conduct under section 20-42 of the Municipal Code of [REDACTED] the code provided:

It shall be unlawful for any person purposely or knowingly to cause inconvenience, annoyance or alarm or create the risk thereof to any person by:

- (a) Engaging in fighting, threatening or violent conduct; or
- (b) Using abusive, threatening or other fighting language or gestures.²

He was also convicted of assault and battery under section 20-61 of the Municipal Code of [REDACTED] which at the time of his conviction provided:

It shall be unlawful for any person purposely or knowingly to:

- (a) Strike or attempt to strike another person with the intent to cause bodily injury;
- (b) Cause or attempt to cause bodily injury to another person;
- (c) Place another person in fear of imminent bodily harm; or
- (d) Touch the sexual or intimate parts of the body of another person without his consent for the purpose of arousing or gratifying the sexual desire of either party.³

On appeal, the petitioner asserts that his conviction for disorderly conduct is not a crime involving moral turpitude. Moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general. *Matter of Short*, 20 I. & N. Dec. 136, 139 (BIA 1989)(citations omitted). The crime of disorderly conduct encompasses offenses that vary greatly by jurisdiction. The petitioner's disorderly conduct conviction in violation of the [REDACTED] Municipal Code includes the elements of engaging in fighting and using abusive language, conduct that is analogous to simple assault. Offenses characterized as simple assaults are generally not considered to be crimes involving moral turpitude because they are not inherently base, vile, or depraved. *Id.* The petitioner's disorderly conduct conviction is therefore not a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act.

On appeal, the petitioner asserts that even if his conviction for assault and battery could be considered a crime involving moral turpitude, it would fall under the petty offense exception of section 212(a)(2)(A)(ii)(II) of the Act because the crime for which he was convicted did not carry a maximum penalty of more than one year imprisonment and he was sentenced to less than six months

² State law reference— Regulation of disorderly conduct, Neb. Rev. Stat. § 14-102(22).

³ State law reference— Similar provisions, Neb. Rev. Stat. § 28-310.

imprisonment. When, as in this case, no specific penalty is provided under the [REDACTED] Municipal Code, a violation of the code includes a punishment by a fine of not exceeding \$500.00 or by imprisonment not to exceed six months, or both such fine and imprisonment in the discretion of the court. [REDACTED] Municipal Code § 1-10. Since the penalty for the offense did not exceed imprisonment for one year and the petitioner was not sentenced to any term of imprisonment, he qualifies for the petty offense exception. Consequently, section 101(f)(3) of the Act does not apply because even if the petitioner was convicted of a crime involving moral turpitude he is eligible for the petty offense exception to section 212(a)(2)(A)(i)(I) of the Act.⁴

Regarding the director's finding that the petitioner was convicted of a crime of violence and therefore barred from a finding of good moral character as an aggravated felony under section 101(f)(8), the petitioner was not given any term of imprisonment for his assault and battery conviction. A crime of violence is a bar to a finding of good moral character as an aggravated felony under section 101(f)(8) of the Act only if the term of imprisonment is at least one year. See Section 101(a)(43)(F) of the Act. Here, as the petitioner was not given any term of imprisonment for his assault and battery conviction, he is not considered to have been convicted of a crime of violence.

C. Petitioner Lacks Good Moral Character under Section 101(f) and the Regulation

Nonetheless, the record shows the petitioner lacks 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). 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." 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 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. . . .

Primary evidence of good moral character is the self-petitioner's affidavit. 8 C.F.R. § 204.2(c)(2)(v). On appeal, the petitioner asserts that his two convictions were connected to the abuse. The petitioner recounted in his declarations submitted below that he was arrested in February [REDACTED] during an incident in which he was taking a nap when S-K- jumped on top of him and began choking him because he would not wake up. He stated that he pushed S-K- in response. The petitioner claimed that S-K- scratched herself and told the police that he assaulted her. He stated that

⁴ We need reach the director's additional finding that the petitioner's conviction for assault and battery is a crime of violence. A crime of violence is a bar to a finding of good moral character as an aggravated felony under section 101(f)(8) of the Act only if the term of imprisonment is at least one year. See Section 101(a)(43)(F) of the Act. Here, the petitioner was not given any term of imprisonment for his assault and battery conviction.

S-K- subsequently obtained a protection order against him. Regarding his second arrest, the petitioner recounted that S-K- became jealous and physically assaulted him because he was speaking with another woman at a night club. The petitioner stated that S-K- hit him with either a wrench or a tire iron from his car as they were driving home. He claimed that she fell after she got out of the car and he then took his keys from her. *See Petitioner's Declarations*, dated June 14, 2011 and January 7, 2014. The petitioner, however, appears to have minimized his involvement in these incidents as his two declarations materially differ in the degree of his culpable conduct. The petitioner stated in his initial declaration that during the first incident he became angry at S-K- when she jumped on him and he "pushed her against the wall." In his declaration submitted in response to the second RFE, the petitioner modified his narrative and only stated that he pushed S-K- off of him. Similarly, in his initial declaration the petitioner recounted that during the second incident he and S-K- had an argument in his car and he left her and drove off. However, he stated in his declaration submitted in response to the RFE that he was already parked outside his apartment building when S-K- got out of his car. The petitioner's failure to provide a credible, consistent account of the incidents draws into question the reliability of his statements as probative evidence. The petitioner has therefore failed to establish extenuating circumstances for his unlawful acts.

In addition, the petitioner's probationary terms included evaluation and testing for chemical dependency, a no contact order and attendance at a Batterers Intervention Program, indicating that the court determined that the petitioner had chemical dependency issues and he required behavioral treatment because he was involved in domestic violence. The petitioner submitted evidence that he completed the conditions of his probation and he was eventually released from probation, but he has not further discussed his chemical dependency issues or taken responsibility for his involvement in the offenses. Moreover, at the time the petitioner filed the instant Form I-360 he was still on probation for his assault and battery conviction and therefore he failed to demonstrate that he was rehabilitated at the time of filing. The petitioner submitted letters attesting to his good moral character from his friends, [REDACTED], and his business associates, [REDACTED]. He also provided evidence that he owns a commercial cleaning company and he received recognition and an award from a business journal for his success with this company. The petitioner's friends and business associates, however, do not indicate that they are aware of the petitioner's convictions and can knowingly attest to his good moral character despite these incidents.

The petitioner's recent convictions demonstrate conduct that falls below the average citizen in the community and he has committed unlawful acts which adversely reflect upon his moral character pursuant to the final paragraph of section 101(f) of the Act and the regulation at 8 C.F.R. § 204.2(c)(1)(vii). The petitioner has failed to establish extenuating circumstances. Nor has he taken responsibility for his involvement in the offenses or shown rehabilitation at the time of filing. He has therefore failed to 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.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.